



**MEMORANDUM**  
of  
**UNDERSTANDING**

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Between  
the  
Family Court of Australia  
and  
Federal Magistrates Court  
for the  
Provision of Services

1 July 2004

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## ***Outline***

This memorandum of understanding is in 6 parts.

- Part 1** describes the legal and organisational framework within which the memorandum operates.
- Part 2** describes case management in the Federal Magistrates Court.
- Part 3** describes the arrangements for the provision of services to the FMC.
- Part 4** describes service standards for the provision of all services and arrangements for monitoring service delivery.
- Part 5** describes the obligations undertaken by the jurisdictions.
- Part 6** describes the arrangements for the management of the memorandum

## 1 Framework

The Family Court of Australia (FCoA) and the Federal Magistrates Court (FMC) are independent courts of justice established within the Commonwealth of Australia.

FCoA and FMC have concurrent jurisdiction in most areas of family law.

The government established the Federal Magistrates Court to —

- improve access and lower the costs of justice for less complex matters,
- effect the transfer of less complex matters from FCoA to a jurisdiction that will apply simple, quick and affordable practices and procedures, and
- free judges of the FCoA to focus on matters of greater legal complexity that require the consideration and determination of a superior court.

To the extent that the courts share concurrent jurisdiction and to the extent that it is efficient and effective to do so, FCoA has agreed to provide specific support and service for and on behalf of FMC as set out in this Memorandum of Understanding.

The *Federal Magistrates Act 1999* provides for arrangements to be made between FMC and FCoA for the provision of services, in particular:

- Section 90 Arrangements for sharing services with other federal courts
- Section 92 Arrangement for sharing courtrooms and other facilities
- Section 100 Arrangements relating to commonwealth staff

FMC has made arrangements with FCoA pursuant to the provisions of sections 90, 92 and 100. These arrangements are at Attachment A.

The purpose of this memorandum of understanding is to provide additional information to supplement the formal arrangements made, by heads of jurisdiction, under sections 90 and 92 and, by chief executives, under section 100.

### 1.1 Principles

The principles that guide the implementation of this arrangement are:

- The two courts have been established to satisfy the demand in the community for a diversity of services for the resolution of family disputes. The paramount consideration in the implementation of this arrangement is the delivery of high quality public services.
- Some of the resources provided to FCoA by appropriation are provided to support Commonwealth obligations in relation to family law. To the maximum extent practical, the staff of FCoA will provide support services to FMC in respect of family law.
- The FCoA offers the services on the basis that the provision of those services is not detrimental to, or inconsistent with, the proper conduct and exercise by FCoA of the judicial power of the Commonwealth, statutory functions and obligations of FCoA under the Family Law Act or other relevant legislation.

- Services provided by FCoA under this MOU will be performed in a like manner and to the same standard and quality as would apply day to day in relation to services provided to staff, including the judiciary, and using a like process and procedure in FCoA.
- Transfers in recurrent budget funding have included the salaries and administrative on-costs for SES Registrars, their assistants and court officers. An administrative on-costs figure of 28% was added to cover expenses directly related to the workloads of the Registrars, assistants and court officers, including circuit travel, home security, court recording and transcript, videoconferencing usage, interpreters and administrative expenses.
- Any further transfer of funds from FCoA to FMC will occur in response to a transfer of workload from FCoA to FMC net of the workload transfer reasonably considered to have been covered by the funds previously transferred. The amount of any further transfer will be agreed between the parties at the time.
- The parties acknowledge that FCoA, on behalf of the Commonwealth, has commitments, and will continue to enter into commitments, to meet staffing salaries and related costs, service contracts and property costs. Accordingly, any further transfer of funds from FCoA to FMC which may be agreed would be on the basis that the associated commitments and liabilities would also pass to FMC or, alternatively, that the funds would remain available to FCoA for a reasonable period of time under service purchase arrangements with FMC.
- Throughout the MOU there is a range of services provided on a user pays basis. The costing basis used for each of these services is defined as one of the following costing bases:
  - Pass through costs – ie generally direct costs as incurred from an external provider and passed through to the FMC either via FCoA or, preferably, invoiced direct to the FMC
  - Direct staff costs – ie Salary of the staff member and salary oncost comprising long service leave and superannuation.
  - Direct staff cost plus administrative overhead - ie Direct staff costs as above plus an additional 35% for other administrative costs eg provision of a desk computer, stationery etc
  - Full cost recovery – ie As per direct staff and admin overheads plus any related capital costs (ie the user cost of capital or depreciation associated with usage of equipment or specific assets in deliver of the service.)
- FMC is directly responsible for the funding of additional costs created in FCoA by the provision of registry and other services where those additional costs arise from increased workloads or different work practices.

