

FIRST PRINT

JUSTICES (COSTS) AMENDMENT BILL 1991 (No. 2)

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

Until recently, there has not been a presumption that costs should be awarded to successful defendants in committal proceedings or in summary criminal proceedings conducted under the Justices Act 1902. The decision of a majority of 3 of 5 Judges of the High Court of Australia in *Latoudis v. Casey* [(1990) 170 C.L.R. 534] has now given rise to such a presumption.

The object of this Bill is to amend that Act so as to restrict the awarding of costs to successful defendants in committal proceedings or proceedings for offences dealt with by Magistrates, or in appeals to the District Court against their decisions in any such proceedings, to cases in which:

- (a) the investigation into the alleged offence was conducted in an unreasonable or improper manner; or
- (b) the proceedings were initiated without reasonable cause or in bad faith or were conducted by the prosecution in an improper manner; or
- (c) 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; or
- (d) because of other exceptional circumstances relating to the conduct of the proceedings by the prosecution, it is just and reasonable to award costs.

The proposed restriction will not apply to the awarding of costs in relation to unsuccessful private prosecutions.

The Bill provides as a transitional measure that the proposed amendments do not affect the awarding of costs to defendants in proceedings commenced before the amendments commence or to appellants in appeals relating to any such proceedings.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 gives effect to the Schedule of amendments.

Clause 4 makes the transitional measure referred to above.

Schedule 1 contains amendments to sections 41A, 81 and 125 of the Justices Act 1902 that have the effect described above.

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TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Justices Act 1902 No. 27
4. Transitional

SCHEDULE 1—AMENDMENTS

JUSTICES (COSTS) AMENDMENT BILL 1991 (No. 2)

NEW SOUTH WALES



No. , 1991

A BILL FOR

An Act to amend the Justices Act 1902 with respect to the awarding of costs.

Justices (Costs) Amendment 1991 (No. 2)

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;

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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.
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JUSTICES (COSTS) AMENDMENT ACT 1991 No. 79

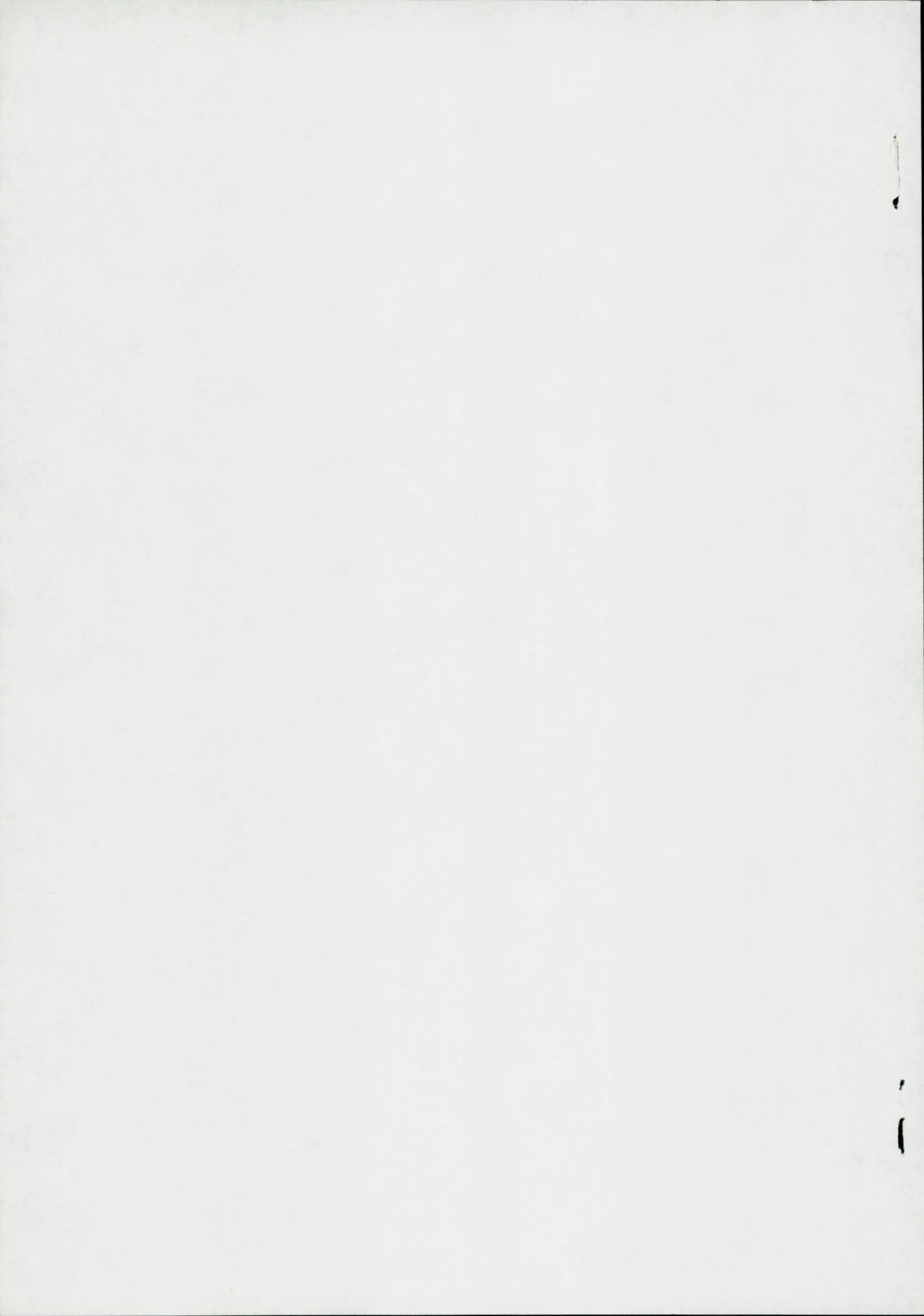
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SCHEDULE 1—AMENDMENTS



JUSTICES (COSTS) AMENDMENT ACT 1991 No. 79

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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*]