



New South Wales

# Criminal Procedure Amendment (Court Costs Levy) Bill 2013

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Criminal Procedure Act 1986* to make certain accused persons found guilty of offences in summary proceedings before the Local Court automatically liable to pay a court costs levy. The levy will replace the present system under which the Local Court has the discretion to make an order that an accused person pay court costs if found guilty, and
- (b) to amend the *Fines Act 1996* to provide that, for the purpose of that Act, a court costs levy is to be treated as a fine for the purposes of enforcement action, and
- (c) to amend the *Children (Criminal Proceedings) Act 1987* 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.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

### **Schedule 1      Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 1 [1]** inserts a new section in the provisions of the *Criminal Procedure Act 1986* that deal with the awarding of costs in summary proceedings before the Local Court (including proceedings for indictable offences that are being dealt with summarily).

The proposed section provides for the imposition of a court costs levy (which is in addition to any pecuniary penalty) on persons dealt with in summary proceedings before the Local Court who are either convicted or are found guilty and made the subject of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*. The levy is to attach to each conviction or order and is to be of an amount prescribed by the regulations.

The court costs levy does not attach to the following convictions or orders:

- (a) convictions resulting in a sentence of imprisonment (unless the sentence is a suspended sentence),
- (b) orders under section 10 (1) (a) of the *Crimes (Sentencing Procedure) Act 1999* (where a court finds a person guilty of an offence, but directs that the charge be dismissed) where the offence is not punishable by imprisonment,
- (c) findings of guilt recorded in the Local Court subsequent to the making of an order under Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987* in relation to a traffic offence (where the offence is dealt with by the Local Court by virtue of section 210 of the *Criminal Procedure Act 1986*),
- (d) convictions, or orders under section 10 of the *Crimes (Sentencing Procedure) Act 1999*, recorded in the Drug Court,
- (e) convictions or orders that the regulations exempt from liability to pay the levy.

In addition, a person who is under the age of 18 years is not liable to pay the court costs levy in respect of a conviction or order imposed by the Local Court if the Court directs that the person is exempt from the levy.

**Schedule 1 [2]** omits existing provisions about a court's discretion to make orders requiring an accused person to pay court costs as a consequence of the fact that the automatic court costs levy will replace discretionary orders relating to court costs (for courts other than the Children's Court). The existing provisions about the making of orders for professional costs are unaffected by the amendment.

**Schedule 1 [3] and [4]** make it clear that an existing provision about the award of professional costs to the prosecutor applies not only to convictions but extends to circumstances where an accused person is found guilty of an offence and an order is made under Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987*.

**Schedule 1 [5]** provides for the making of savings and transitional provisions consequent on the proposed amendments to the *Criminal Procedure Act 1986*.

**Schedule 1 [6]** provides that the amendments made by Schedule 1 extend to proceedings commenced but not finally determined immediately before the commencement of the amendments.

## **Schedule 2 Consequential amendment of other Acts**

### **Amendment of Children (Criminal Proceedings) Act 1987 No 55**

**Schedule 2.1 [1]** amends the *Children (Criminal Proceedings) Act 1987* to provide that the court costs levy being created by the amendments to the *Criminal Procedure Act 1986* does not apply to criminal proceedings before the Children's Court.

**Schedule 2.1 [2]** provides that the Children's Court may, at the end of summary proceedings in which an accused person is found guilty of an offence, order that the person pay court costs in addition to any pecuniary penalty imposed in respect of the same offence (so that the Children's Court can retain its existing discretion to do so).

**Schedule 2.1 [3] and [4]** make savings and transitional provisions.

### **Amendment of Fines Act 1996 No 99**

**Schedule 2.2** amends the *Fines Act 1996* to provide that, for the purposes of that Act, a court costs levy is to be treated as a fine imposed by the court by which the person liable to pay the levy was convicted or found guilty. This will allow enforcement action to be taken under that Act, including allowing the person liable to pay the court costs levy to access a range of alternative payment options available under that Act.