

Compensation For Persons Detained in Custody

Terms of Reference

In 1973 the Commission was given a reference to consider whether legislation should be enacted to provide compensation for people detained in custody and subsequently acquitted.

Background of Reference

Detention in custody may involve personal hardship beyond the immediate loss of liberty, such as loss of income, property and employment. While a person in Western Australia may obtain compensation for legal costs in some circumstances, the only compensation for other losses is by means of an ex gratia payment from the Crown. At the time of the reference only one person had ever been compensated after having served a sentence for a wrongful conviction. The question for the Commission was whether persons wrongly imprisoned should be compensated and if so, to what extent.

From the outset it was recognised that only in exceptional circumstances could a person who had been detained in custody, and subsequently acquitted, be awarded compensation. The Commission issued a working paper on the subject in November 1976, which dealt with two aspects of the administration of the criminal law that might warrant consideration for compensation. Firstly, where a plaintiff is detained in custody pending final disposition of their case and is then acquitted, either at trial or on appeal; and secondly, where a plaintiff has been convicted and has served part, or all, of their sentence before they are pardoned or their conviction is quashed. The paper also drew attention to legislative schemes in other jurisdictions¹ which made provision for compensation in such cases. The paper was widely distributed and attracted a number of comments, some of which raised points that caused the Commission to conduct further research in preparation for delivery of a final report.

Reference Withdrawn

Research continued until 1981 when the project was deferred at the request of the Attorney-General. The reference was not revived and was formally withdrawn in 1983.

¹ Specifically those schemes operating in Holland, West Germany, France, Sweden and the United States of America.