

Our ref: LLP:PWeh1274904

9 June 2017

Mr Andrew Cappie-Wood
Secretary
Department of Justice
DX1227 Sydney

Dear Mr Cappie-Wood,

Online Registry and the Online Court

I am writing in relation to the Online Registry and the Online Court. The Law Society's Litigation Law and Practice Committee has contributed to this letter.

We understand that the Online Court sits within the Online Registry and is currently available for certain matters in the Supreme, District, Local and Land and Environment Courts. The Law Society's Litigation Law and Practice Committee has been monitoring the roll out of the Online Court and has sought feedback from NSW legal practitioners on their experience using the Online Court. Generally, the feedback has been positive. Practitioners have indicated the Online Court can save them significant time and make proceedings more cost effective.

However, practitioners have also raised some concerns with certain aspects of the Online Court. We consider that the feedback we have received may be useful to your Department in further refining the operation of the Online Court. To that end we have enclosed a summary of some of the general concerns at Attachment A. Some of the comments from practitioners also relate to the Online Registry more generally. We have included those comments for your reference.

The Law Society has been particularly concerned to hear of some issues created by the current registration and notifications process for the Online Registry and Online Court. Further detail is set out below.

Registrations

Practitioners have advised that they have found the registration process for the Online Registry, which is required to access the Online Court, to be cumbersome and time consuming.

When a practitioner seeks to register with the Online Registry they must choose the following category that best describes them:

- (a) I am the solicitor on the record
- (b) I am a barrister
- (c) I will be managing or accessing cases on behalf of a solicitor or barrister
- (d) I will be managing or accessing cases on behalf of an authorised officer of a non-legal firm
- (e) I am an authorised officer of a non-legal corporation/organisation which is a party to a case
- (f) None of the above (e.g. representing yourself).

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The Law Society understands that once a person has registered it is not possible for them to change their registration status. For example, if someone registers as an employee (i.e. someone who is “managing or accessing cases on behalf of a solicitor or barrister”) and is later promoted to a principal (i.e. the solicitor on the record), they are not able to change their registration. Instead, that person is required to register a completely new profile. This practice is time consuming and does not fully take into account the practicalities of legal practice. We would be grateful if your Department would give consideration to allowing practitioners to easily change the category which applies to them when their circumstances change.

Notifications

The registration category has further consequences within the Online Court environment in relation to notifications. As you are aware, the Online Court relies on emails to notify solicitors when there is activity in the Online Court. We understand that emails are being sent only to the solicitor on the record and not to the contact solicitor on the matter (who will usually be someone registered in the Online Court as “managing or accessing cases on behalf of a solicitor or barrister”). We note that the contact solicitor is the person who has day-to-day responsibility for the case. The solicitor on the record is required to be a solicitor with an unrestricted practising certificate (see rule 7.1 of the *Uniform Civil Procedure Rules 2005* (NSW)). In law firm environments, this will usually be the supervising solicitor (often a Partner) who will not undertake daily work on the matter. Depending on the size and nature of the law firm, it may be some time before the solicitor on the record has an opportunity to forward the email to the relevant contact solicitor for review and any necessary action.

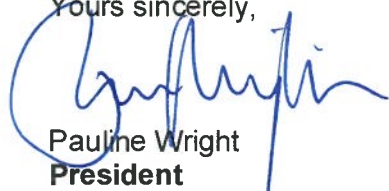
The practice of sending notification emails only to the solicitor on the record creates difficulties when the notification email contains information or requires further action that is time sensitive. A number of practitioners have raised concerns about this notification process. We consider that the risk that this practice poses for law firms could be resolved if all emails that are sent to the solicitor on the record for a matter are also sent to the contact solicitor. The contact solicitor’s details are provided in the court documents and should be easily available to the Online Court. This would ensure that any necessary action can be taken as efficiently as possible.

Based on the feedback we have received, the Online Registry and Online Court are generally popular with solicitors in NSW and can provide additional efficiencies for Court users. We would appreciate your consideration of the concerns outlined in this letter to ensure that it continues to develop in the best way for all users.

