



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: CrimDHrg1558813

4 July 2018

The Hon Mark Speakman MP
Attorney General
GPO Box 5341
SYDNEY NSW 2001

Dear Attorney General,

Provision of court transcripts in criminal matters

I write to you in relation to access to transcripts of criminal hearings and trials before the New South Wales court system.

The Law Society is concerned about the significant fees privately funded clients must generally pay for transcripts. The Committee acknowledges that the Registrar has a general power to waive all or part of a court fee¹, however we understand that in practice this rarely occurs.

At an average of 100 pages for a full day in court, the cost for a transcript can easily run to \$1000 per day.² For a multi-day hearing in the Local Court, this is prohibitively expensive. For a trial that could last weeks or months the cost can be significantly higher.

The Law Society's view is that when a transcript is already being prepared to assist the Magistrate, Judge, or jury, and is provided to the prosecution, it would increase the efficiency of the court system if all parties had free access to the transcript. For example, in a part-heard matter in the Local Court, where there can be several months between hearing dates, a transcript assists the Magistrate to refresh his or her memory of the evidence given. The transcript also assists the parties to make submissions at the end of the hearing. If the Magistrate and the legal representatives all have a copy of the transcript it would likely save court time.

The Law Society acknowledges that in the past, the charging of fees for transcripts was probably well founded when copies of the transcript were typed and manually copied for each party. However, currently, the transcript is typed and emailed to the respective Registry, where it is printed for the court file. The transcript is typed for the Bench, and provided to legally aided clients and the prosecution. We submit that the principle of equality of arms (that is, the procedural equality of the accused with the prosecution) is a significant element of a fair trial. A defendant receiving a copy of the transcript at no cost is consistent with this principle.

In requesting a copy of transcripts that will already be prepared for the Magistrate, Judge or jury, and provided to the prosecution, the Law Society is not asking the Government to incur

¹ Clause 16(1), *Criminal Procedure Regulation 2017*

² Part 1 of Schedule 2, Item 11, *Criminal Procedure Regulation 2017*

extra expenses or perform any additional service. We are requesting access to documents that already exist, without having to spend significant amounts to receive them.

The Law Society suggests that the following amendments be made to the relevant Registry, or other, policy in relation to criminal proceedings:

1. In circumstances where a judicial officer is provided with a transcript of proceedings, that transcript is to be released free of charge to the parties, or their legal representatives.
2. In other circumstances, even if the judicial officer does not require a transcript but agrees its provision is in the interests of justice, the Bench papers may be marked as such and the parties can be provided with a transcript free of charge.

Thank you for considering this submission.

The Law Society contact for this matter is Rachel Geare, Senior Policy Lawyer, who can be reached on (02) 9926 0310 or at rachel.geare@lawsociety.com.au.

Yours sincerely,



Doug Humphreys OAM
President

cc Ms Catherine D'Elia
Deputy Secretary, Courts and Tribunal Services

His Honour Judge Graeme Henson
Chief Magistrate of the Local Court of NSW

The Honourable Justice Derek Price AM
Chief Judge of the District Court of NSW

The Honourable Tom Bathurst AC
Chief Justice of the Supreme Court of NSW