## **1.2 Objectives of the memorandum**

The courts have entered into this memorandum:

- to identify those services agreed to be provided by FCoA for and on behalf of Federal Magistrates Court
- to clarify the expectations and extent of the services to be provided;
- to provide a basis for development of the on-going relationship between the parties;
- to ensure that FCoA will, as far as is practical, provide services and/or facilities required for work in the concurrent jurisdiction; and
- to provide a sound basis for any further adjustment of budgets having regard to the cost of services and facilities provided by FCoA including the extent to which these costs are fixed and or sunk costs within the FCoA

## **1.3 Costing and output appropriations**

The courts have agreed that the cost of services provided free of charge to the FMC as estimated by the Family Court will be incorporated into the Courts Portfolio Budget Statements (under the notes to the Financial Statements). The estimate is provided for reporting purposes only to give an indication of the total resources as allocated across all services/outputs.

The courts also agree that there needs to be accountability and transparency in relation to cost allocation methodology.

At year end the estimate of resources provided free of charge to the FMC will be reflected in their financial statements. The FCoA will provide this information by 21 July each year noting that the audit of financial statements has not been completed. Once the audit is substantially complete a written assurance can be provided by the Financial Statements signing officer in the FCoA that the amount is materially correct as at that time. Until such time as services are uniquely identified, costed and the subsequent transfer of funds take place, FCoA will not recover costs in servicing FMC other than as specified by this MOU.

## **1.4 Arrangements for Workload and Resource Usage Monitoring**

The FCoA in consultation with the FMC will develop a workload cost allocation model to refine allocation of costs and to provide a basis for discussion in the event that there is a need to transfer staffing resources. Modelling will also need to take account of this benchmark together with the overall workload of the Courts jointly. The parties agree that the workload/cost allocation model should be updated with resource information annually. The Chief Finance Officers will develop this process.

Whenever practicable, FMC and FCoA will consult each other prior to taking resourcing decisions which will impact or disrupt established practices or pre-empt appropriate consideration of the issues.

## **2 Case management in the Federal Magistrates Court**

### **2.1 Case management procedures**

Proceedings in the Federal Magistrates Court are managed by federal magistrates after the first court date.

Any question concerning the rescheduling of a court date that is later than the first court date shall be referred to the office of a relevant federal magistrate.

#### **2.1.1 Children's matters**

Primary dispute resolution will be ordered in the registry at the time of issue of proceedings in all children's matters, including circuit matters.

Primary dispute resolution should, optimally, occur before the first court date.

In children's matters a hearing date may not always be allocated on the first court date. If additional primary dispute resolution or a family report is required the fixing of a hearing date may be deferred.

#### **2.1.2 Financial matters**

It will be usual for primary dispute resolution and the final hearing date to be ordered at the first court date.

### **2.2 Division of role and functions of registries and associate staff in case management**

The memorandum operates against the background of a case management system in which federal magistrates are responsible for the case management of their docket after the first court date. This could be an individual or a collective docket.

#### **2.2.1 Before 1st court date**

Registries provide all client services up to the first court date, including listing services. That is, they receive documents, create and maintain court files, list matters for the first court date in accordance with diary rules provided by FMC, and provide basic procedural advice. More complex advice on FMC matters and procedure is referred to the FMC Registrar.

Registry staff will produce court lists from Casetrack and display them in the registry.

Registry staff will provide the court files for the first court date no later than midday on the day prior to the first court date. The files are to be delivered to the FMC staff or be made available for collection at an agreed location.

### 2.2.1.1 Administrative Adjournments

Registries will order administrative adjournments at any time prior to midday on the working day prior to the first court date, or before the court file going to the federal magistrate, whichever is the earlier. Any request for an administrative adjournment after the file has been sent to the federal magistrate or where such request cannot be accommodated within any appropriate existing FMC list must be referred to the federal magistrate. Any request for an administrative adjournment after the first court date must be referred to the federal magistrate

### 2.2.2 After 1st court date

After the first court date registries will provide listing services, deliver files from the registry to federal magistrates' chambers, collect hearing fees, receive documents, maintain court files, publish court lists and, occasionally, provide court officers.

