

COSTS IN CRIMINAL CASES ACT.

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 13, 1967.

An Act relating to costs in criminal cases; to amend the Justices Act, 1902, as amended by subsequent Acts; and for purposes connected therewith. [Assented to, 23rd March, 1967.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

Short title,
commence-
ment and
application.

1. (1) This Act may be cited as the "Costs in Criminal Cases Act, 1967".

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

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(3) This Act does not apply in respect of proceedings No. 13, 1967 instituted, or appeals lodged, before its commencement.

2. The Court or Judge or Justice or Justices in any proceedings relating to any offence, whether punishable summarily or upon indictment, may—

Certificate
may be
granted.

- (a) where a defendant, after a hearing on the merits, is acquitted or discharged as to the information then under inquiry; or
- (b) where, on appeal, the conviction of the defendant is quashed and—
 - (i) he is discharged as to the indictment upon which he was convicted; or
 - (ii) the information or complaint upon which he was convicted is dismissed,

grant to that defendant a certificate under this Act, specifying the matters referred to in section three of this Act and relating to those proceedings.

3. (1) A certificate granted under this Act shall specify that, in the opinion of the Court or Judge or Justice or Justices granting the certificate—

Form of
certificate.

- (a) if the prosecution had, before the proceedings were instituted, been in possession of evidence of all the relevant facts, it would not have been reasonable to institute the proceedings; and
- (b) that any act or omission of the defendant that contributed, or might have contributed, to the institution or continuation of the proceedings was reasonable in the circumstances.

(2) A certificate granted under this Act by a Justice or by Justices shall specify the amount of costs that he or they would have adjudged to be paid if he or they had made an order for costs against the informant, prosecutor or complainant, as the case may be.

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Payment
of costs.

4. (1) In this section "Under Secretary" means the Under Secretary of the Department of the Attorney General and of Justice.

(2) Any person to whom a certificate has been granted pursuant to this Act may, upon production of the certificate to the Under Secretary, make application to him for payment from the Consolidated Revenue Fund of the costs incurred by that person in the proceedings to which the certificate relates.

(3) Subject to subsection four of this section, the Under Secretary shall, as soon as practicable after receiving an application under subsection two of this section, furnish to the Treasurer a statement, signed by the Under Secretary, setting forth the particulars of the application and the certificate to which it relates and specifying—

- (a) (i) where an amount for costs has been specified in the certificate pursuant to subsection two of section three of this Act, the amount so specified; or
- (ii) where an amount for costs has not been so specified, the amount that, in the opinion of the Under Secretary, would reasonably have been incurred for costs by the applicant in the proceedings to which the certificate relates; and
- (b) any amounts which, in the opinion of the Under Secretary, the applicant has received or is entitled to receive or would, if he had exhausted all relevant rights of action and other legal remedies available to him, be entitled to receive, independently of this Act, by reason of his having incurred those costs.

(4) The Under Secretary may defer furnishing to the Treasurer any statement under subsection three of this section for as long as he considers it necessary to do so to enable him to specify the amounts referred to in subparagraph (ii) of paragraph (a), and paragraph (b), of that subsection.

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(5) Where the Treasurer, after receiving the Under Secretary's statement relating to any such application, considers that, in the circumstances of the case, the making of a payment to the applicant is justified, the Treasurer may pay to the applicant his costs or such part thereof as the Treasurer may determine. No. 13, 1967

(6) Any payments under subsection five of this section may be made without further appropriation than this Act.

5. (1) Where payment is made to any person pursuant to section four of this Act, the Under Secretary shall be subrogated, to the extent of the payment, to all the rights and remedies of that person, other than those provided under this Act, to recover costs incurred in the proceedings in respect of which application for the payment was made. Under Secretary subrogated to rights of applicant.

(2) Any moneys recovered by the Under Secretary pursuant to subsection one of this section shall be paid to the Consolidated Revenue Fund.

6. No certificate granted pursuant to this Act shall be admissible in evidence in any proceedings. Certificate not admissible in evidence.

7. (1) The Justices Act, 1902, as amended by subsequent Acts, is amended by inserting next after section forty-one the following new section :— Amendment of Act No. 27, 1902. New sec. 41A.

41A. (1) The Justice or Justices making any order discharging a defendant as to the information then under inquiry may in and by such order adjudge that the informant shall pay to the clerk of the court to be by him paid to the defendant such costs as to such Justice or Justices seem just and reasonable. Justice may order costs to be paid by informant.

(2) The amount so allowed for costs shall in all cases be specified in such order.

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(3) The provisions of sections eighty-two, eighty-three and eighty-four of this Act relating to orders for the payment of costs shall, mutatis mutandis, apply to and in respect of orders for the payment of costs made pursuant to this section.

(2) The Justices Act, 1902, as amended by subsequent Acts and by this Act, may be cited as the Justices Act, 1902-1967.

CRIMINAL