



THE LAW SOCIETY  
OF NEW SOUTH WALES

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29 July 2009

The Hon. John Hatzistergos, MLC  
Attorney General for NSW  
GPO Box 5341  
SYDNEY 2001

Dear Attorney General,

**Re: Appointment of Registrars to the Local Courts**

The Litigation Law and Practice Committee of the Law Society (the Committee) has asked me to bring to your attention its recommendations on the future appointment of Registrars of the Local Courts.

The Local Courts of New South Wales have grown considerably in stature since the time they were known as the Courts of Petty Sessions. The monetary jurisdiction of \$500 conferred by the Courts of Petty Sessions Act 1970 (section 12) has now increased to \$60,000. There are moves to increase it further to \$100,000. Its jurisdiction has also widened to include mining, industrial matters, family law, mental health and a larger and more complex criminal jurisdiction. Also, The Local Court Act 2007, which commenced on 6 July 2009, has in many ways made the Local Courts similar to the District Court.

In tandem with this wider increase in the jurisdiction and functions of the Local Court, the duties and functions of the Registrars have also correspondingly increased. In particular, a large volume of judicial functions have been delegated to Registrars by statute.

Section 19 of the *Local Court Act 2007* provides:

**19 Registrar's functions generally**

(cf LCA 1982, section 10B)

- (1) A registrar has and may exercise the functions conferred on a registrar by or under this Act, the rules or any other Act or law.
- (2) Subject to any direction of the Director-General of the Attorney General's Department, a registrar (including a registrar for a designated place or places) may exercise such functions as are conferred on the registrar under subsection (1) in respect of any place, or any particular designated place or places, in the State.
- (3) A person employed as a deputy registrar has, under the registrar, all of the functions of the registrar and may exercise those functions in respect of any place in the State at which the registrar may exercise the functions.
- (4) The Director-General may delegate the exercise of the Director-General's function under subsection (2) to:

- (a) any member of staff employed in the administration of the business of the Court, or
- (b) any other person (or person belonging to a class of persons) prescribed by the regulations.

Section 13 of the *Civil Procedure Act 2005* permits the Senior Judicial Officer of any court to direct that a function of the court is exercised by the Registrar or other officer of the court. By statutory instrument dated 12 August 2005, the then Chief Magistrate had delegated a number of the functions of the Local Courts to Registrars. This delegation continues by virtue of the transitional provisions of the Local Court Act 2009. A copy of the schedule of delegated functions is attached to this letter for your ease of reference.

You will therefore readily appreciate that a large number of judicial functions are now regularly carried out by Registrars as part of their normal duties.

The Committee submits that judicial functions should be performed by legally qualified persons. The phrase "legally qualified" means in this context a person who is a qualified legal practitioner or who is eligible for admission as a legal practitioner as set out in sections 6 and 24 respectively of the Legal Profession Act 2004.

New appointments for registrars should be made only from those possessing legal qualifications as referred to above. The Committee has been unable to find any legislative or policy sources indicating the qualifications required for appointment as registrars. It is suggested that relevant legislative amendments to the Public Sector Management Act 2002 or any other relevant legislation should be introduced if required.

There are already in office many registrars who do not have legal qualifications. It is submitted that every endeavour must be made to offer financial or other incentives to encourage Registrars to obtain legal qualifications. Over time, by a gradual process (with the retirement of senior personnel and the appointment only of legally qualified persons to new vacancies) all registrars in the Local Court would be legally qualified.

The Committee appreciates that in outlying country areas it may not be possible to attract legally qualified personnel to take up appointment as Registrars when the occasion arises. However, it is submitted that if sufficient incentives are offered, there is every likelihood of this happening.

I shall be grateful for your views on this proposal.

Yours sincerely,



**Joseph Catanzariti**  
President

## Delegated Powers of Registrar

The function of the court to waive, postpone and remit fees as referred to in clause 17(3) to the *Criminal Procedure Regulations 2005*.

