

[REDACTED]

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**From:** Claire Hammerton Cole  
**Sent:** Tuesday, 29 March 2022 3:13 PM  
**To:** [REDACTED]  
**Subject:** RE: FOI - consultation on the basis of personal information about you [SEC=OFFICIAL:Sensitive]  
**Attachments:** Pages from Media clips (8 February 2022).pdf; 2022 02 09 Pages from News Clippings.pdf; 2022 02 10 Pages from News Clippings.pdf; 1610681129.pdf

**OFFICIAL:Sensitive**

Dear Jonathan,

As discussed on the phone, I have attached the recent articles about the Court's recruitment processes that were published in The Australian.

Best regards,

Claire

**Claire Hammerton Cole | Registrar, General Law & Practice**  
Principal Registry | Federal Court of Australia  
Law Courts Building, Queens Square, Sydney NSW  
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**From:** Claire Hammerton Cole  
**Sent:** Monday, 21 March 2022 5:22 PM  
**To:** [REDACTED]  
**Subject:** FOI - consultation on the basis of personal information about you [SEC=OFFICIAL:Sensitive]

**OFFICIAL:Sensitive**

Dear Mr Palmer,

The Federal Court has received FOI requests relating to recent articles published about the Court's recruitment processes in The Australian. Two of the documents that fall within the scope of these requests contain your personal information, which means I am required to consult with you. Please read the attached letter, which contains more information. The relevant documents containing your personal information are attached to this email.

If you have any questions or would like to discuss, please feel free to contact me.

Best regards,

Claire

**Claire Hammerton Cole | Registrar, General Law & Practice**  
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08 Feb 2022

The Australian, Australia

Author: Kylar Loussikian Jill Rowbotham • Section: General News

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# Untried lawyers score key positions

**EXCLUSIVE**

**KYLAR LOUSSIKIAN  
JILL ROWBOTHAM**

At least two untried and under-qualified junior lawyers were given high-paid, senior positions at the Federal Court ahead of better qualified candidates.

One employee was promoted to the position of national registrar in December 2016 despite not having been admitted as a practitioner in any state.

A confidential Australian Public Service Commission investigation into the matter later found that the woman “did not hold an essential qualification for the position and no reasonable efforts were made throughout the selection process to determine whether she was eligible to be admitted to practice”.

In a second instance, a legal case manager was offered a position as national registrar in September 2018 – over other experienced solicitors – months before he completed his College of Law legal training course.

Documents obtained by The Australian show the court’s then chief executive, Warwick Soden, was so alarmed by the appointment that he wrote to the then principal judicial registrar, Sia Lagos, to ask: “Should we not think about a limited delegation for the time being as I assume you would not be suggesting (he) preside in court in the near future?”

The selection report obtained by The Australian said: “(His) referees both spoke of the quality of work that (he) produces; and how he is always positive and is a delight to work for.” “(He) was

one of the lead applicants.”

Andrea Jarratt, the director of national operations, wrote in an email sent in November that the man, who had only graduated university the previous year, would “not be undertaking ... delegated judicial work until he is admitted to practice”. He was admitted in February 2019.

The Australian has chosen not to publish the names of the two employees. Both still work at the Federal Court.

Descriptions for the national registrar positions read: “This position may require the occupant to perform statutory legal functions, as necessary. Therefore, legal qualifications and admission as a practitioner of the High Court and/or the Supreme Court of a State or Territory of Australia is essential. “To undertake this role, the successful candidate must have ... litigation and case management experience in superior courts of Australia.”

The Federal Court’s registrars – some of whom are paid more than \$140,000 a year – have the power to make orders about discovery, inspection and production of documents, and make orders about costs.

*Continued on Page 6*



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# Untried junior lawyers score key Federal Court positions

Continued from Page 1

They can also exercise various powers delegated by judges to make decisions under the Bankruptcy Act, the Corporations Act and the Native Title Act.

The Australian has obtained applications for the national registrar positions including one lawyer who had been a litigator since 1994 specialising in Federal Court matters. She had previously been a deputy district registrar with the court, lectured at the University of NSW and had published several books about Federal Court litigation. The appointment caused some disquiet within the court.