The federal magistrate is responsible for case management in this phase and enquiries about case management, eg administrative adjournment, re-listing or mentions, will be referred to the federal magistrate's office to be managed by the federal magistrate's support staff.

Registry staff should provide basic procedural advice in accordance with the *Responsibilities for Managing Correspondence (including e-mail), Counter and Telephone Enquiries From FMC Clients*, including information about listings, to litigants or their legal advisers in this phase, or may refer more complex inquiries to the FMC Registrar.

Registry staff will provide a liaison between different elements of the court. For example, if a federal magistrate sets a matter down for internal PDR, FMC chambers staff will be given advice by the Registry as to when Mediators are available. Similarly, the registry will provide liaison with external agencies where there are established protocols, eg between the Department of Human Services and the FCoA, which have been adopted substantially by FMC.

### 2.2.3 Listing Services

FCoA will list matters and schedule courtrooms for hearings in FMC.

Specific volumes of matters to be heard in a list, for example the divorce list or the duty list, will be discussed and negotiated at a registry level.

FCoA may make administrative adjournments and reschedule matters according to the current FMC guidelines.

The listing function does not include the listing of matters for final hearing. FMC will take responsibility for the further listing of matters after the first court appearance.

FMC will maintain its own listing protocols and court trial procedures for its final hearings.

Where practicable, listing arrangements are to be managed at registry level however where appropriate may be referred to the FCoA General Manager, Client Services or the FMC Coordinator Court Services.

The FCoA Listings Coordinator in scheduling lists will balance the needs of both courts and take into account relevant factors such as the requirements for courtrooms, court officers, and the safety and comfort of court clients.

Any long-term difficulties in respect of FMC listing should be directed to the FMC Court Services Coordinator.

Adjournments in court will be managed by the FMC associate. The associate is responsible for any ensuing correspondence.

Daily lists will be produced electronically, as per FCoA. The titles of the lists will be modified to satisfy the specific wording requirements of FMC.

## 2.2.4 Transfers

### 2.2.4.1 To the FCoA

When a matter is transferred to the FCoA the registry will receive the transfer order and create a new FCoA file and list the proceedings in accordance with FCoA case management guidelines.

### 2.2.4.2 From the FCoA

When a matter is transferred by the FCoA the registry will create a Federal Magistrates Court file and

- in the instance of an urgent or same day transfer,
  - contact the federal magistrates associate, who will advise the registry of a date on which the matter may be listed for mention
- in all other cases,
  - subject to the diary rules, list the matter in the next available duty list and notify the parties.

### 2.2.4.3 From state and territory courts of summary jurisdiction

Until Section 45 of the Family Law Act is amended, matters transferred from a state or territory court of summary jurisdiction will be entered into FCoA Casetrack and, if appropriate for transfer to the Federal Magistrates Court, be transferred by order to the Federal Magistrates Court without a physical FCoA file being created. A Federal Magistrates Court file will be created in the registry and a date for mention will be fixed as if the proceedings were new proceedings in the Federal Magistrates Court. The registry will advise the parties by letter of the date that has been fixed.

Immediately upon receipt of a matter transferred from a State or Territory Court for hearing in the Federal Magistrates Court the Registry will assess the urgency of the matter. The Registry will process the application as set out below within 5 working days of receipt for matters considered to be urgent and 10 working days for matters not considered to be urgent:

- Make any necessary requisition
- Transfer the matter to the Federal Magistrates Court
- Attach a copy of any requisition to the court file
- List the matter for a first court date in accordance with the Federal Magistrates Court diary rules
- Notify the parties of the Court date in writing

The Federal Magistrate will be responsible for ensuring compliance with any requisition.

### 2.2.5 Divorce Applications<sup>1</sup>

All divorce applications received at FCoA Registries are to be filed with the FMC, and/or in the jurisdiction specifically requested by the applicant.

Registry staff will provide basic procedural advice to divorce applicants.

The registry will list divorce applications for hearing before a federal magistrate or registrar (however described) in accordance with diary rules provided by the Federal Magistrates Court.

