



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.

First print



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New South Wales

Criminal Procedure Amendment (Court Costs Levy) Bill 2013

No. , 2013

A Bill for

An Act to amend the *Criminal Procedure Act 1986* to impose a court costs levy on persons convicted of offences in certain summary proceedings; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Criminal Procedure Amendment (Court Costs Levy) Act 2013</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

[1] Section 211A

Insert after section 211:

211A Imposition of court costs levy

- (1) An accused person who is convicted of an offence in summary proceedings before a court is, by virtue of the conviction, liable to pay a *court costs levy* that is of the amount prescribed by the regulations.
- (2) However, a court costs levy is not payable in relation to any of the following:
 - (a) a conviction resulting in the imposition of a sentence of imprisonment (unless the execution of the sentence is suspended by the court),
 - (b) an order under section 10 (1) (a) of the *Crimes (Sentencing Procedure) Act 1999* in relation to an offence that is not punishable by imprisonment,
 - (c) a finding of guilt in relation to a traffic offence (within the meaning of section 210 of this Act) by the Local Court when dealing with the accused person under Division 4 of Part 3 of the *Children (Criminal Proceedings) Act 1987*,
 - (d) a conviction in proceedings before the Drug Court,
 - (e) a conviction that the regulations exempt from liability to pay the levy.
- (3) A convicted person who is under the age of 18 years is not liable to pay the court costs levy if the court directs that the person is exempt from liability to pay the levy in respect of the conviction. Such a direction may be made when the court convicts the person, or at any time afterwards.
- (4) The court costs levy is in addition to, and does not form part of, any pecuniary penalty imposed in respect of the offence.
- (5) The court costs levy is to be paid to the registrar of the court. The registrar is to pay the levy to the prosecutor if court costs have been paid by the prosecutor in respect of the proceedings.
- (6) The commencement of any proceedings by way of appeal against, or review of, a conviction in respect of which the court

Criminal Procedure Amendment (Court Costs Levy) Bill 2013

Schedule 1 Amendment of Criminal Procedure Act 1986 No 209

costs levy has been imposed on a person stays the liability of the person to pay the levy. In such a case:	1
(a) the setting aside of any such conviction annuls that liability, and	2
(b) the dismissal of any such proceedings removes the stay of liability.	3
(7) To avoid doubt, this section extends to:	4
(a) proceedings conducted in the absence of the accused person, and	5
(b) proceedings in which a person who was under the age of 18 years when an offence was allegedly committed pleads guilty to, or is found guilty of, an offence in proceedings before a court, but not if the person is dealt with under Division 4 of Part 3 of the <i>Children (Criminal Proceedings) Act 1987</i> .	6
(8) In this section, a reference to a person being convicted includes a reference to an order being made in relation to the person under section 10 of the <i>Crimes (Sentencing Procedure) Act 1999</i> .	7
Note 1. This section does not apply in respect of criminal proceedings before the Children's Court (see section 27 (2A) of the <i>Children (Criminal Proceedings) Act 1987</i>). Section 42A of that Act provides for the Children's Court to make orders regarding court costs at its discretion.	8
Note 2. Section 4 of the <i>Fines Act 1996</i> provides that a court costs levy payable under this section is, for the purposes of that Act, taken to be a fine imposed by the court that convicted the person or found the person guilty.	9
[2] Section 215 When professional costs may be awarded to prosecutor	10
Omit section 215 (1) (b) and (2).	11
[3] Section 215 (4)	12
Insert "under Division 4 of Part 3 of the <i>Children (Criminal Proceedings) Act 1987</i> or" after "made".	13
[4] Section 215 (4)	14
Omit "that section". Insert instead "the relevant section".	15
[5] Schedule 2 Savings, transitional and other provisions	16
Insert at the end of clause 1 (1):	17
<i>Criminal Procedure Amendment (Court Costs Levy) Act 2013</i>	18

