



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: LLP:DHeh1447805

28 March 2018

Mr Paul McKnight
Executive Director
Strategy and Policy Division
Department of Justice
DX1227 Sydney

By email: jonathen.rose@justice.nsw.gov.au

Dear Mr McKnight,

Review of the Local Court Act 2007 (NSW)

Thank you for your letter regarding the Department's review of the *Local Court Act 2007* (NSW) ("Act").

The Law Society understands that the current review of the Act is to determine whether the policy objectives of the Act remain valid and whether the terms of the legislation remain appropriate for securing those objectives. The Law Society offers the following comments for consideration as part of this review. The Law Society's Litigation Law and Practice Committee has contributed to this letter.

Jurisdictional limits

Currently, the jurisdictional limit of the Local Court is \$100,000 when sitting in its General Division (other than for claims of damages arising from personal injury or death) and \$10,000 when sitting in its Small Claims Division.¹

The Law Society considers that the jurisdictional limit for the General Division remains appropriate.

The Law Society has previously indicated support for increasing the Small Claims Division's jurisdiction to \$20,000 to facilitate a quicker and cheaper method of resolving civil monetary disputes. Any expansion should ensure that safeguards are in place so that appeal rights are not reduced.

In addition, we have suggested that consideration be given to enacting changes providing for the transfer of proceedings from the General Division to the Small Claims Division in the following circumstances:

¹ *Local Court Act 2007* (NSW) s 29.

- where evidence is available that the disputed amount is less than the jurisdictional limit of the Small Claims Division notwithstanding that the amount claimed by the plaintiff may exceed the jurisdictional limit; and
- where the parties agree to the proceedings being transferred to the Small Claims Division.

However where proceedings are transferred by consent to the Small Claims Division, the appeal provisions, which provide a right to both parties to appeal on the basis of an error of law, should be preserved. An amendment to s 39 of the Act would need to be made to preserve the rights of appeal where the amount of the dispute exceeds the jurisdictional limit of the Small Claims Division but the proceedings were dealt with in that Division by consent.

Lists within the General Division

The Law Society suggests that, subject to consultation with the Local Court, consideration may be given to dividing the General Division of the Court into a number of lists to allow for the appointment of magistrates with some specialist experience to particular lists. We suggest that these lists could include the following:

- a) Criminal (including AVO matters);
- b) Commercial;
- c) Employment and Industrial (including WHS matters); and
- d) General civil.

Please do not hesitate to contact Ella Howard, Policy Lawyer, on (02) 9926 0252 or at ella.howard@lawsociety.com.au if you would like to discuss this matter further.

Yours sincerely,



Doug Humphreys OAM
President