

## Payment of Costs in Criminal Cases

### Terms of Reference

In 1969, the Committee was asked to consider whether any alteration was desirable in the law relating to payment of costs to persons acquitted in prosecutions for criminal offences.

### Background of Reference

At the time of the reference, the law provided that in summary trials the court had a general discretion to award costs to acquitted persons.<sup>1</sup> The established practice, however, was not to award costs to the acquitted person where the complainant was a police officer. Similarly, on appeals from summary trials the appellate court had a discretion<sup>2</sup> to award costs except against a police officer.<sup>3</sup> In trials on indictment the law provided that the Crown neither received nor paid costs. This resulted in very few acquitted persons being reimbursed for the legal costs of their defence.

In April 1971 Premier John Tonkin, announced at a press conference that the Government intended to introduce legislation making the Crown liable to pay costs when it failed in a prosecution.<sup>4</sup> In March 1972 the Committee issued a working paper which examined the law and practice in other jurisdictions and discussed the issues involved in devising a statutory scheme for awarding costs in criminal cases.

### Nature and Extent of Consultation

The working paper was widely distributed and generated comments from a range of sources including judicial officers, law reform agencies, the Solicitor General, the Western Australian Crown Solicitor, the Law Society and the Police Department of Western Australia. The final report containing the Committee's recommendations was delivered in August 1972.<sup>5</sup>

### Recommendations

After careful consideration of the issues involved in implementing the Government's policy to award costs to successful defendants, the Committee recommended that:

- The successful defendant should be entitled to costs and the court should be required to order costs in the defendant's favour, unless:
  - (a) the charge was dismissed under s 669 of the Criminal Code dealing with first offenders;
  - (b) the defendant did or omitted to do something which was unreasonable in the circumstances and which contributed to the institution or continuation of the proceedings;
  - (c) the defendant did or caused to be done some act calculated to prolong the proceedings unnecessarily or cause unnecessary expense.
- The dismissal of a charge on a technical point should not be made a ground for denial of costs, due to the difficulty in defining the circumstances in which a prosecution may have failed on a 'technicality'.
- A special statutory fund should be established for the payment of costs in prosecutions by the police and officers of government departments and state instrumentalities. Other official prosecutions should have the costs awarded against the authority concerned and recoverable as a debt. Legislation should also be enacted to ensure that any existing statutory immunity did not preclude the award of such costs.

<sup>1</sup> *Justices Act 1902 (WA)* ss 151 & 152.

<sup>2</sup> *Justices Act 1902 (WA)* ss 190 & 206.

<sup>3</sup> *Justices Act 1902 (WA)* s 219.

<sup>4</sup> Law Reform Committee of Western Australia, *Payment of Costs in Criminal Cases*, Project No 12 (1972) para 2.

<sup>5</sup> *Ibid.*

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- Appellate courts should be given the same power to award costs as given to courts of first instance. The appellate court's power should also extend to awarding costs in proceedings in the court below.
- The prohibition on awarding costs against justices or police officers should be maintained.
- Legislation should be enacted empowering the Governor in Council to prescribe a scale of costs, but allowing the court to depart from it whenever it thought fit.
- Legislation may be necessary to deal with some consequential matters not within the terms of reference of the report but raised in the working paper:
  - (a) the court should be empowered to grant the successful defendant part of his costs notwithstanding that he has been convicted of a lesser offence if he can satisfy the court that additional costs were incurred in defending the more serious charge;
  - (b) where the defendant is charged with several offences in the one complaint and is acquitted of one or more of the charges, the court should be given a discretion to award the extra costs incurred in defending such charges;
  - (c) the application for costs should generally be dealt with by the presiding magistrate as soon as the trial has ended but the magistrate may adjourn the application and grant leave to adduce further evidence;
  - (d) costs should be awarded where a charge is not proceeded with or is withdrawn.
- The power to award costs should not be extended to order a convicted person to pay the costs of the successful prosecution.

### Legislative or Other Action Undertaken

The Committee's recommendations were implemented in 1973 when Parliament passed the *Official Prosecutions (Defendants' Costs) Act 1973* (WA).