The outcomes of divorce hearings will be entered in Casetrack by the presiding officer or under his or her direction. He or she (or the staff) will also print the certificate, which will be placed in a folder with the court files. This practice is to continue until a bulk printing capacity is developed in Casetrack. When that occurs the function of printing certificates of divorce will revert to the registry

The registry will check, correct (if necessary), sign the certificate and dispatch copies to the parties after the decree has become absolute.

### 2.2.6 Primary Dispute Resolution -Adjournments

Registry staff may adjourn any PDR event administratively provided the adjournment does not compromise any listing for a final hearing. An application for an adjournment that could have the effect of compromising the capacity of the court to hear a matter on a date fixed for hearing must be referred to the relevant federal magistrate.

### 2.2.7 Circuits

The FMC will conduct circuits and will provide the FCoA with details of all circuit rosters. The FMC will notify the FCoA of any change or proposed change to established circuit rosters.

Registries will support circuits by:

- Listing new matters for first mention on the first day of the circuit sittings, noting that the first date may be a telephone or video call-over.
- Making PDR appointments
- Preparing all files for collection by the Federal Magistrates Court staff no later than 5 working days prior to the circuit date (or call-over date)

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<sup>1</sup> See para 3.3.3 re allocation of divorce workload  
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- Maintaining circuit files, ensuring that late filings are given a high priority within the registry so as to ensure that files are complete when the file is taken away from the registry
- Produce court lists for the circuit from Casetrack.
- FMC will consult with the FCoA prior to establishing any new circuit locations. The FMC will have regard to the impact of any proposed new circuit on registry resources which is identified by the FCoA.
- Where possible, at non-metropolitan registries, in order to reduce delay in the filing of essential documents, the registry will provide a full filing service for documents that are to be filed during the period of a circuit sittings. That service will be provided for the week prior to the circuit and during the conduct of the circuit.

### **3 Services to be provided by the FCoA**

#### **3.1 Registry Services**

The metropolitan, rural and regional registries will provide a range of registry services to the Federal Magistrates Court, including filing services. Filing services will include those circuits attached to the FCoA registry.

The FMC and FCoA will work together to determine the need and level of filing service provided by rural and regional registries. A determination of the level of filing service will be specific to individual rural and regional registries.

FCoA will work towards providing a full range of filing services.

Specific FMC requirements for any additional, and/or changed registry services should be submitted to the FCoA for consideration.

Services provided by FCoA pursuant to a Section 90 Arrangement will be performed in a like manner and to the same standard, quality, and using a like process and procedure as apply day to day in FCoA.

An arrangement pursuant to Section 90 of the Federal Magistrates Act (FMA) has been entered into between the Chief Federal Magistrate and the Chief Justice. The key issues are as follows:

- The delivery of services by FCoA staff to FCoA clients should not be compromised by the performance of functions on behalf of FMC
- The functions to be performed by staff on behalf of FMC should not be inconsistent with those functions currently performed by staff on behalf of FCoA
- In the event that a function is not addressed in the MOU, the CEO of FCoA or his delegate can determine priority of performance of functions between FCoA and FMC
- Documents to be lodged with or filed with FMC may be received by staff of FCoA appointed for that purpose. FCoA staff will respond to enquiries relating to the jurisdiction of FMC and its procedures. FMC are to provide appropriate guidelines to assist staff.
- Complex enquiries may be referred to the Registrar of FMC
- FMC will not require FCoA staff to perform functions which are not described in this agreement or the Business Procedures Manual without first consulting with and obtaining the agreement of the CEO of FCoA

##### **3.1.1 Hours of service**

Services provided under this memorandum will be performed during the ordinary hours that the services are available within FCoA on a registry-by-registry basis.

If there is a change in registry opening hours, the registry manager will notify the FMC Co-ordinator of Court Services.

### 3.1.2 Locations

FCoA will make filing facilities available as requested at all FCoA locations at the times when those locations are open for business. The detail of the arrangements for the provision of filing services is to be confirmed by the General Manager, Client Services.

### 3.1.3 Advice to litigants

Registry staff will provide general advice to litigants and their representatives in relation to the operations and procedures of the Federal Magistrates Court relating to family law issues.

The level of service to be provided by registry staff is detailed in the document *Responsibilities for Managing Correspondence (including e-mail), Counter and Telephone Enquiries From FMC Clients*.

More complex enquiries may be referred to the FMC Registrar.