One email from then deputy principal registrar John Mathieson, sent on February 13, reads: "There is no mention in (his) CV that he has been admitted in the Supreme Court as a legal practitioner. You will remember from our earlier general discussions about appointments that admission was a mandatory requirement for appointment."

Ms Jarratt responded: "(he) was admitted last Friday." Mr Soden, the following day, wrote to Ms Lagos: "While I have no difficulty with the proposed appointment of registrar, I do question the apparent assumption (as usually occurs) for the automated delegation of all powers of the court that could be delegated to a registrar when the person was so recently admitted."

"David (Pringle) has assured me that he is a highly capable registrar and will have no difficulty dealing with the straightforward categories of registrar work," Ms Lagos wrote on February 20.

"You will note from (his) CV that he also comes with considerable initial training in mediation,

and we have no doubt that once accredited, he will skilfully conduct less complex mediation as needed."

The Australian is not suggesting either employee has been unable to perform in their roles, only that the appointment process caused concerns within the court.

The appointments of the two employees were also the subject of an APSC investigation by acting assistant commissioner Kate McMullan. In late December 2020, Ms McMullan wrote to Ms Lagos to inform her she had found the recruitment process that led to the court promoting the woman had breached the Public Service Act because "all eligible members of the community were not given a reasonable opportunity to apply to perform the relevant duties".

"(This is) because ... if admission as a legal practitioner was not essential for performance of the role, listing it as an essential requirement in the advertisement may have precluded other members of the community with the same qualifications as (the woman) from applying for the position. Admission as a legal practitioner is listed as essential for performance of the role., but does not appear to have been considered as part of the selection process," Ms McMullen wrote.

"(She) ... was selected over a field of candidates all of whom did have this work-related quality."

There was no breach in the case of the man, she wrote, because there was "a clear pathway to eligibility within a reasonable time after the recruitment process" and "it was reasonable to expect other members ... who had an antici-

pated date for admission to legal practice in the very near future would have felt it was open to them to apply for the position.

"While I did not make any adverse findings concerning the engagement of (the man), as a matter of best practice it may have been advisable for the selection panel to more explicitly record the reason for shortlisting, interviewing and selecting such a candidate."

The Federal Court declined to comment.



Lagos



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## PROMOTION PROBLEMS

### REGISTRAR 1

When looking at ██████'s qualifications I note that he was admitted as a lawyer of the Supreme Court of NSW on 8 February 2019.

While I have no difficulty with the proposed appointment of Registrar, I do question the apparent assumption (as usually occurs) for the automatic delegation of all powers of the Court that could be delegated to a Registrar when the person was so recently admitted. Should we not think about a limited delegation for the time being as I assume you would not be suggesting that ██████ preside in Court in the near future?

**Federal Court chief executive Warwick Soden email to Federal Court principal judicial registrar Sia Lagos on February 14, 2019**

The intention is, for National Registrars such as ██████, to undertake limited work only once trained and accredited ... Of course, through their training, national registrars will be closely supervised and in the case of ██████ that supervisor will be undertaken by David Pringle.

As to ██████'s skills and capabilities, David has assured me that he is a highly capable registrar and will have no difficulty dealing with the straightforward categories of registrar work.

**Lagos's email to Soden on February 20, 2019**

Dear Sia  
Thanks for going to the time to make me feel comfortable about the controls that will be applied to the delegation of lower level work initially. I will not make the formal appointments on that assumption.

**Soden's email to Lagos on February 20, 2019**

### REGISTRAR 2

Following my review of the evidence provided by you up to 27 October 2020, I was satisfied that the allegations of disclosable conduct concerning each of the recruitment processes was not substantiated, except in relation to the promotion of ██████ to a National Registrar position.

On the basis of the relevant evidence I have considered, I have found on the balance of probabilities that ██████ did not hold an essential qualification for the position and that no reasonable efforts were made throughout the selection process to determine whether she was eligible to be admitted to practice.

