

JUSTICES (COSTS) AMENDMENT ACT 1991 No. 79

NEW SOUTH WALES



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JUSTICES (COSTS) AMENDMENT ACT 1991 No. 79

NEW SOUTH WALES



Act No. 79, 1991

An Act to amend the Justices Act 1902 with respect to the awarding of costs. [Assented to 17 December 1991]

Justices (Costs) Amendment 1991

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Justices (Costs) Amendment Act 1991.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Justices Act 1902 No. 27

3. The Justices Act 1902 is amended as set out in Schedule 1.

Transitional

4. An amendment made by this Act does not apply to the awarding of costs to a defendant in proceedings commenced before the commencement of the amendment or to an appellant in an appeal relating to any such proceedings.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 41A (**Payment of costs by informant**):

After section 41A (2), insert:

(2A) Costs are not to be awarded in favour of a defendant unless the Justice or Justices is or are satisfied as to any of the following:

- (a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner;
- (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner;
- (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the defendant might not be guilty or that, for any other reason, the proceedings should not have been brought;

SCHEDULE 1—AMENDMENTS—*continued*

(d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.

(2B) Subsection (2A) does not apply to the awarding of costs against an informant acting in a private capacity.

(2) Section 81 (**Payment of costs by defendant, or by prosecutor or complainant**):

After section 81 (3), insert:

(4) Costs are not to be awarded in favour of a defendant unless the Justice or Justices is or are satisfied as to any of the following:

(a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner;

(b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner,

(c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the defendant might not be guilty or that, for any other reason, the proceedings should not have been brought;

(d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.

(5) Subsection (4) does not apply to the awarding of costs against an informant or complainant acting in a private capacity.

(3) Section 125 (**Powers of Court appealed to**):

After section 125 (2), insert:

(3) Costs are not to be awarded in favour of an appellant whose conviction is quashed or set aside unless the Court is satisfied as to any of the following:

(a) that the investigation into the alleged offence was conducted in an unreasonable or improper manner;

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SCHEDULE 1—AMENDMENTS—*continued*

- (b) that the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner;
 - (c) that the prosecution unreasonably failed to investigate (or to investigate properly) any relevant matter of which it was aware or ought reasonably to have been aware and which suggested either that the defendant might not be guilty or that, for any other reason, the proceedings should not have been brought;
 - (d) that, because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.
- (4) Subsection (3) does not apply to the awarding of costs against a respondent acting in a private capacity.

*[Minister's second reading speech made in—
Legislative Assembly on 16 October 1991
Legislative Council on 11 December 1991]*