
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.

◀ Payment of Costs in Criminal Cases

- 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 - (d) costs should be awarded where a charge is not proceeded with or is withdrawn.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).