**Extracts from Australian Public Service Commission assistant commissioner Kate McMullan to now Federal Court chief executive Sia Lagos on December 23, 2020**



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# Federal Court boss warned on job rule sidestep

## EXCLUSIVE

KYLAR LOUSSIKIAN  
JILL ROWBOTHAM

The top Federal Court bureaucrat was warned by her deputy the court could be in breach of public service rules after it hired a string of national registrars on lower classifications – then bumped up their salaries and titles to “get around” a limit on senior appointments.

Scott Tredwell, now the court’s general counsel but at the time its acting deputy principal registrar, emailed the chief executive, Sia Lagos, in October 2020 warning he had concerns about the use of special agreements to “in effect, get around the cap”.

Under public service rules, departments and agencies are not permitted to fill vacancies classified as senior executive service positions with staff employed on a lower classification but additional remuneration. At least five, however, were appointed in this way, an investigation by The Australian can reveal.

A 2018 confidential recruitment update for judicial registrar positions shows one candidate applied for a role in a classification known as Senior Executive Service Band 2 – or SES2. In the recommendations, it is noted the woman should be appointed to a lower Executive Level 2 level. “Would require allowance equivalent to SES1 or higher,” it read.

A second person considered

for an SES1 position had a similar recommendation.

One internal candidate was considered for a national judicial registrar position at an SES1 level. “No SES. But individual flexibility arrangement,” then Federal Court chief executive Warrick Soden wrote in September 2018. “(Another woman) is appointed to backfill (a) role as a Judicial Registrar, Legal 2, but with allowance equivalent to SES1,” the document reads. “NSW to receive additional resourcing of two Judicial Registrars (Legal 2) but with an allowance equivalent to SES1.”

Some internal promotions, the special deals known as individual flexibility arrangements show, were given pay rises of around \$50,000 a year despite ostensibly

remaining at the same level. Under public service rules, agencies and departments can apply more than one classification to a group of duties – a practice known as broadbanding. However, the rules say, this “does not apply to a group of duties to be performed by an SES employee”.

The string of new appointments came under Ms Lagos and led to the sidelining of several long-time registrars. It created disquiet within the Federal Court, and a complaint to the Australian Public Service Commission led to an extensive investigation.

The Australian reported on Tuesday that the APSC found one junior lawyer “did not hold an essential qualification for the position and no reasonable efforts

were made ... to determine whether she was eligible to be admitted to practice”.

But the APSC investigation, undertaken by the then acting assistant commissioner Kate McMullan, did not substantiate allegations of impropriety in the recruitment processes which resulted in the appointment of eight registrars under the arrangement because there had been “a role review process that had resulted in certain positions being found suitable for either a Legal 2 or (SES1) position, depending on the relative complexity and work load”.

“I note that more clear and transparent communications from the FCA about the role review process, including the changing nature of the National Judicial Registrar role to allow it to be held at either a Legal 2 or (SES1) position level, may have been advisable to reduce the risk of misunderstanding,” Ms McMullen wrote in December 2020. “I have therefore recommended that future FCA role reviews or restricting exercises are communicated to staff in a transparent and clear way to reduce the risk of misunderstanding and/or misinformation.”

In correspondence sent during the preparation of the court’s response to Ms McMullen’s review two months before the conclusion of the investigation, however, Mr Tredwell wrote: “I have some concerns regarding our proposed statements in respect of the SES Cap and our use



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of Individual Flexibility Agreements to, in effect, get around the cap”.

“I’m also wondering how our response sits as against the Public Service Classification Rules 2000, particularly 6 to 10,” Mr Tredwell, now the court’s general counsel, wrote in reference to regulations which ban the broadbanding of SES roles.

In a separate email obtained by The Australian, the court’s assistant people and culture director Matt Asquith admits the decision on whether to classify registrars into EL2 and SES1 bands is primarily based not only on the additional responsibilities undertaken, but “The SES cap the Court has, and if the positions can fit within the cap”.

These emails were not provided to Ms McMullen during her investigation. The Federal Court declined to comment.

A spokeswoman for the ASPC said: “A role evaluation is the method of determining the relative work value of a job through assessing the nature, impact and accountabilities of the role. It is not uncommon for positions with the same job title to be classified differently as a result of differences in one or more of the evaluation factors – for example, the scope and complexity of the role.

