



Criminal Procedure Amendment (Court Costs Levy) Bill 2013

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CRIMINAL PROCEDURE AMENDMENT (COURT COSTS LEVY) BILL 2013

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Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [8.56 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

Section 215 of the Criminal Procedure Act 1986 provides the Local Court of New South Wales with the power to make an order that a defendant pay court costs, generally in the amount of the filing fee, if the defendant is convicted. The bill will amend the Criminal Procedure Act to replace this existing discretion 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 levy would attach to most convictions in the Local Court as well as some orders under section 10 of the Crimes (Sentencing Procedure) Act 1999 where the defendant is found guilty but the court does not proceed to conviction. The levy would align with the filing fee in the Local Court, which is currently \$83.

At present court costs orders made under section 215 are being inconsistently applied. The proposed amendment is intended to achieve greater consistency in the application of court costs. In addition, the Government believes that a proportion of the cost of conducting criminal proceedings should be borne by those found guilty of an offence. It is important that offenders take responsibility for the impact of their actions on the community, including the costs of bringing them to justice. The Productivity Commission's 2013 report on government services estimates that the average cost to government of finalising a criminal matter in the Local Court is about \$750 per matter. The payment of a levy will therefore represent a modest contribution by the offender towards the community's costs in bringing that person to justice.

However, the proposed levy will contain certain exceptions, recognising that there are some special circumstances in which the levy should not apply. For example, the levy will not apply in the Children's Court, which will retain its existing discretion to make court costs orders. It also will not apply to findings of guilt recorded in the Local Court in relation to traffic offences involving children where the court has chosen to deal with the defendant under the Children (Criminal Proceedings) Act rather than at law. If the levy would otherwise apply to a defendant in the Local Court who is under the age of 18 years the Local Court will have a discretion to exempt that person from payment.

The levy also will not apply to convictions resulting in a sentence of imprisonment, other than a suspended sentence, as prisoners have little opportunity to pay off debts while in prison, and the accumulation of debts could have a negative impact on rehabilitation. Similarly, the levy will not attach to convictions or other orders recorded in the New South Wales Drug Court. At present, Drug Court judges use their discretionary power and do not impose court costs on offenders in the Drug Court. The rationale for this is that the Drug Court is a therapeutic court and the imposition of further monetary penalties on this group of offenders at the time of completion of the program may act as a barrier to their remaining crime and drug free. Application of the levy may hamper rehabilitation of those individuals and counteract the benefits of the Drug Court program.

Finally, the levy will not apply to orders made under subsection (1) (a) of section 10 of the Crimes (Sentencing Procedure) Act when a court finds a person guilty of an offence but, because of extenuating circumstances, directs the charge to be dismissed, except when the offence is punishable by imprisonment. The same exception applies in respect of the Victims Compensation Levy. Importantly, the bill also contains an amendment to the Fines Act 1996 to ensure that individuals who cannot pay the levy in full will have access to a range of alternative payment options through the court and the State Debt Recovery Office. For example, the arrangements include applications to pay by instalment, seeking an extension of time within which to pay, having the debt written off due to serious medical, domestic or financial problems, and participation in the Work and Development Order Scheme, which allows disadvantaged individuals to satisfy fine debts by non-monetary means through unpaid work with an approved organisation, or by undertaking certain courses or treatment.

Prior to implementation of the levy, steps will be taken to enhance the availability of information about court costs and other fees that may apply, if a defendant goes to court, so that people are advised of those costs before they are incurred. The bill also requires the levy scheme to be reviewed after 12 months of operation. I commend the bill to the House.