Version
as at 23 December 2023

Costs in Criminal Cases Act 1967

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

Schedule
Enactments repealed

9

An Act to amend the law relating to the payment of costs in criminal cases

1 Short Title and commencement

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

(2) This Act shall come into force on 1 April 1968.

2 Interpretation

In this Act, unless the context otherwise requires,—

costs means any expenses properly incurred by a party in carrying out a prosecution, carrying on a defence, or in making or defending an appeal

court means any court exercising any jurisdiction in criminal cases

Crown organisation has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

defendant means any person charged with an offence.

Section 2 **Crown organisation**: inserted, on 18 October 2002, by section 19 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

3 Act to bind the Crown

This Act shall bind the Crown.

4 Costs of the prosecutor

(1) Where any defendant is convicted by any court of any offence, the court may, subject to any regulations made under this Act, order him to pay such sum as it thinks just and reasonable towards the costs of the prosecution.

(2) Where on the arrest of that person any money was taken from him the court may in its discretion order the whole or any part of the money to be applied to any such payment.

(3) Where the court convicts any person and the prosecutor has not prepaid any fees of court, the court may order the person convicted to pay the fees of court.

(4) Any costs allowed under this section shall be specified in the conviction and may be recovered in the same manner as a fine.

(5) If subsection (1) or subsection (3) applies and the defendant or person convicted is a Crown organisation convicted of an offence against the Building Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, or the Resource Management Act 1991, any costs and fees awarded must be paid from the funds of that organisation.

Compare: 1957 No 87 s 72(1), (4), (6); 1961 No 43 s 402(1), (4)

Section 4(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 4(5): inserted, on 18 October 2002, by section 20 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 4(5): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 4(5): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 4(5): amended, on 1 October 2009, by section 162(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(5): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

5 Costs of successful defendant

(1) Where any defendant is acquitted of an offence or where the charge is dismissed or withdrawn, whether upon the merits or otherwise, the court may, subject to any regulations made under this Act, order that he be paid such sum as it thinks just and reasonable towards the costs of his defence.

(2) Without limiting or affecting the court's discretion under subsection (1), it is hereby declared that the court, in deciding whether to grant costs and the amount of any costs granted, shall have regard to all relevant circumstances and in particular (where appropriate) to—

(a) whether the prosecution acted in good faith in bringing and continuing the proceedings:

(b) whether at the commencement of the proceedings the prosecution had sufficient evidence to support the conviction of the defendant in the absence of contrary evidence:

(c) whether the prosecution took proper steps to investigate any matter coming into its hands which suggested that the defendant might not be guilty:

(d) whether generally the investigation into the offence was conducted in a reasonable and proper manner:

(e) whether the evidence as a whole would support a finding of guilt but the charge was dismissed on a technical point:

(f) whether the charge was dismissed because the defendant established (either by the evidence of witnesses called by him or by the cross-examination of witnesses for the prosecution or otherwise) that he was not guilty:

(g) whether the behaviour of the defendant in relation to the acts or omissions on which the charge was based and to the investigation and proceedings was such that a sum should be paid towards the costs of his defence.

(3) There shall be no presumption for or against the granting of costs in any case.

(4) No defendant shall be granted costs under this section by reason only of the fact that he has been acquitted or that any charge has been dismissed or withdrawn.

(5) No defendant shall be refused costs under this section by reason only of the fact that the proceedings were properly brought and continued.

Compare: 1957 No 87 s 72(2); 1961 No 43 s 402(3)

Section 5(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 5(1): amended, on 29 June 2009, by section 18 of the Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41).

Section 5(2)(e): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 5(2)(f): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 5(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

6 Costs of convicted defendant

Where any defendant is convicted but the court is of the opinion that the prosecution involved a difficult or important point of law 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, the court may, subject to any regulations made under this Act, order that he be paid such sum as it considers just and reasonable towards those costs.

