



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: RBGMM1295724

Direct Line: 9926 0216

20 August 2009

Mr Laurie Glanfield AM
Director General
Department of Justice and Attorney General
Level 14, 10 Spring Street
SYDNEY NSW 2000

Dear Mr Glanfield,

Re: Payment of costs – Costs in Criminal Cases Act 1967

The Law Society's Criminal Law Committee (Committee) has asked that I bring to your attention some important issues relating to processing applications for costs awarded in criminal matters.

You will appreciate that costs in criminal cases are only rarely awarded by the courts. Therefore, it is of the utmost assistance to the accused person if the processes for payment are expedited.

Delay

Practitioners have reported that applications remain unprocessed for up to 12 months after the Court has granted a Certificate of Costs pursuant to the *Costs in Criminal Cases Act 1967*. Understandably, such delays cause considerable stress for both the solicitor and client.

The Committee urges that adequate resources should be allocated to deal with such applications in a timely manner. The Committee seeks your assistance in affording a higher priority to the processing of costs applications in criminal cases.

Quantum of costs

A further concern is that the quantum of costs awarded bears little relationship to the practical reality of reasonable costs incurred by the accused person in 2009.

The Committee suggests that the Certificate of Costs ought to be the subject of referral to assessment under Part 3.2, Division 11, Subdivision 3 of the *Legal Profession Act 2004*. A Certificate of Determination presented by a Costs Assessor would assist in expediting the payment of costs. Departmental officers would not have to perform the role of cost assessor and this would reduce delays in processing applications.

The Committee is of the view that the assessed costs paid out of the Consolidated Fund should not be subject to any discretionary reduction by the Department, unless in very exceptional circumstances.

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These measures would require legislative amendment to the *Costs in Criminal Cases Act 1967*, and I am happy to discuss this with you further.

I look forward to your response.

Yours sincerely,



Joseph Catanzariti
President