



New South Wales

# Local Court Rules (Amendment No 5) 2014

under the

Local Court Act 2007

The Local Court Rule Committee has made the following rules of court under the *Local Court Act 2007*.

Stephen Olischlager  
Secretary of the Rule Committee

## Explanatory note

The object of these Rules is to amend the *Local Court Rules 2009* to:

- (a) provide for electronic case management in criminal and application proceedings, including the use of an electronic case management system (the Online Registry) that allows electronic filing, issuing and service of court documents, and
- (b) provide for the appointment and removal of solicitors by parties to criminal and application proceedings, and
- (c) revise terminology relating to the service of documents on inmates of correctional centres.

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### **1 Name of Rules**

These Rules are the *Local Court Rules (Amendment No 5) 2014*.

### **2 Commencement**

These Rules commence on the day on which they are published on the NSW legislation website.

## Schedule 1 Amendment of Local Court Rules 2009

### [1] Rule 1.3 Definitions

Insert in alphabetical order in rule 1.3 (1):

*party* includes:

- (a) in relation to application proceedings—an applicant or respondent, and
- (b) in relation to criminal proceedings—a prosecutor or defendant.

### [2] Rule 5.5 Personal service on inmate of correctional centre

Omit “governor” from rule 5.5 (1). Insert instead “general manager”.

### [3] Rule 5.10 Service of other documents

Insert “or notice of appointment” after “notice of appearance” wherever occurring in rule 5.10 (2).

### [4] Rule 6.4 Service of subpoenas

Omit rule 6.4 (2) (a) and (b). Insert instead:

- (a) by leaving it with the person, or
- (b) if the person is an inmate of a correctional centre, by leaving it with the general manager of the correctional centre or by sending it by post or facsimile or other electronic transmission to the general manager of the correctional centre, or

### [5] Part 8, Divisions 3 and 4

Insert after Division 2:

## Division 3 Electronic case management for criminal and application proceedings

### 8.12 Application of Division

This Division applies to criminal proceedings and application proceedings.

### 8.13 Definitions

- (1) In this Division:

*coversheet* means a page that is generated by the Online Registry that includes details about the case in which the document is being filed (including the case number).

*ECM system* means an electronic case management system established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

*Online Registry* means the electronic case management system of that name established under clause 2 of Schedule 1 to the *Electronic Transactions Act 2000*.

*registered user* means a person who is registered as a user of the Online Registry.

*upload*, in relation to a document, means to transfer an electronic version of the document from a computer or other device to the Online Registry.

- (2) In this Division, a reference to filing a document in Court includes a reference to any other method of sending a document to the Court.

#### 8.14 Registration of users

- (1) Any person may apply to be a registered user by completing and submitting the application form, and agreeing to comply with the terms and conditions, published on the Online Registry website.
- (2) A person applying to be a registered user must provide such information as may be required by the application form including whether or not the applicant is a legal practitioner.
- (3) A registrar of the Court may direct that the registration of a person be cancelled if, in the opinion of the registrar, the person should not have been registered as a user of the Online Registry.

#### 8.15 Electronic filing of documents

- (1) This rule applies to any document that is permitted to be filed using the Online Registry.
- (2) In any proceedings, a document permitted to be filed using the Online Registry may be filed in the Court on behalf of a party to the proceeding by a registered user who is:
  - (a) a party to proceedings (including a police prosecutor), or
  - (b) a relevant legal practitioner for a party in proceedings.
- (3) A document that is filed by means of the Online Registry is taken to have been filed when the Online Registry gives notice of acceptance of the document.
- (4) Notice of acceptance of a document, and of the date and time of the acceptance, is to be given, by means of the Online Registry, to the registered user by whom the document was filed.
- (5) When filed by means of the Online Registry, a document that is required to be signed by a person is taken to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2000* if the person's name is printed where his or her signature would otherwise appear.

#### 8.16 Uploading documents

- (1) In this rule, *document* means a document submitted for filing in accordance with rule 8.15 and includes any attachment that forms part of or accompanies that document.
- (2) This rule applies to any document that may be, or is required to be, uploaded and submitted for filing by the Online Registry.
- (3) A true and complete copy of the document must be uploaded in a format that is permitted by the Online Registry.
- (4) Each document uploaded must be accurately described.
- (5) If the document is an affidavit, the description of the document must include the name of the deponent and the date that the affidavit was sworn or affirmed.
- (6) If a document that is required to be signed under the *Criminal Procedure Act 1986*, the *Local Court Act 2007* or these rules is uploaded, the document must be a scanned copy that includes a clear, legible copy of the signature of the person who signed the document.
- (7) If an affidavit or statement of evidence is uploaded, it must include:
  - (a) a clear, legible copy of the signature of the deponent of the affidavit or person making the statement, and

- (b) if the document has been witnessed, a clear legible copy of the signature of the witness, and
  - (c) if the document is an affidavit executed in New South Wales, a duly completed certificate under the *Oaths Act 1900*.
- (8) A person who has filed a document by uploading it is taken to have agreed that, if the Court so requires, he or she will file the original document in accordance with the Court's directions.