Under s.13 of the *Civil Procedure Act 2005*, I direct that a Registrar of the Local Court\*\* may exercise the powers of a Court conferred by the legislation listed in column 1 and described in column 2, but subject to any restrictions listed in column 3.

I further direct that a Registrar of the Local Court may exercise the powers of the Court conferred by the *Civil Procedure Act 2005* and *Uniform Civil Procedure Rules 2005* in respect of civil proceedings where the exercise of that power by the Registrar is done with the consent of the parties to the proceedings.

The function of the court to waive, postpone and remit fees as referred to in clause 11 of the *Civil Procedure Regulations 2005*.

Judge Price  
Chief Magistrate  
12 August 2005

\*\*See section 10A Local Courts Act 1982 relating to power of Deputy Registrars to perform functions of Registrars

Column 1	Column 2	Column 3
<b>Part 1</b> <i>Civil Procedure Act 2005</i>		
<b>Section</b>	<b>Description</b>	<b>Restriction</b>
Section 14	Dispense with rules in particular cases	Restricted to those matters which a Registrar may deal with
Section 38	Referral to arbitration Revoking a referral to arbitration	Restricted to Registrars at Local Court where the Registrar is Graded 7/8 and above
Section 43(1)	Order for Rehearing before award taken effect as judgment	
Section 61(1),(2) and	Directions as to practice and procedure	Courts where the Registrar is Graded 7/8 and above
Section 64	Amendment of Documents	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above or Registrar by consent
Section 66(1)	Adjournment	
Section 67	Stay of Proceedings	Subject to stay subsisting only pending hearing by court set down for first available day.
Section 68	Attendance and production	
Section 98	Costs	On default judgment, motions adjournments, enforcement of judgments and orders, case management and interlocutory matters.
Section 100	Interest up to judgment	In respect of a judgment given or entered under Part 16 of the Rules
Section 101	Interest after judgment	In respect of a judgment given or entered under Part 16 of the

		Rules
Section 108	Order for examination of judgment debtor	
<b>Part 2</b> <i>Civil Procedure Rules 2005</i>		
<b>Section</b>	<b>Description</b>	<b>Restriction</b>
Rule 1.12	Extension and abridgment of time	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 1.13	Fixing Time	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Part 2	Case management generally	Restricted to Call-over and Pre-Trial Review
Rule 3.3	Registration of user of Electronic Case Management system	
Rule 4.10	Filing Generally	Restricted to the filing of a defence where a judgment has been entered against the defendant seeking to file the defence.
Rule 6.16	Alter return day in summons	
Rule 7.3	Leave to an unrepresented litigant to issue subpoena	
Rule 10.14	Substituted and informal service	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 12.2	Leave to discontinue	Restricted to where statement of claim not served
Rule 12.7	Dismiss proceedings for want of due despatch	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 12.9	Dismiss where inactive for 9 months	
Part 15.10	Particulars	Restricted to Registrars at Local Court where the Registrar is Graded 7/8 and above
Rule 16.9	Judgment for costs alone	
Part 16	Default Judgment	Except for Rule 16.4 and Rule 16.10
Rule 18.2	Motions - requirement for notice	All Registrars in relation to an urgent stay of proceedings and Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above in relation to substituted service
Rule 18.4	Time for service of Notice of Motion	
Rule 28.5	Consolidation of Proceedings	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 31.4(1)	Directing party furnish witness statement	

Rule 33.2	Issuing a subpoena	Registrar
Rule 33.4	Setting aside a Subpeona	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 36.16(2)	Setting aside default judgment	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 36.17	"Slip Rule"	Restricted to judgments entered by default
Rule 37.4	Objections to instalment order	Restricted to Registrars at Local Courts where the Registrar is Graded 7/8 and above
Rule 38.3-38.4	Examination Order & Venue for Examination	
Rule 38.5	Examination	
Rule 38.6	Arrest Warrant	
Part 39.2	Application for Writ	
Part 39.34	Application Garnishee Order	
Part 39.38	Refusal to make Garnishee order	
Rules 42.1-42.4	Order for costs	Restricted to matters that may be dealt with by Registrars.

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