7 Payment of defendant's costs

(1) Subject to subsection (2), where any order is made under section 5 or section 6 the amount ordered to be paid to the defendant shall—

(a) if the prosecution was conducted by or on behalf of the Crown, be paid by the chief executive of the Ministry of Justice out of money appropriated by Parliament for the purpose and may be recovered as a debt due by the Crown:

(b) if the prosecution was not conducted by or on behalf of the Crown, be paid by the person who commenced the proceedings and may be recovered from him as a debt, and any such order made by the District Court shall be enforceable as if it were a fine.

(2) Notwithstanding the provisions of subsection (1) where a court is of the opinion that any person has acted negligently or in bad faith in bringing, continuing, or conducting a prosecution it may, in any order made under section 5, direct that the defendant's costs shall be paid by—

(a) the government department, officer of the Crown, local authority, or public body on whose behalf that person was acting; or

(b) if he was not so acting, by that person personally,—

and in any such case costs shall not be paid under subsection (1) but shall be paid by, and may be recovered as a debt from, the government department, officer of the Crown, local authority, public body, or person specified in the order.

(3) If an order under section 5 or section 6 relating to the payment of costs is made in favour of a Crown organisation that was prosecuted for an offence against the Building Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, or the Resource Management Act 1991, those costs must be paid to that Crown organisation.

Section 7(1)(a): amended, on 1 October 2003, pursuant to section 14(2) of the State Sector Amendment Act 2003 (2003 No 41).

Section 7(1)(a): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 7(1)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 7(1)(b): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 7(3): inserted, on 18 October 2002, by section 21 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 7(3): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 7(3): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 7(3): amended, on 1 October 2009, by section 162(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 7(3): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

8 Costs on appeals

(1) Where any appeal is made pursuant to any provision of Part 6 of the Criminal Procedure Act 2011 the court which determines the appeal may, subject to any regulations made under this Act, make such order as to costs as it thinks fit.

(2) No defendant or convicted defendant shall be granted costs under this section by reason only of the fact that his appeal has been successful.

(3) No defendant or convicted defendant shall be refused costs under this section by reason only of the fact that the appeal was reasonably brought and continued by another party to the proceedings.

(4) No Judge, Justice, or Community Magistrate is liable to costs just because an appeal is filed against a determination by that judicial officer.

(5) If the court which determines an appeal is of opinion that the appeal includes any frivolous or vexatious matter, it may, if it thinks fit, irrespective of the result of the appeal, order that the whole or any part of the costs of any party to the proceedings in disputing the frivolous or vexatious matter shall be paid by the party who raised the frivolous or vexatious matter.

(6) If the court which determines an appeal is of opinion that the appeal involves a difficult or important point of law it may order that the costs of any party to the proceedings shall be paid by any other party to the proceedings irrespective of the result of the appeal.

Compare: 1957 No 87 s 140; 1961 No 43 s 391

Section 8(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 8(4): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

9 Party giving notice of appeal and not prosecuting may be ordered to pay costs

(1) If a notice of appeal is given under Part 6 of the Criminal Procedure Act 2011 but the appeal is abandoned under that Part, the court appealed to may, subject to any regulations made under this Act, allow the respondent any costs that it thinks fit.

(2) No costs incurred after notice has been given by the appellant abandoning the appeal shall be allowed.

Compare: 1957 No 87 s 141

Section 9(1): replaced, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

10 Enforcement of order as to costs made on an appeal

(1) Where on the determination of any appeal either party is ordered to pay costs,—

(a) the order as to costs shall, in the case of an appeal under Part 6 of the Criminal Procedure Act 2011, be included in the notice of the decision sent in accordance with section 342 of that Act, and, except where the party ordered to pay costs is the Crown, or a person acting for or on behalf of the Crown, be enforceable as if it were a fine imposed by the District Court:

(b) the amount of the costs shall be recoverable from the Crown where the party ordered to pay costs is the Crown or a person acting for or on behalf of the Crown.