“A role evaluation which determines differing classifications for a role depending on the nature of the work involved is distinct and separate to a broadbanding arrangement.”

I have some concern regarding our proposed statements in respect of the SES cap and our use of Individual Flexibility Agreements to, in effect, get around the cap.

I’m also wondering how our response sits as against the Public Service Classification Rules 2000, particularly Rules 6 to 10.

**Extract from acting deputy principal registrar Scott Tredwell’s email of October 26, 2020**



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‘GOING TO BECOME A MAJOR ISSUE’

# Top judge warned of registrar overhaul

**EXCLUSIVE**

**KYLAR LOUSSIKIAN  
JILL ROWBOTHAM**

A long-serving judge on the Federal Court was so incensed by the reorganisation plans drawn up by its most senior bureaucrats that he took the unusual step of intervening – warning that it was “going to become a major issue”.

Emails obtained by The Australian show Andrew Greenwood objected to plans to downgrade the classification that one existing registrar would be appointed to – a decision the court’s chief executive and senior officials attempted to blame on the Australian Public Service Commission.

Instead, Justice Greenwood in the emails sent in October 2018 accused then chief executive Warwick Soden, and his replacement, Sia Lagos, of “obfuscating”.

Mr Soden had claimed the registrar, a man who had been at the court for many years, could not be given the original Senior Executive Service classification advertised because it would be vetoed by the APSC representative.

“Sia spoke to me briefly before she went on leave and apparently the (APSC) representative was

concerned that (the man) was not very forthcoming about the changes to the management system or otherwise he would make to improve the work of the court,” Justice Greenwood wrote.

“First, Warwick’s advice that the APSC has a veto on appointment is wrong,” Justice Greenwood wrote in an internal memo.

“The true position is that neither Warwick nor Sia want to appoint (the man). The so-called ‘veto’ is a red herring to prevent (him) being awarded the position.

“The SES classification, you will find, will have been taken somewhere else in the organisation ... regrettably, the eight Brisbane judges will not accept the downgrading of the role.”

The Australian on Wednesday reported that the Federal Court’s bureaucrats had circumvented the cap on the number of staff by hiring them at lower levels and using special agreements to increase their pay – by up to \$50,000 – and their titles.

A major reorganisation of the court’s national registrars – which took place over several years – caused angst within the agency as long-serving staff were sidelined.

In the reorganisation, the most senior registrar in Queens-

land ended up in a position lower than the SES classifications other state registrars were given.

“Warwick tells me there is a problem because the (APSC) has a veto on any SES appointments,” Justice Greenwood wrote in one email dated October 18.

“To solve the problem, Warwick wants to downgrade the role from an SES position, avoid the APSC’s veto and appoint (him).

“This reduces the standing of the position. It reduces (the man).

“Queensland is the third largest state by population ... he has the unqualified support of the eight resident judges, the profession and the staff. What more is required?”

The process to reorganise the Federal Court’s national registrars was later investigated by the APSC. At that time, court officials told acting assistant commissioner Kate McMullen a “role review” meant some positions were classified at SES level and others at a lower one. Many staff employed at a lower level, were given special deals to raise their salary.

Under public service rules, departments and agencies are not permitted to fill SES classified positions at lower levels.



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A week after Justice Greenwood's complaint about the registrar's apparent demotion, an HR official wrote to the man to confirm they would use "an agency determination which varies your base salary", giving him a pay rise.

The Federal Court declined to comment, but Justice Greenwood confirmed he had been told that the APSC had objected to the

man's appointment because he "might not be accommodating of planned changes to the management structure of the court".

"If that view was held, it was, unfortunately, incorrect," he wrote in an email to The Australian. "I understand the public service representative's view was not ultimately decisive in any event.

"(He) was ultimately appointed to the role at the (lower level) configured in a way as determined by Mr Soden and Ms Lagos, no doubt in discussion with the APSC."

Ms McMullen's investigation concluded that "a role review process ... had resulted in certain positions being found suitable for either (classification)".

"More clear and transparent communications from the FCA about the role review process, including the changing nature of the National Judicial Registrar role to allow it to be held at either ... position level, may have been advisable to reduce the risk of misunderstanding," she wrote in December 2020.

