



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: JJ/Criminal: RBG 742236

7 June 2013

Mr Brendan Thomas
Assistant Director General
Department of Attorney General & Justice
10 Spring Street
Sydney NSW 2000

Dear Mr Thomas,

AVL proposal for NSW Children's Court

I refer to the request for comments from the Law Society's Juvenile Justice Committee and Criminal Law Committee (Committees) in relation to a proposal, currently under consideration by a working party chaired by the Department of Attorney General and Justice, relating to appearances via Audio Visual Links (AVL) in the NSW Children's Court.

The AVL proposal

The Committees have considered the proposal that all juvenile detainees in NSW who are appearing before the NSW Children's Court will appear via AVL in all matters, except where their presence is essential to the interests of justice. This is a change from the current system whereby, except on weekends, juveniles still have a right of first appearance in court.

The Committees' views on this proposal are set out below; however it is very unusual for this type of reform to proceed without fuller consultation. The Committees note that the proposal initially referred to a 'pilot', and now refers to a 'reform'. The Committees would appreciate the opportunity to review a full proposal/discussion paper. It would also be appropriate for representatives from the Law Society, Bar Association and the Aboriginal Legal Service to sit on the working party in order to properly represent practitioners in relation to such an important proposal.

Although the reform highlights changes to first appearance rights, the Committees note that the proposed legislative change does not exclude sentences and hearings. The Committees are therefore concerned that in future an administrative decision may be made to have young people appear for sentence and hearings via AVL. The Committees seek your assurance that this is not part of the current proposal and that no change to this will be made in the future. It would be completely untenable for solicitors to represent clients in sentences and hearings without them appearing in person.

Children (Criminal Proceedings) Act 1987

Children appearing before a court exercising criminal jurisdiction have the right to be heard, and the right to participate, in the processes that lead to decisions that affect them (section 6(a) *Children (Criminal Proceedings) Act 1987*). Further, section 12(4) requires the court to give children the fullest opportunity practicable to be heard, and to participate, in the proceedings. ~~The right to participation includes the child's right to be kept fully informed about the progress of a matter. When a child appears via AVL, the child's solicitor has little~~

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opportunity or time to ensure that the child has understood the outcome of the appearance. The special considerations afforded to child defendants should not be diminished.

Representation Principles for Children's Lawyers

All solicitors must comply with the Law Society's Representation Principles for Children's Lawyers. To be in breach of these principles is to be in breach of the practising requirements of the profession. The Representation Principles currently require face to face taking of instructions in order to facilitate proper communication and understanding by the child. The use of AVL creates difficulties in building rapport and trust with the child on the screen. The Representation Principles are extremely difficult to adhere to when instructions are taken from the child over the telephone or via AVL. The proposal is contrary to the principle that solicitors should see the child in person in all but exceptional circumstances.

Impact on clients of the Aboriginal Legal Service

Solicitors from the Aboriginal Legal Service note that it is not the default position of the ALS to simply require their clients at Court, and are reluctant to have them transported to court and disrupt their daily patterns at the detention centre for mentions and interlocutory procedures, unless the solicitor considers it necessary to have the young person at court. However, particularly in the first appearance at court, it is crucial to have proper face to face contact with the client. The majority of ALS juvenile clients in custody have poor literacy skills and varying degrees of intellectual disabilities. It is therefore essential to have in person contact to detect fitness issues, establish rapport, receive coherent instructions and gauge whether the child understands the court process.

Issues with current AVL appearances at Children's Courts

Solicitors on the Committees report that the current load of AVL appearances at Children's Courts (requiring access to Juvenile Justice Centres from court) are currently working very poorly. Not only metropolitan solicitors, but also solicitors from regional areas, report considerable delays in any current AVL mention, due to not being able to make contact with the young person, especially in the morning and despite many attempts. This causes great difficulties for solicitors and for the courts due to the delays in not having matters ready. It is unfortunate that solicitors often bear the brunt of dissatisfaction from the court when matters are not ready to proceed at the start of the court day.

The Committees are very concerned that a system already not coping with the present demand may be expanded. First appearance matters would in general take more time than the current AVL mentions, and therefore the Committees hold the view that the current system should be improved, and be shown to work properly, before any expansion is introduced.

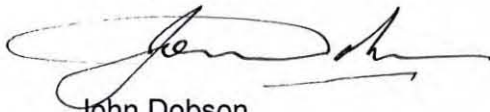
The Committees do not see how solicitors, especially those in private practice, can be resourced to use AVL with clients in a timely way before court. Solicitors will have to attend court to use an AVL suite, not all courts have an AVL suite in the legal areas, and of course private practitioners do not have the equipment in their offices. In a large number of regional towns there is no access to AVL facilities at all, either in the courts or in the township generally, to arrange AVL conferences to take instructions. For example, in Gunnedah solicitors have to travel to Tamworth utilising Legal Aid's offices, if they are to have AVL access with clients (a round trip of two hours).

In addition, due to significant budgetary pressures, Legal Aid has recently removed waiting time from the start-up grants for Children's Court crime, which will only increase the difficulties for private practitioners. Based on current systems, the waiting times and delays for initial contact, make the proposal untenable from a cost perspective.

There does not appear to have been any evidence-based report or record of cost savings achieved by having young people appear via AVL in the current system. Members of the Committees are aware that there was an AVL pilot at Bidura Children's Court, but are not aware that there was any subsequent report. The Committees question the basis upon which the Department asserts significant cost savings, and is of the view that changes which will have a negative impact on the rights of young people should not proceed without proper assessment and evidence.

I look forward to hearing from you at your earliest convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Dobson', with a long horizontal flourish extending to the right.

John Dobson
President