

SEVENTH REPORT

OF THE NORTHERN TERRITORY LAW REFORM COMMITTEE

TO

THE ATTORNEY-GENERAL FOR THE NORTHERN TERRITORY

---

RELATING TO DEFENDANTS' COSTS IN SUMMARY PROCEEDINGS

---

DORWIN

MAY 1981

MEMBERS OF THE NORTHERN TERRITORY LAW REVIEW COMMITTEE:

The Honourable Mr Justice J.L. Toohy (Chairman),  
the Honourable Mr Justice J.H. Muirhead,  
Mr B. Martin (Solicitor-General), Mr G. Galvin, S.M.  
Messrs T. Coulehan, J. Dorling, D. Mildren,  
A.R. Miller, A. Oakey, J. Reeves and T. Riley.

REPORT AND RECOMMENDATION OF THE NORTHERN TERRITORY LAW  
REVIEW COMMITTEE - RELATING TO DEFENDANTS COSTS IN  
SUMMARY PROCEEDINGS

To: The Honourable P.A.E. Everingham,  
Attorney-General for the Northern Territory of Australia.

Sir,

This Committee has examined the existing laws of the Territory and concluded it should report to you that it has found a need for legislation to provide for the payment of costs to defendants in certain criminal cases.

1. Such costs may in some circumstances be paid under existing law, but there is a need to clarify and codify the position and an Act to deal with costs in criminal proceedings is required. An important problem this Act can eliminate, is the present position whereby a defendant who obtains costs against a public officer who conducts a prosecution on behalf of the Crown or a municipality, may levy execution against that officer personally. This is a highly undesirable situation, even if in practice it is unlikely to arise.
2. The appropriate Territory enactment should, we suggest, contain provisions as set out hereafter; these reflect, in the main, provisions drawn from Tasmanian and Western Australian legislation.
3. The Act should bind the Crown, its instrumentalities and certain statutory authorities including municipalities.
4. Costs recoverable under the provisions of the Act should not include expenses incurred by the Territory, Commonwealth or by a legal aid organisation on behalf of

the defendant to the extent that they are not payable or repayable by the defendant, save where the court determines there are special circumstances justifying payment.

5. The proceedings to be covered by the Act shall be proceedings in any "court" as defined by the Interpretation Act.
6. The legislation should apply to criminal proceedings brought by a public officer against a defendant - the term "public officer" to be defined to include a Minister of the Crown, a person employed in the Public Service of the Territory, Crown Prosecutor for the Territory, member of the Police Force of the Territory, a legal practitioner acting as solicitor or counsel as or for the Crown Prosecutor, a Probation Officer or an officer employed by a statutory authority, the latter to include a municipality within the meaning of the Local Government Act.
7. Where an accused person has been forced to incur legal costs in order to defend himself against an indictable offence in the Supreme Court, the Act should provide for the payment of his costs.
8. Payment in these cases should be limited to situations where the accused has been acquitted or the prosecution obtains leave to withdraw or enters a nolle prosequi.
9. The Western Australian Law Reform Commission's published report recommends that in the cases mentioned in paragraphs 7 and 8 costs should be paid. With the exception of a nolle prosequi entered, Tasmanian legislation provides for payment of such costs. English, New Zealand and New South Wales legislation is limited to payment where the accused is acquitted.

10. Other states have not followed Tasmania's lead. The Committee recommends that the Territory should do so as the burden of expense upon accused in criminal trials is at least as great, usually greater, than upon defendants in summary proceedings.
11. The legislation should, therefore, provide that the Court, shall, except for good reason to the contrary, grant to the defendant a certificate of costs under the Act in circumstances where:-
- a) he is acquitted of an offence or a nolle prosequi is entered;
  - b) the complaint charging him with the offence is dismissed or withdrawn; or
  - c) he is discharged upon an indictment for the offence.

All summary and indictable offences should be encompassed by the legislation.

12. The Court should be further empowered to adjourn to Chambers any question (in respect of the granting of a certificate under the legislation, or) concerning the amount thereof, to enable the making of submissions and the tendering of evidence, including affidavit evidence, on the question.
13. The legislation should specifically preclude a defendant who obtains a certificate of costs from recovering those costs by execution against the prosecutor personally where it is a public officer.
14. In the case of a prosecution by a public officer, a certificate of costs granted to a defendant should specify:-
- a) in the case of a prosecution brought by a public officer other than one who is employed by or acts as an agent for a municipality or any other statutory body, that on production of the

certificate to the Treasurer, the defendant should be paid the costs specified therein out of Consolidated Revenue.

b) in the case of a prosecution brought by a public officer who is employed by or acts as an agent for a municipality or any other statutory body, costs should be awarded against that body (where appropriate) and recoverable against it as a civil debt.

