

# Costs in Criminal Cases Act 1967 No 13

[1967-13]



New South Wales

## Status Information

### Currency of version

Current version for 27 March 2021 to date (accessed 3 May 2024 at 9:50)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Editorial note**

The Parliamentary Counsel's Office is progressively updating certain formatting styles in versions of NSW in force legislation published from 29 July 2019. For example, colons are being replaced by em-dashes (em-dashes). Text of the legislation is not affected.

This version has been updated.

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 27 March 2021

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# Costs in Criminal Cases Act 1967 No 13



New South Wales

An Act relating to costs in criminal cases; to amend the [Justices Act 1902](#) as amended by subsequent Acts; and for purposes connected therewith.

## 1 Name of Act, commencement and application

- (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.
- (3) This Act does not apply in respect of proceedings instituted, or appeals lodged, before its commencement.

### 1A Definition

In this Act—

**Director-General** means the Director-General of the Attorney General's Department.

## 2 Certificate may be granted

- (1) The Court or Judge or Magistrate in any proceedings relating to any offence, whether punishable summarily or upon indictment, may—
  - (a) where, after the commencement of a trial in the proceedings, a defendant is acquitted or discharged in relation to the offence concerned, or a direction is given by the Director of Public Prosecutions that no further proceedings be taken, or
  - (b) where, on appeal, the conviction of the defendant is quashed and—
    - (i) the defendant is discharged as to the indictment upon which he or she was convicted, or
    - (ii) the information or complaint upon which the defendant was convicted is dismissed,

grant to that defendant a certificate under this Act, specifying the matters referred to in section 3 and relating to those proceedings.

- (2) For the avoidance of doubt, a certificate may be granted in accordance with subsection (1) (a) following an acquittal or discharge of a defendant at any time during a trial, whether a hearing on the merits of the proceedings has occurred or not.
- (3) In this section, **trial**, in relation to proceedings, includes a special hearing conducted under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* and also includes preliminary proceedings that form part of the trial, for example, a voir dire.

### 3 Form of certificate

- (1) A certificate granted under this Act shall specify that, in the opinion of the Court or Judge or Magistrate granting the 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) (Repealed)

### 3A Evidence of further relevant facts may be adduced

- (1) For the purpose of determining whether or not to grant a certificate under section 2 in relation to any proceedings, the reference in section 3 (1) (a) to **all the relevant facts** is a reference to—
  - (a) the relevant facts established in the proceedings, and
  - (b) any relevant facts that the defendant has, on the application for the certificate, established to the satisfaction of the Court or Judge or Magistrate, and
  - (c) any relevant facts that the prosecutor, or in the absence of the prosecutor, any person authorised to represent the Minister on the application, has established to the satisfaction of the Court or Judge or Magistrate that—
    - (i) relate to evidence that was in the possession of the prosecutor at the time that the decision to institute proceedings was made, and
    - (ii) were not adduced in the proceedings.
- (2) Where, on an application for a certificate under section 2 in relation to any proceedings, the defendant adduces evidence to establish further relevant facts that were not established in those proceedings, the Court or Judge or Magistrate to which or to whom the application is made may—

- (a) order that leave be given to the prosecutor in those proceedings or, in the absence of the prosecutor, to any person authorised to represent the Minister on the application, to comment on the evidence of those further relevant facts, and
  - (b) if the Court, Judge or Magistrate think it desirable to do so after taking into consideration any such comments, order that leave be given to the prosecutor or to the person representing the Minister to examine any witness giving evidence for the applicant or to adduce evidence tending to show why the certificate applied for should not be granted and adjourn the application so that that evidence may be adduced.
- (3) If, in response to an application for a certificate under section 2 in relation to any proceedings, the prosecutor or, in the absence of the prosecutor, any person authorised to represent the Minister on the application adduces evidence to establish further relevant facts that were not established in those proceedings, the Court or Judge or Magistrate to which or to whom the application is made may—
  - (a) order that leave be given to the defendant to comment on the evidence of those relevant facts, and
  - (b) if the Court or Judge or Magistrate think it desirable to do so after taking into consideration any of those comments, order that leave be given to the defendant to examine any witness giving evidence for the prosecutor or that authorised person.

#### **4 Payment of costs**

- (1) A person to whom a certificate has been granted under this Act may apply to the Director-General for payment from the Consolidated Fund of costs incurred in the proceedings to which the certificate relates. The application is to be accompanied by a copy of the certificate.
- (2) The Director-General may, if of the opinion that, in the circumstances of the case, the making of a payment to the applicant is justified, determine the amount of costs that should be paid to the applicant, not exceeding the maximum amount referred to in subsection (3).
- (3) The maximum amount is the amount that, in the opinion of the Director-General, would reasonably have been incurred for costs by the applicant in the proceedings, reduced by any amounts that, in the opinion of the Director-General, the applicant—
  - (a) has received or is entitled to receive, or
  - (b) would, if the applicant had exhausted all relevant rights of action and other legal remedies available to the applicant, be entitled to receive,independently of this Act, because of the applicant's having incurred those costs.

- (4) The Director-General may refuse an application under this section if of the opinion that, in the circumstances of the case, the making of a payment to the applicant is not justified or (without limitation) if costs are otherwise recoverable.
- (5) The Director-General may defer consideration of an application under this section for as long as the Director-General considers it necessary to do so to enable the Director-General to ascertain any amount referred to in subsection (3).
- (6) The amount specified in the determination is payable from the Consolidated Fund to the applicant or to another person on the applicant's behalf. Any payments from the Consolidated Fund under this section may be made without further appropriation than this Act.

## **5 Director-General subrogated to rights of applicant**

- (1) Where payment is made to any person pursuant to section 4, the Director-General 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.
- (2) Any moneys recovered by the Director-General pursuant to subsection (1) shall be paid to the Consolidated Fund.

## **6 Certificate not admissible in evidence**

No certificate granted pursuant to this Act shall be admissible in evidence in any proceedings.

### **6A Delegation**

The Director-General may delegate any of his or her powers, authorities, duties or functions under this Act (other than this power of delegation) to an officer of the Attorney General's Department.

## **6B Savings and transitional provisions relating to [Courts Legislation Amendment Act 1998](#)**

- (1) In this section—

**amending Act** means the [Courts Legislation Amendment Act 1998](#).

**existing certificate** means a certificate granted under this Act before the relevant commencement.

**relevant commencement** means the commencement of the provision of the amending Act that substitutes section 4.

- (2) This Act as in force before the relevant commencement continues to apply to and in respect of an existing certificate where an application had been made under this Act in connection with the certificate before that commencement.

- (3) This Act as in force after the relevant commencement applies to and in respect of an existing certificate where an application had not been made under this Act in connection with the certificate before that commencement.
- (4) The Governor may make regulations containing other provisions of a savings or transitional nature consequent on the enactment of Schedule 5 to the amending Act.
- (5) Any such provision may, if the regulations so provide, take effect from the date of assent to the amending Act.
- (6) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

**7 Savings and transitional provisions relating to [Courts Legislation Amendment Act 2001](#)**

- (1) Sections 2 and 3A, as amended by the [Courts Legislation Amendment Act 2001](#), apply to and in respect of proceedings not finally determined before the commencement of the relevant amendment.
- (2) Sections 2 and 3A, as in force immediately before their amendment by the [Courts Legislation Amendment Act 2001](#), continue to apply to and in respect of proceedings finally determined before the relevant amendment commenced.