An additional step that may assist the Online Registry and Online Court to develop in a user-friendly way would be for the Department to establish a User Group, which can meet regularly and provide feedback on their experiences using these online systems. If established, the Law Society would be glad to participate in such a User Group.

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,



Pauline Wright
President

Encl:
Attachment A: Feedback provided by practitioners

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<p>General</p>	<p>Practitioners have noted that at times the interface has 'crashed' which has made it difficult for them to complete and/or upload documents.</p> <p>The Help Desk function provided by the Court Registry has been excellent, although there can be a delay to get through to them as the practitioner has to go through the NSW Courts phone service.</p> <p>Practitioners have provided feedback that the online system is quite rigid and does not allow for variations in practice. The following specific issues were brought to our attention:</p> <ul style="list-style-type: none"> • The <i>Uniform Civil Procedure Rules 2005</i> (NSW) allow a defendant to file a Notice of Motion setting aside a default judgment or an originating process without filing a Notice of Appearance. This is particularly important for defendants who are not submitting to the jurisdiction. However, the Online Registry requires parties to file a Notice of Appearance before they get access to the file in the Online Registry. This means the Notice of Motion needs to be filed over the counter to avoid submitting to the jurisdiction, resulting in additional time and cost to the client. • It is not uncommon to commence proceedings by Summons and then have the matter proceed on pleadings. However, the Online Registry will not allow parties to file a Statement of Claim in a matter commenced by Summons because the system is designed so that a Statement of Claim is only recognised as an originating process. • When an originating process or order is generated, not every page has the court's seal applied. This is problematic with freezing orders, especially when the "Penal Order" is an attachment to the principal order document bearing the court's seal. Originating processes and orders should have the seal applied to all pages. While Uniform Civil Procedure Rules r 6.2(3A) and 31.12(2) only require a seal on the first page, entities outside NSW at times question why every page is not sealed. • If a document is not filed online, it cannot be accessed through the Online Registry. <p>The feedback we have received indicates that there is uncertainty as to how an e-organisation works, how practical it is for large firms and whether it would compromise confidentiality barriers. Additional practical information would be beneficial for practitioners.</p>
<p>Access to documents</p>	<p>Practitioners have reported that there have been occasions where affidavits lodged via the Online Court were not included with the Court papers for a hearing date. This had the result that the judge did not have the benefit of reviewing the relevant documents in advance of the hearing, causing unnecessary delay.</p>
<p>Filing</p>	<p>Practitioners have reported that the online environment would be much easier to navigate if there was a home page that listed all the cases a user is working on so that they could always go back to that as a starting point. Currently, the only way to see this list is to go to the "Search cases" tab and then click on "Search case list" and practitioners have reported that this is not intuitive for a first-time user.</p> <p>Practitioners have reported that where there are multiple claims in a matter before the court, the court file tends to be separated into these claims. When filing, it can be difficult to determine which sub-proceeding to file a document to. In comparison, the Federal Court eLodgment platform allows all documents to be filed to the relevant court file.</p>

	<p>A notice of listing for the filing of certain forms cannot be accessed through the platform immediately after filing a document. Since this notice is required for the service of certain documents, it can be inconvenient waiting for the notice to be provided. On some occasions practitioners have had to contact the registry and ask them to provide the notice.</p>
<p>Application for subpoena</p>	<p>When filing an application for a subpoena, the user is required to complete a form that essentially details what is already written in the subpoena. Practitioners have reported that this is time-consuming and appears to be unnecessary as this information is only used to populate the cover page for the filed document.</p> <p>When filling in this cover page information, a drop-down menu of potential access orders is used. Where the terms of the subpoena deviate from what is listed on the website, the user can't actually file a document on the online platform. In such cases, the documents need to be filed in person at the registry. Practitioners have indicated that something that allows the user to specify the terms themselves (or just do away with requirement) would be very welcome.</p> <p>The user cannot review the information they have entered without returning to the start of the application to edit this information. A review panel would be useful.</p>