### 3.1.4 Collection of fees

FCoA will receive fees payable under the Federal Magistrates Regulations.

All monies received will be paid into bank accounts nominated by the FMC Chief Finance Officer.

#### 3.1.4.1 Hearing fees

Registry managers will advise federal magistrates, when forwarding files to chambers for a listed defended hearing, if a hearing fee that is payable has not been paid.

#### 3.1.4.2 Accounting

The FMC relies on data entered into Casetrack by the FCoA registry staff to reconcile to amounts received in the FMC administered bank account. Where the figures in Casetrack are incorrect or require amendment, the FCoA registry staff are to advise (by email) the relevant finance officer in the FMC

Advice of dishonoured cheques will be advised by the FMC to the relevant FCoA registry. Recovery action is to be taken, in the first instance, by the relevant FCoA registry staff in accordance with procedures issued by the FCoA Chief Executive Officer. Where an amount is deemed to be irrecoverable, advice is to be provided in writing to the FMC CFO.

Where deposits include re-banking of a dishonoured cheque, the FCoA registry staff are to email the relevant finance officer in the FMC details of the file number and amount.

Where deposits to the FMC litigants trust account are made, details of the deposit and a copy of the relevant court order are to be faxed to the relevant FMC finance officer on (03) 8600 4445.

The FCoA is responsible for the control framework surrounding fees collection. Fees are to be collected in accordance with Chief Executive Instructions issued under the *Financial Management and Accountability Act 1997* by the Chief Executive of the FCoA.

The Financial Statements signing officer in the FCoA will provide an assurance in writing as soon as it is available from the audit process that the controls over revenue collections have operated satisfactorily over the previous 12 months.

The FCoA will provide to the CEO FMC a copy of any audit report, internal or external, that relates to the handling of public moneys on behalf of the Federal Magistrates Court. The report will be provided to the FMC Audit Committee and the FMC external auditors.

#### 3.1.4.3 Fee Waiver

FCoA staff will waive fees in accordance with the Federal Magistrates Regulations. Guidelines for the waiver of fees have been agreed and published by the courts.

#### 3.1.4.4 Fee Deferral

Applications for deferral of fees under the Federal Magistrates Regulations received by FCoA staff are to be referred to the FMC Registrar.

#### 3.1.4.5 Fee Exemption

FCoA staff will exempt fees in accordance with the Federal Magistrates Regulations.

#### 3.1.4.6 Fee Refund

Applications for refund of fees received by FCoA staff are to be referred to the FMC Chief Finance Officer with advice from an FCoA staff member who holds a relevant delegation that a refund is payable under the Federal Magistrates Regulations.

#### 3.1.4.7 Issue applications

FCoA staff will issue all applications in relation to family law. Return dates for applications issued in the Federal Magistrates Court will be allocated in accordance with diary rules established in Casetrack by Federal Magistrates Court.

#### 3.1.5 Maintenance of court files

Federal Magistrates Court physical files differ from FCoA files, but have a compatible file structure.

FMC will adopt an approach to filing that is similar to FCoA.

#### 3.1.6 Casetrack

FCoA registry staff will operate Casetrack for the FMC, except in the areas of work undertaken by FMC associates.

The function of associates includes:

- allocating judicial officers to sittings
- entering outcomes following proceedings conducted by federal magistrates or other Federal Magistrates Court staff

Where applicable, each court is to be responsible for the quality of its data entry.

There will be a need for continuing liaison between the FCoA and the FMC on matters of operational detail as problems are identified and raised. Liaison should occur on these issues firstly at the registry level and where there are national implications or a national policy is required, such issues would be referred to the General Manager Client Services (FCoA) and the Coordinator of Court Services (FMC).

The FMC will be responsible for the following aspects of Casetrack:

- Management of FMC metadata
- Management of FMC templates
- Management of FMC diary rules
- Management of FMC data analysis.

The courts will monitor Casetrack operations through the Casetrack Users Group.

The courts will have access to a common Casetrack end user layer. Although both courts will have technical access to all information in the end user layer they each agree to access or publish only:

- (a) lodgement data
- (b) information that relates to their own operations.

The courts will not access or publish data available in the end user layer that relates to the other court, other than basic filing information, without the express written agreement of the Chief Executive Officer of the other court.

