



**THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA**

Project No 12

**Payment Of Costs in
Criminal Cases**

REPORT

AUGUST 1972

REPORT ON
PAYMENT OF COSTS IN CRIMINAL CASES

5. Although possibly not now of major significance in view of the Government's intention as expressed by you, it may nevertheless provide a useful background to outline the features of the working paper and to summarise the comments received, before going on in paragraphs 15 to 30 below to give the Committee's views on how to implement the Government's policy.

WORKING PAPER AND COMMENTS THEREON

6.

9. Comments on the working paper were received from -

“The importance of a criminal prosecution not resulting in a conviction is that the accused person is not liable to suffer any prescribed disability or penalty in respect of the charge. It is quite irrelevant whether he is in fact innocent or merely fortunate not to have been found guilty. The significance of an acquittal or a conviction is confined to the consequences. When one comes to consider the question of costs, it is really a question of compensation that is to be determined. This necessarily requires a consideration of the merits of the particular case. I cannot see that it is irrelevant in considering this question to recognise that many verdicts of acquittal in trials on indictment are sympathy verdicts, or verdicts which depend on a reasonable doubt albeit attended with grave suspicion, or verdicts which are plainly perverse. It must be remembered that having regard to the committal procedure, no one is required to stand trial on indictment unless there is evidence on oath which if believed would justify a conclusion of guilt beyond reasonable doubt. Another aspect of the matter is that referred to briefly in paragraph 1 hereover, namely, the truth that very few accused persons have anyone but themselves to blame for the charges made against them”.

- (c) He quoted the view of Virtue J. in *Q v. Jackson*—

- (d) He also approved of the English Practice Direction (see paragraph 17 of the working paper) but would prefer that the criteria were laid down in a statute, as in New Zealand (see paragraph 21 of the working paper).
 - (e) He did not give any reason for his view that in summary trials of summons cases, and in appeals from courts of petty sessions, costs should “follow the event”. However he said that the award of costs on successful appeals from courts of petty sessions would “go a long way to meeting the public concern that gave rise to the initial reference of the matter to the Committee”.
12. The State Crown Solicitor’s views are as follows -
- (a) He noted that the estimated costs would be substantial and would compete with other demands on public money such as housing and hospitals, and was concerned that this extra burden would by and large be caused by the wrongful or improper, whether or not criminal, conduct of the accused which attracted police attention in the first place. Generally speaking accused persons are the authors of their own misfortune. He gave the example of a person acquitted of the offence of causing death by failing to use reasonable care in the use of a motor vehicle. In his view there is “always some highly negligent driving on the part of the accused which warrants his being indicted” and it is “impossible to predict whether any particular jury will be satisfied that the negligence amounted to criminal negligence”.
 - (b) He cannot agree with the suggestion that costs in criminal proceedings should be awarded “as in the trial of a civil action”. Acquittal is not a matter of the accused establishing his innocence but is a result of the prosecution failing to satisfy the court of the accused’s guilt beyond reasonable doubt.
 - (c) However, he considers that “where an entirely innocent man has been the victim of unfortunate circumstances resulting in his being wrongly charged with an offence, or where the Police have acted negligently or injudicially in the initiation of charges against an innocent person ... the community owes it to the acquitted person to bear the burden of his legal costs”. To accomplish this the courts should be empowered to

award payment of costs to an acquitted person out of funds appropriated for that purpose.

13. One commentator appeared to have mistaken the Committee's intention. He assumed that it involved the awarding of costs against police officers and traffic inspectors personally. However the Committee suggested that such a step was undesirable. Paragraph 30 of the working paper states -

“On principle it may be argued that costs should not be awarded personally against officers of the Crown or the police and other statutory authorities acting pursuant to a duty to lay complaints and prosecute ... If costs are to be paid to accused persons in such cases they should be awarded to be paid out of State funds or the funds of the authority concerned”.

The Committee emphasises that its view is that if costs are to be awarded they should not be awarded against police officers or other officials acting in the course of their duty.

IMPLEMENTING THE GOVERNMENT'S DECISION

14. In the following paragraphs the Committee discusses suggestions to implement the Government's decision as expressed in paragraph 4 above.

Criteria

15. In the Committee's view the accused should be entitled to his costs if he is acquitted, and the court should be required to order costs in his favour. However the court should be empowered to deny an accused all or part of his costs in the following circumstances -

(a) If the charge was dismissed under s.669 of the *Criminal Code* dealing with first offenders.

of the offence by evidence which is inadmissible. There seems no reason why the accused should be denied his costs in this sort of case.

The Committee is of the view that it would be very difficult if not impossible to define precisely those circumstances in which an accused should be denied his costs because of the failure of the prosecution on a technicality. It would therefore recommend that this should not be made a ground for denial of costs.

Funds for paying defence costs

18. Under s.152 of the *Justices Act* any order for costs in favour of an acquitted person must be made against the complainant personally. The Committee suggested in paragraph 30 of its working paper that in 0 TD6paras09fficial prosecutions the award should be made directly against the Crown or other authority employing the complainant.

19. The Committee now thinks the better courparwould be to establish a special statutory fund and to empower the court to order that an accused's costs be paid directly from that fund in D6pas where it is feasible to do so. The English*Costs in Criminal Cases Act 1952* (as amended by the *Courts Act 1971*) and the *Costs in Criminal Cases Act 1967* as0New Zealand both make provision for a statutory fund.

20. There may however be administrative difficulties in including all statutory bodies within the ambit of the statutory fund suggested in the previous paragraph, particularly if, as would seem desirable, theparbodies were required to reimburparthe fund for payments made in respect of their unsuccessful prosecutions. It may be advisable therefore to confine the statutory fund to prosecutions by the police and 9fficers of Government departments and State instrumentalities and, in 0 TD6paras09ther 9fficial prosecutions, to provide that costs are to be awarded against the authority concerned and recoverable as a debt.

21. It would also be necessary to enact legislation ensuring that any existing statutory immunity as to costs (see for example s.72 of the *Traffic Act*, s.61 of the *Transport Commission Act* and s.365 of the *Health Act*) did not prevail against an award of costs out of the statutory fund or, where applicable, against a statutory body.

Appeals

22. The Committee is of the view that it would be desirable to extend the Government's

- (3) Finally, paragraphs 15 to 25 above refer to persons who are acquitted of a charge. There is no reason why the Government's proposal should not extend to cases where a charge is not proceeded with or is withdrawn and the Committee recommends accordingly.

Supreme Court

27. You asked the Committee to include in its report a discussion of whether the proposals should extend to persons acquitted in the Supreme or District Courts. In paragraph 40 of its working paper the Committee expressed the tentative view that if insufficient finance was available the scheme should be limited in the first instance to indictable offences. The reason for this suggestion was that the number of indictable offences is much less than that of summary offences, but that the cost of a successful defence against a charge of an indictable