The Australian on Monday reported the investigation separately found a junior lawyer had been appointed despite not holding "an essential qualification for the position".

**'He has the unqualified support of the eight resident judges, the profession and the staff. What more is required?'**

---

**ANDREW GREENWOOD**  
FEDERAL COURT JUDGE





29 MAR, 2022

## Spotlight shines back on watchdog

The Australian, Australia

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PROBE INTO COMPLAINT HANDLING

# Spotlight shines back on watchdog

**EXCLUSIVE**

**KYLAR LOUSSIKIAN  
JILL ROWBOTHAM**

The Commonwealth Ombudsman is investigating how the nation's public service authority handled internal complaints of alleged wrongdoing by senior officials at the Federal Court.

The Australian in early February revealed that at least two untried and underqualified junior lawyers were given high-paid, senior positions ahead of better qualified candidates. The court's acting deputy principal registrar, Scott Tredwell, had separately warned the organisation's chief executive that special deals were being used to get around a cap on senior appointments.

The Australian Public Service Commission, which had previously been alerted to the issues, did not substantiate allegations of impropriety in the process that resulted in the appointment of eight registrars under the special arrangements.

The review, undertaken by acting assistant commissioner Kate McMullen, did find one jun-

ior lawyer "did not hold an essential qualification for the position and no reasonable efforts were made ... to determine whether she was eligible to be admitted to practice".

However, The Australian has confirmed that the Commonwealth Ombudsman has begun an investigation into Ms McMullen's review and escalated it to the second most serious level in its powers – known as category 4.

Matters at this level, according to Ombudsman documents, include those where there is a reluctance by a government agency to acknowledge issues, one that may potentially be sensitive or involves the head of an agency.

"If our investigation has revealed evidence of serious misconduct, the approach should be escalated to category 4 at the earliest opportunity," the Ombudsman's work practice guide reads.

In an email obtained by The Australian, one senior figure at the Ombudsman writes: "I will consider whether it was reasonably open to (Ms McMullen) to make the findings and decisions she made, whether reasonable lines of enquiry were pursued,

and whether other reasonable requirements for good administration were met. I am taking the issues raised seriously," the note continues. "I expect this investigation may take some time."

That note, issued on March 21, came after the Ombudsman contacted the APSC in late December regarding the same issue to disclose it was conducting a preliminary investigation into the matter. "(Our officials) provided the requested documents to the Ombudsman on 14 January, 2022," the APSC email from acting assistant commissioner for integrity Giorgina Strangio reads.

"The Ombudsman advised that it will take some time to work through the documents and contact us again in mid-February."

The issue relates to a major reorganisation of the court's national registrars under Sia Lagos, now the chief executive.

The string of new appointments came under Ms Lagos and led to the sidelining of several long-time registrars. It created disquiet within the Federal Court, and a complaint to the APSC led to the extensive investigation.



29 MAR, 2022

## Spotlight shines back on watchdog

The Australian, Australia

Page 2 of 2

In some instances, the Federal Court's bureaucrats had circumvented the cap on the number of staff by hiring them at lower levels and using special agreements to increase their pay – by up to \$50,000 – and their titles.

The Australian also reported that one long-serving judge was so incensed by the reorganisation plans that he took the unusual step of intervening – warning that it was becoming a “major issue”.

Federal Court judge Andrew Greenwood also alleged Ms Lagos and her predecessor, Warwick Soden, were “obfuscating”.

“First, Warwick’s advice that the APSC has a veto on appointment is wrong,” Justice Greenwood wrote in an internal memo.

“The true position is that neither Warwick nor Sia want to appoint (him). The so-called ‘veto’ is a red herring to prevent (him) being awarded the position.”

The ASPC’s brief investigation found only that “more clear and transparent communications ... may have been advisable to reduce the risk of misunderstandings”. Some correspondence obtained by The Australian, however, was not provided to Ms McMullen during her inquiries.

**‘I am taking  
the issues raised  
seriously. I expect  
this investigation  
may take  
some time’**

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**COMMONWEALTH  
OMBUDSMAN**