### 3.1.7 Provision of court officers

FCoA does not provide court officers for family law or child support proceedings in the FMC, unless there are unforeseen circumstances and it is possible for a registry to meet the FMC requirement. FMC staff will generally meet FMC court officer requirements.

FMC will pay the costs of provision of such services on a direct staff cost basis.

### 3.1.8 Oaths and affirmations

Procedures for the taking of oaths or affirmations are detailed in *Guidelines to ASO staff* issued by the FCoA's General Manager, Client Services.

### 3.1.9 Exhibits

Procedures for the management of exhibits are detailed in *Guidelines to ASO staff* issued by the FCoA's General Manager, Client Services.

### 3.1.10 Subpoenas and subpoenaed documents

Procedures for the issue of subpoenas and the management of subpoenaed documents are detailed in *Guidelines to ASO staff* issued by the FCoA's General Manager, Client Services.

### 3.1.11 Requests for access to court file (or material on court file) by non parties

Requests for access to a Federal Magistrates Court file (or material on a court file) by a non-party should be referred to the Registry Manager in the first instance who will consider the request in the context of Rule 2.08 of the Federal Magistrates Court Rules 2001 and refer the matter to a Registrar to determine if leave should be granted.

If a request involves a criminal investigation or a request from the media, the Registry Manager should refer the request to the Registrar of the Federal Magistrates Court. If leave to inspect (or produce the file) is granted, the registry manager will implement arrangements to facilitate inspection/copying/ transmission of material by the person making the request.

### 3.1.12 Archiving

Archiving of court files is a basic function of registries. The Family Court has within its ongoing appropriation funding for the baseline level of family law file retention. Issues about the contribution of FMC in relation to any increase in file retention levels are yet to be resolved and the courts will work to reach agreement on that issue as soon as possible, recognising the high priority of the issue.

The Federal Magistrates Court has commenced the process of developing a disposals authority, in conjunction with the National Archives Australia. That process is likely to take until 2005. FMC will seek to establish a similar disposal authority for court files as is established for the Family Court.

Pending the completion of the DIRKS Project, FMC documents cannot be sentenced and will be retained by registries. When this creates additional storage costs to the FCoA these costs will be passed on to the FMC.

Any issues in relation to document storage are to be referred to the FMC Chief Finance Officer through the FCoA's Chief Finance Officer.

### 3.1.13 Interpreters

Federal Magistrates Court will apply FCoA Policy *Guidelines for the Use of Interpreters*, in particular the section on "*When to utilise interpreter services*".

The need for interpreting services can be identified at the time of filing, at Counselling/Mediation sessions or at Court appearances.

Clients can request the provision of interpreting services, staff may suggest to clients that they need interpreting services, or a presiding officer may order the provision of interpreting services.

If a request for an interpreter is made on behalf of FMC the registry procedure for arranging such services will be adopted by FMC. The associate to the federal magistrate will complete relevant documentation only if the interpreter is required in court on occasion after the first court event.

A request for the provision of interpreter services should be made no less than 2 weeks prior to the date on which the service is required. In those matters where the booking is to be for more than one day, the request should be made 6 weeks in advance.

Interpreters are required to have an attendance record signed by the associate to the federal magistrate or, if the interpreter was not required to attend for a hearing, by an appropriate FCoA Officer.

When an FCoA Officer signs an attendance record a copy of the record will be sent to the FMC CFO in order to facilitate payment.

Invoices are to be sent to the FMC CFO at 305 William Street, Melbourne.

In the event that a registry receives an invoice in relation to an attendance in FMC proceedings the registry will forward the invoice to the FMC CFO immediately in order that payment is not delayed.

#### 3.1.14 Child minding facilities

Childcare is provided at some FCA locations to family law clients only while the client is on court premises.

Child care is not provided if a qualified child care officer is not available; there is a limit on the number of children who can be accommodated in child care, depending on the number of child care officers available. The registry will provide childcare to FMC clients on the same basis as FCoA clients, at no cost to FMC or its clients.

On request by FMC to increase childcare capacity or to provide childcare where none would otherwise be available, FCoA will if practicable engage qualified childcare on a pass through cost basis to the FMC.

#### 3.1.15 Court reporting

The contract arrangements between FCoA and its reporting and transcription service providers also includes the provision of services to the FMC. The FMC will meet the cost of such services.

The FMC records all proceedings other than uncontested divorce applications. If transcript is required FMC will deal directly with the service provider.

