



The New South Wales Bar Association

09/387 &11/147

23 August 2012

Mr. Paul McKnight  
Executive Director  
NSW Law Reform Commission  
DX 1227 SYDNEY

  
Dear Mr. McKnight

**Security for Costs and Associated Orders**

Thank you for your e-mail of 8 August 2012 inviting further comments from the NSW Bar Association in relation to Question 4.1 of Consultation Paper 13 on the Security for Costs and Associated Orders.

Although the Association does not have any further comments to make in relation to Question 4.1, it does however stand by its previous submissions.

In particular, the Association wishes to reiterate its position on the following:

1. **Public interest costs orders** – the NSW Bar Association is of the view that the availability of “public interest costs orders” should be confined to particular jurisdictions, such as the Land and Environment Court, in which “public interest” litigation is routinely encountered. It should not be extended to courts generally. (see paragraph 19 of the Association’s submission dated 22 August 2011).
2. **Cost capping** – the NSW Bar Association submits that no amendment of CPA s95(4)(c) or UCPR Rule 42.4 is necessary, and the application of those provisions should be left to courts dealing with particular cases. (see paragraph 21 of the Association’s submission dated 22 August 2011).
3. **Generally** – the NSW Bar Association submits that no substantial modification of procedural rules governing questions of security for costs is required. If however it is determined that modification is required, those modifications would be best left to the Uniform Rules Committee to address in light of experience from time to time. (see paragraph 22(g) of the Association’s submission dated 22 August 2011).

Should you wish to clarify any of the issues raised in this letter or in the Association's previous submissions, please contact the Association's Policy Lawyer Jo Wilton on (02) 9232-4055 or by e-mail [jwilton@nswbar.asn.au](mailto:jwilton@nswbar.asn.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. McConnachie', with a large, stylized flourish at the end.

Alastair McConnachie  
Deputy Executive Director