



Judicial Conference of Australia

JUDGES' ASSOCIATION HAS CONCERNS ABOUT NSW DISRESPECTFUL BEHAVIOUR IN COURTS BILL

**Media release by the President
of the Judicial Conference of Australia
6th July 2016**

The Judicial Conference of Australia expressed its concerns today about the potential impacts of the New South Wales Government's *Courts Legislation Amendment (Disrespectful Behaviour) Bill 2016*.

It is highly unlikely that the Bill, if enacted, would cause any person to moderate behaviour that was disrespectful to a court, Justice Steven Rares, President of the JCA said. "The Bill is unnecessary, since all Courts already have ample powers to deal with behaviour amounting to disrespect as a contempt of Court".

The Bill will create a summary offence where an accused in criminal proceedings, a litigant in civil proceedings, or a witness in any proceedings before a NSW court, except the Industrial Court, engages in intentional conduct that amounts to behaviour that is "disrespectful to the Court or Judge presiding over the proceedings (according to established court practice and convention)".

The maximum penalty will be 14 days imprisonment, a fine of \$1,100 or both. Adults will be prosecuted mostly in the Local Court and children always in the Children's Court. Prosecutions can only be commenced with the consent of the Attorney General.

However, as Justice Rares noted, a prosecution for the proposed offence will only occur much later and usually in a different court from that in which the disruptive behaviour occurred. The JCA is very concerned that the Bill appears to ignore the fact that the judge or magistrate hearing a case is best placed to deal with any disrespectful or disruptive behaviour in court that could have any inappropriate consequences.

If the NSW State Government is concerned that the Courts do not have sufficient powers or discretions to deal with contemptuous conduct, it

should consider clarifying the powers of the Courts to deal with those matters themselves. That would be preferable to the proposed Bill which gives power to the Attorney General to bring proceedings long after a disruptive horse has bolted, Justice Rares said.

He said that it is not clear what the Bill's reference to 'established court practice' means. For example, the Land and Environment Court often adopts informal procedures suiting the type of the case before it, such as when it goes on site visits.

Justice Rares also said, "It is unlikely that the legislation will have any deterrent effect. An accused person facing serious charges, with the potential of a lengthy jail term, is unlikely to be worried about the possibility that, if he or she does something disrespectful to the Court they might receive, at a much later time, a maximum of an extra 14 days on their sentence".

Justice Rares noted, in addition, that the Bill provides that a child accused in proceedings in the Supreme Court could be prosecuted for not standing up. Yet, a prosecution of the child for the new offence would be heard in the Children's Court, where the practice is that no one stands.

The Judicial Conference of Australia is the professional association of judges and magistrates in Australia.

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