When scheduling FMC family law matters, that FMC has advised are to be recorded, FCoA staff will arrange for the attendance of the service provider. FMC undertake all certification and payment of court reporting invoices.

#### 3.1.16 Videoconferencing

FCoA will allow FMC use of its videoconferencing network for matters of concurrent jurisdiction on a direct staff plus administrative overhead cost (if applicable) basis. The FCoA Chief Finance Officer will advise the FMC (in writing) of any additional costs to be recovered from the FMC.

Access is by booking through the local registry and is subject to the approved policies of FCoA as may be amended from time to time and to the availability of equipment and trained court operators.

Use of FCoA videoconferencing equipment by FCoA has precedence over all other users however a videoconferencing booking made by FMC and accepted by FCoA will not be set aside without consultation between FCoA and FMC.

### 3.1.17 Stores

FCoA will, if requested and where agreed to in writing with the relevant local Registry Manager provide access to office photocopy and facsimile services (as opposed to applicant counter services) on a full cost recovery basis, based on the principle of fair usage.

### 3.1.18 Exercise of delegated powers by registry staff

A range of non-judicial powers have been delegated to FCoA registry staff. The detail of the delegated functions and the guidelines for the exercise of power are provided in the *Manual for Delegation of Registrars' Powers to APS staff*.

### 3.1.19 Statutory functions of registry managers under the Family Law Act

Registry managers will perform the statutory functions of registry managers under sections 67H, 67Z, 68R and 70M as if the registry manager were an appropriate officer of the Federal Magistrates Court. In the exercise of those functions the registry managers may seek guidance or direction from the FMC Registrar.

### 3.1.20 Participation in registry case management meetings

A federal magistrate will be invited to participate in registry case management meetings to review case management issues that affect FMC.

## **3.2 Mediation Services**

### 3.2.1 Lawyer mediation

#### 3.2.1.1 Conciliation Conferences by Court staff

FCoA Deputy Registrars, in their capacity as FMC registrars, will conduct conciliation conferences pursuant to an order made by a federal magistrate.

Deputy Registrars will facilitate conciliation conferences in the same manner and to the same standard as FCoA conferences with the following exceptions:

Deputy Registrars will not be required to make any directions or procedural orders, but will refer unresolved issues back to the court.

Deputy Registrars are to complete the FMC "Conciliation Conference Report" prior to referring the matter back to the federal magistrate.

In the event that a conference resolves and draft consent orders are prepared, the Deputy Registrar can make the consent orders if he or she considers it appropriate to do so exercising the judicial powers delegated by federal magistrates.

Alternatively, the completed "Conciliation Conference Report" and draft consent orders may be referred to a federal magistrate for appropriate action.

FCoA and FMC will monitor the demand for conciliation conferences to ensure that local capacity and demand are kept in equilibrium. Where available resources or demand change, either locally or nationally, the courts will consult, in a spirit of cooperation and in context of the principles detailed in this MOU, to develop mutually acceptable strategies to address the changed circumstances.

### 3.2.1.2 Provision of lawyer mediation in circuit locations

FCoA Deputy registrars will provide lawyer mediation in support of FMC circuits. The relevant registry manager and the FMC Coordinator of Court Services will negotiate the details of deputy registrar visits.

### 3.2.1.3 Responsibility for outcomes in case management system

FCoA staff who provide lawyer mediation services will complete all case management information and complete all Casetrack data requirements before returning a file to the Federal Magistrates Court.

### 3.2.1.4 Conciliation services by other agencies

FMC may engage external providers of conciliation services to conduct conciliation conferences.

FMC arrangements with external providers will not impose any obligation on FCoA staff to deliver court files or assume responsibility for outcomes in case management systems.

## 3.2.2 Mediator Mediation

### 3.2.2.1 Privileged mediation by Court staff

Court ordered privileged mediation can be ordered at the time of filing or at the first court date in all children's matters, including circuit matters. The usual situation is that counselling will be ordered in chambers at the time of filing and before the first court date.

Court ordered privileged mediation when ordered in children's matters must be completed prior to the ordering of a family report.

FCoA will conduct court ordered privileged mediation in the same manner and to the same standard as is provided to FCoA clients.

FCoA Mediators will provide written advice (the FCoA's standard Mediation/Counselling memorandum) to the federal magistrate to advise whether the matter has settled or to provide recommendations in relation to the need for further mediation or the ordering of a family report etc.