15. Because for the purposes of the proposed legislation a public officer of the Commonwealth will be in the same position as a private individual (the Territory being unable by its legislation to bind the Commonwealth) this residual anomaly should be brought to the attention of the Commonwealth authorities concerned.
16. The quantum of costs specified in any certificate is to be in the discretion of the court with no upper or lower limits to be prescribed.
17. The courts should be given a further power to grant a certificate of costs where the defendant is convicted but the court is of the opinion that the charge involved a difficult or important point of law or issue of fact and that special circumstances prevail whereby he should recover costs in respect of arguing that issue.
18. The usual general power for the Administrator to make regulations under the legislation should be included, and it should be drawn in the light of any proposed Suitor's Cost Fund Act, and of course any other legislation, existing or in train, touching the matter.

19. The need for legislation as summarised above is commended for your consideration.

---

Chairman

---

Executive Member

---

Member

A BILL

FOR

AN ACT

To provide for the payment of costs to Defendants in criminal cases; to amend the Justices Act and for incidental purposes. Be it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:-

PART I

PRELIMINARY

1. This Act may be cited as the Defendants Costs Act.
2. This Act shall commence upon a day to be appointed by the Administrator by notice in the Gazette.
3. (1) This Act does not apply in respect of proceedings instituted, or appeals lodged, before its commencement.  
(2) This Act binds the Crown.
4. In this Act, unless the contrary intention appears -  
"costs" means expenses properly incurred by a defendant but does not include any expenses incurred by the Territory, Commonwealth, or any other body by way of legal aid to the defendant;  
"Court" means a court of summary jurisdiction;  
"defendant" means any person charged with an offence;  
"public officer" means any person employed in any capacity in the public service of the Territory and includes:-
  - (a) a police officer;
  - (b) a probation officer; and
  - (c) an officer employed by a Statutory Authority;"Statutory Authority" means any person or body of persons, whether corporate or unincorporate, constituted or established by or under any Act, to administer or control any department, business, or undertaking on behalf of the Territory, and includes a municipality within the meaning of the Local Government Act.



5. (1) Subject to this Act, where a person having been charged by a public officer with an offence is discharged totally or in part from the proceedings in respect thereof, that is to say, where:-
- (a) he is acquitted of an offence;
  - (b) the complaint charging him with the offence is dismissed or withdrawn; or
  - (c) he is discharged upon an indictment for the offence, the Court may subject to this:-  
Act in relation to these proceedings or part thereof grant to that defendant a certificate of costs under this Act.
6. The Court may adjourn to Chambers any question in respect of the granting of a certificate under this Act, or the amount thereof, to enable the making of submissions and the tendering of evidence, including affidavit evidence, on that question.
7. Where costs are ordered under this Act:-
- (a) if the public officer a party to the proceedings is a Minister of the Crown, a person employed in the Public Service of the Territory, a member of a Police Force, or any other person acting as Agent of or under the instructions of such a person, the Clerk or Registrar, as the case requires, of the Court shall give to the defendant a certificate signed by the Clerk or sealed with the Seal of the Court, as the case requires, showing the amount of the costs ordered, and on production of the certificate to the Treasurer, the defendant shall be paid such costs out of Consolidated Revenue; or
  - (b) if the public officer a party to the proceedings is a person employed by a municipality within the meaning of the Local Government Act, or by any other statutory body, or is any other person acting as Agent of or under the instructions of such a person or body, the costs shall be ordered against that body and shall be paid by it to the defendant and shall be recoverable as a civil debt.

8. The amount specified in any certificate under this Act other than Court fees, shall be in the discretion of the Court.
9. Where a defendant is convicted but the court is of the opinion that the charge involved a difficult or important point of law or on an issue of fact and that in the special circumstances of the case it is proper that he should receive costs in respect of the arguing of that point of law or issue of fact the court may order that he be granted a certificate under this Act on such terms as it thinks just and reasonable.
10. The Administrator may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the carrying out of or the giving of effect to this Act.