(2) Despite subsection (1), if, on the determination of any appeal to which a Crown organisation convicted of an offence against the Building Act 1991, the Building Act 2004, the Health and Safety at Work Act 2015, or the Resource Management Act 1991 is a party, the Crown organisation is ordered to pay costs, the order as to costs is enforceable as if it were a fine imposed on the Crown organisation by the District Court.

Compare: 1957 No 87 s 142

Section 10(1)(a): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 10(1)(a): amended, on 1 April 1980, pursuant to section 18(2) of the District Courts Amendment Act 1979 (1979 No 125).

Section 10(2): inserted, on 18 October 2002, by section 22 of the Crown Organisations (Criminal Liability) Act 2002 (2002 No 37).

Section 10(2): amended, on 23 December 2023, by section 6 of the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68).

Section 10(2): amended, on 4 April 2016, by section 232 of the Health and Safety at Work Act 2015 (2015 No 70).

Section 10(2): amended, on 1 October 2009, by section 162(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10(2): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

11 Order for costs made by the High Court or Court of Appeal

Any order made by the High Court or the Court of Appeal, other than on an appeal under Part 6 of the Criminal Procedure Act 2011, for the payment of costs by any person, other than the Crown, shall upon being filed in the High Court have the effect of a judgment.

Section 11 heading: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

Section 11: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 11: amended, on 1 April 1980, pursuant to section 12 of the Judicature Amendment Act 1979 (1979 No 124).

12 Submissions and evidence

Before deciding whether to award costs under this Act the court shall allow any party who wishes to make submissions or call evidence on the question of costs a reasonable opportunity to do so.

13 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing the heads of costs that may be ordered to be paid under this Act:

(b) prescribing maximum scales of costs that may be ordered to be paid under this Act:

(c) prescribing the manner in which costs for which the Crown is liable shall be claimed from or paid by the Crown:

(d) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Any regulations made under this Act may—

(a) apply scales of costs, fees, or expenses prescribed from time to time under other enactments:

(b) delegate, or empower a court to delegate, to any person or officer the power to determine the costs to be allowed under any particular head.

(3) Where any maximum scale of costs is prescribed by regulation, the court may nevertheless make an order for the payment of costs in excess of that scale if it is satisfied that, having regard to the special difficulty, complexity, or importance of the case, the payment of greater costs is desirable.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 13(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

14 Consequential amendments and repeals

(1) *Amendment(s) incorporated in the Act(s).*

(2) The enactments specified in the Schedule are hereby repealed.

15 Saving

Nothing in this Act shall limit or affect the powers of any court under sections 106 and 108 of the Sentencing Act 2002.

Section 15: amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

16 Transitional provision

This Act shall apply to proceedings commenced on or after the date of the commencement of this Act and to proceedings commenced but not completed before that date.

Schedule
Enactments repealed

s 14(2)

Crimes Act 1961 (1961 No 43)

Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87) (Reprinted 1966 Statutes, Vol 4)

Amendment(s) incorporated in the Act(s).

Notes

1 General

This is a consolidation of the Costs in Criminal Cases Act 1967 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023 (2023 No 68): section 6

Secondary Legislation Act 2021 (2021 No 7): section 3

District Court Act 2016 (2016 No 49): section 261

Health and Safety at Work Act 2015 (2015 No 70): section 232

Criminal Procedure Act 2011 (2011 No 81): section 413

Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31): section 162

Summary Proceedings Amendment Act (No 2) 2008 (2008 No 41): section 18

Building Act 2004 (2004 No 72): section 414

State Sector Amendment Act 2003 (2003 No 41): section 14(2)

Crown Organisations (Criminal Liability) Act 2002 (2002 No 37): sections 19–22

Sentencing Act 2002 (2002 No 9): section 186

District Courts Amendment Act 1998 (1998 No 76): section 7

Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(1)

District Courts Amendment Act 1979 (1979 No 125): section 18(2)

Judicature Amendment Act 1979 (1979 No 124): section 12

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