



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: JD:rg:Criminal:691385  
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13 March 2013

The Hon. Greg Smith SC MP  
Attorney General and Minister for Justice  
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Governor Macquarie Tower  
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SYDNEY NSW 2000

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Dear Attorney General,

**Criminal Procedure Amendment (Court Costs Levy) Bill 2013**

The Law Society's Criminal Law Committee (Committee) has reviewed the *Criminal Procedure Amendment (Court Costs Levy) Bill 2013*. The Bill seeks to replace the existing discretion of the court to order costs with a statutory court costs levy, which would apply to most defendants found guilty of an offence in summary proceedings before the Local Court.

The Bill has the potential to create hardship for the most vulnerable in the community who may have to pay a courts costs levy in addition to the Victims' Compensation Levy and Legal Aid contribution. The Committee is particularly concerned about the impact on people facing multiple charges, for instance 20 separate charges of goods in custody, which would amount to 20 x the \$83.00 levy. The Committee submits that the Bill should be amended so that the court costs levy applies per set of proceedings rather than per conviction.

Proposed section 211A(2)(a) requires clarification because it is unclear whether the exemption for a person sentenced to imprisonment includes a sentence of home detention or an Intensive Correction Order. The Committee also queries whether a person who receives a suspended sentence, then breaches the suspended sentence and is sentenced to imprisonment, will still be liable for the levy.

The Explanatory Note to the Bill provides that the amendments to the *Children (Criminal Proceedings) Act 1987* are "merely to restate the current system that applies to criminal proceedings involving children, under which there is no automatic costs levy but the court has a discretion to make an order that an accused person who has been found guilty of an offence pay court costs". However, proposed section 42A(5) provides that an order for the payment of court costs may be included in any order under section 33. This could be interpreted as allowing an order for costs to be imposed as a condition of a bond or other community-based order. The Committee doubts that this is the legislature's intention and suggests that this be clarified to avoid doubt.

There is also no prohibition on ordering court costs against a child whose charges are dismissed under *Children (Criminal Proceedings) Act 1987* section 33(1)(a)(i), or dealt with under the *Young Offenders Act 1997*. This potentially places children in a worse position than adults, which is contrary to the principles of the *Children (Criminal Proceedings) Act 1987* (section 6(e)).

The Committee submits that proposed section 42A(5) should be deleted. Section 42A should be further amended to specify that matters dealt with under the *Young Offenders Act 1997* or under section 33(1)(a)(i) are not subject to the court costs levy.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'John Dobson', with a large, sweeping flourish at the end.

John Dobson  
**President**