[6] Schedule 2	1
Insert at the end of the Schedule with appropriate Part and clause numbers:	2
Part Provisions consequent on enactment of Criminal Procedure Amendment (Court Costs Levy) Act 2013	3 4 5
Court costs levy applies to convictions in commenced proceedings	6 7
The amendments made by the <i>Criminal Procedure Amendment (Court Costs Levy) Act 2013</i> extend to proceedings commenced but not finally determined immediately before the commencement of the amendments.	8 9 10 11
Review of amendments	12
(1) The Minister is to ensure that the operation of the amendments made by the <i>Criminal Procedure Amendment (Court Costs Levy) Act 2013</i> are reviewed to determine whether the policy objectives of those amendments remain valid and whether the relevant terms of this Act remain appropriate for securing those objectives.	13 14 15 16 17
(2) The review is to be undertaken as soon as possible after the period of 12 months from the date of commencement of section 211A.	18 19

Schedule 2	Consequential amendment of other Acts	1
2.1	Children (Criminal Proceedings) Act 1987 No 55	2
[1]	Section 27 Application of Criminal Procedure Act 1986 and other Acts	3
	Insert after section 27 (2):	4
	(2A) Despite subsection (2), section 211A of the <i>Criminal Procedure Act 1986</i> does not apply in respect of criminal proceedings before the Children’s Court.	5 6 7
[2]	Section 42A	8
	Insert after section 42:	9
42A	Children’s Court may make orders regarding court costs	10
(1)	The Children’s Court may, at the end of summary proceedings in which a person is found guilty of an offence, order that the person pay court costs.	11 12 13
(2)	Court costs ordered to be paid under this section are in addition to, and do not form part of, any pecuniary penalty imposed in respect of the offence.	14 15 16
(3)	The court costs are to be paid to the registrar of the court. The registrar is to pay the costs to the prosecutor if court costs have been paid by the prosecutor in respect of the proceedings.	17 18 19
(4)	The amount of court costs ordered to be paid under this section cannot exceed the amount of the court costs levy that would be payable under section 211A of the <i>Criminal Procedure Act 1986</i> if that section applied to the offence.	20 21 22 23
(5)	An order for the payment of court costs by a person may be included in any order made under section 33 in relation to the person.	24 25 26
(6)	This section applies to all summary proceedings before the Children’s Court, including proceedings conducted in the absence of the accused person.	27 28 29
(7)	This section applies to summary proceedings before the Local Court relating to a traffic offence in which a person is dealt with under Division 4 (by virtue of section 210 of the <i>Criminal Procedure Act 1986</i>) in the same way as it applies to proceedings before the Children’s Court.	30 31 32 33 34

(8)	This section does not apply to a finding of guilt that the regulations exempt from the operation of this section.	1 2
(9)	An order made by a court under this section for the payment of costs is taken to be a fine within the meaning of the <i>Fines Act 1996</i> .	3 4 5
[3]	Schedule 2 Savings and transitional provisions	6
	Omit clause 1 (1). Insert instead:	7
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of any Act that amends this Act.	8 9 10
[4]	Schedule 2, Part 18	11
	Insert after Part 17:	12
	Part 18 Criminal Procedure Amendment (Court Costs Levy) Act 2013	13 14
31	Application of amendments	15
	Sections 27 (2A) and 42A extend to proceedings commenced but not finally determined immediately before the commencement of those provisions.	16 17 18
2.2	Fines Act 1996 No 99	19
[1]	Section 4 Meaning of “fine”	20
	Insert after section 4 (1) (d):	21
(d1)	any court costs levy payable under section 211A of the <i>Criminal Procedure Act 1986</i> in proceedings for an offence, or	22 23 24
[2]	Section 4 (2A)	25
	Omit the subsection. Insert instead:	26
(2A)	For the purposes of this Act:	27
(a)	a compensation levy is taken to be a fine imposed by the court by which the person liable to pay the levy was convicted, and	28 29 30

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Schedule 2 Consequential amendment of other Acts

- (b) a court costs levy payable under section 211A of the *Criminal Procedure Act 1986* is taken to be a fine imposed by the court by which the person liable to pay the court costs levy was convicted or found guilty. 1
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