#### **8.17 Electronic issuing of a document**

- (1) The Court may:
  - (a) by means of any ECM system, issue an arrest warrant, and
  - (b) by means of the Online Registry, issue any other document to any party to proceedings who is a registered user.
- (2) The date on which the document was issued must be set out in the document.
- (3) When issued by means of an ECM system, a document that is required to be signed by a person is taken to have been duly authenticated for the purposes of clause 5 of Schedule 1 to the *Electronic Transactions Act 2000* if the person's name is printed where his or her signature would otherwise appear.

#### **8.18 Request for a certified copy of a judgment or order**

- (1) This rule applies to a request by a party or on behalf of a party for a sealed copy of a judgment or order submitted to the Court using the Online Registry.
- (2) A request under this rule does not constitute a document being filed in the proceedings.
- (3) If the request is a valid request then a sealed copy of the judgment will be issued.

#### **8.19 Request to issue subpoena**

- (1) This rule applies to a request on behalf of a party to issue a subpoena submitted to the Court using the Online Registry.
- (2) A request to issue a subpoena using the Online Registry can only be made on behalf of a party who is represented by a solicitor.
- (3) A request to issue a subpoena is made by:
  - (a) providing the name of the person to whom the subpoena is addressed, and
  - (b) uploading a copy of the proposed subpoena in the approved form.
- (4) The registered user who submitted the request to issue a subpoena will receive confirmation that the request has been accepted when a coversheet is inserted as the first page of the uploaded subpoena in accordance with rule 8.20.
- (5) If the request to issue a subpoena is for a subpoena for production and to allocate an early return date, the coversheet will also include a notice of the date, time and place where the person is required to attend to produce documents sought under the subpoena if the documents are not produced to the registry beforehand.
- (6) The coversheet will be sealed.
- (7) The coversheet is taken to be part of the issued subpoena for the purposes of these rules.

#### **8.20 Coversheet generated by Online Registry**

- (1) The coversheet will include a seal and a note of the date and time of filing.
- (2) If a document is submitted for filing under rule 8.16 and accepted by the Online Registry, the registered user who submitted the document will be sent a copy of the document submitted for filing with a coversheet inserted as the first page of the document.
- (3) If a coversheet has been inserted as the first page of the document in accordance with subrule (2), the coversheet is taken to be part of the document for the purposes of this Division.
- (4) If, as a result of the filing of a document, the Online Registry has automatically listed the proceedings, then the coversheet will include a notice of the date, time and place that the proceedings have been listed.
- (5) If the document submitted for filing under rule 8.16 includes the other associated documents as attachments under that rule, then the document and the other associated documents will all be included under the one coversheet.

### **Division 4 Appointment and removal of solicitors in criminal and application proceedings**

#### **8.21 Application of Division**

This Division applies to criminal proceedings and application proceedings.

#### **8.22 Power to act by solicitor**

- (1) Every act, matter or thing which, by or under the *Criminal Procedure Act 1986*, the *Local Court Act 2007* or these rules or otherwise by law, is required or allowed to be done by a party may be done by his or her solicitor.
- (2) Subrule (1) does not apply where the context or subject-matter otherwise indicates or requires.

#### **8.23 Adverse parties**

If a solicitor or a partner of the solicitor is a party to any proceedings, or acts as solicitor for a party to any proceedings, that solicitor may not act for any other party in the proceedings, not in the same interest, except by leave of the Court.

#### **8.24 Appointment of solicitor**

- (1) A party that appoints a solicitor to act on the party's behalf may file notice of the appointment.
- (2) A copy of the notice of appointment, as filed, must be served on all other parties if the solicitor intends to file or serve documents electronically.

#### **8.25 Change of solicitor**

- (1) A party for whom there is a solicitor on the record in any proceedings may change solicitors.
- (2) A copy of the notice of change, as filed, must be served on all other parties and, if practicable, on the former solicitor.

**8.26 Removal of solicitor**

- (1) A party that terminates the authority of a solicitor to act on the party's behalf must file notice of the termination.
- (2) A copy of the notice of termination, as filed, must be served on all other parties and, if practicable, on the former solicitor.
- (3) Filing and service of the notice of termination on the other parties may be effected by the former solicitor.
- (4) This rule does not apply to a change of solicitor referred to in rule 8.25.

**8.27 Withdrawal of solicitor**

A solicitor who ceases to act for a party in any proceedings may file notice of the change and serve the notice on the parties.

**8.28 Effect of change**

A change for which notice is required or permitted to be given under this Division does not take effect:

- (a) as regards the Court, until the notice is filed, and
- (b) as regards any person on whom it is required or permitted to be served, until a copy of the notice, as filed, is served on that person.

**8.29 Actions by a solicitor corporation**

Where, by or under the *Criminal Procedure Act 1986*, the *Local Court Act 2007* or these rules or otherwise by law:

- (a) any act, matter or thing is authorised or required to be done by a solicitor for a person, and
- (b) the solicitor is a solicitor corporation, and
- (c) the act, matter or thing can, in the circumstances of the case, only be done by a natural person,

the act, matter or thing may be done by a solicitor who is a director, officer or employee of the corporation.