The FCoA time standards in relation to providing mediation within three weeks of it being ordered will also apply to mediation ordered by FMC. There may be occasions when these time standards can not be met and in these instances the registry manager will inform the FMC PDR Coordinator and discuss the implications.

### 3.2.3 Family Reports

Family Reports are not available for interim hearings.

From the time of the order for a FMC Family report being received in the Mediation Section a report takes approximately 10 -13 weeks to produce. This is a factor in setting hearing dates. FMC Family reports prepared by FCoA will be timed to be released 4 to 5 weeks prior to the date for final hearing.

FCoA Mediators will complete FMC Family reports in the same manner and to the same standard for the FMC as for FCoA. Mediators will prepare FMC Family Reports and complete assessments for the FMC to the standard as detailed in the FCoA 'Family Reports' guidelines" and consistent with the agreed style for FMC Family Reports.

Comment [MSOffice1]:  
What do these words mean?

FCoA will be responsible for the copying of FMC family reports prepared by FCoA Mediator and Reg 8 reports organised by the FCoA. Sufficient copies will be provided for parties to the proceedings including children's representatives.

Federal Magistrates are responsible for the release and distribution of FMC family reports ordered by them.

#### 3.2.3.1 Availability of court-produced FMC family reports

The FCoA will guarantee, in writing, in a financial year a minimum agreed (national) number of family reports to the FMC having regard to the volume provided in the previous financial year. The Family Court will provide a minimum of 682 reports to the FMC in 2003-04. These family reports will be allocated Registry by Registry.

Each registry will allocate mediator resources to prepare family reports ordered by FMC on a pro-rata basis of family report allocation for that registry. The total number of Family Reports that can be completed at a Registry is to be based on Registry capacity and to be determined in consultation between the FCoA Director of Mediation and the FMC Coordinator of Primary Dispute Resolution, at the beginning of each financial year.

FCoA and FMC will monitor their demand for family reports to ensure that local capacity and demand are kept in equilibrium. Monitoring will be the responsibility of the National Manager, Mediation and the FMC Coordinator of Primary Dispute Resolution. Where the available resources or demand change, either locally or nationally, the courts will consult, in a spirit of cooperation and in context of the principles detailed in this MOU, to develop mutually acceptable strategies to address the changed circumstances.

#### 3.2.3.2 Requirements for FMC family reports in excess of agreed capacity

Any cost of providing family reports in excess of the agreed capacity of a registry, aggregated at the national level, will be billed quarterly by the FCoA to the FMC on a pass through basis.

#### 3.2.3.3 Monthly reporting on Family Reports

The FMC will be provided with monthly reports detailing any changes in capacity and emerging trends, and the quantity of FMC Family Reports prepared by the FCoA, and/or by external providers as arranged by the FCoA.

#### 3.2.3.4 FMC referral to community agencies

The Federal Magistrates Court PDR Coordinator may refer mediation work and report writing directly to community agencies or Reg 8 report writers. The FMC will use FMC staff for all aspects of allocation, release and distribution of reports.

### 3.2.4 Responsibility for outcomes in case management system

FCoA staff who provide Mediator mediation services will complete all case management information and complete all Casetrack data requirements before returning a file to the Federal Magistrates Court.

## 3.3 *Litigation Support Services*

### 3.3.1 Appointment of Registrars

FCoA Deputy Registrars are to perform functions in family law matters in a like manner and to the same standard as applies in FCoA.

### 3.3.2 Delegation of judicial powers

#### 3.3.2.1 Deputy Registrars

Under Section 100 of the FMA, Federal magistrates have delegated some powers to FCoA Deputy registrars, and, as required, Deputy registrars are approved by the Chief Federal Magistrate to exercise those powers under ss 102 and 103 of that Act as agreed between the Chief Federal Magistrate and the Chief Justice of FCoA

Deputy registrars will exercise the full range of those powers to hear undefended divorce applications in support of the work of the Federal Magistrates Court. The availability, allocation and scheduling of FCoA Deputy Registrars will at all times be the responsibility of the Principal Registrar FCoA and will be the subject of ongoing consultation between the Principal Registrar FCoA and Registrar FMC

The FMC Registrar has issued guidelines for the performance of this work. All communication of FMC policies and guidelines and national practice and procedure to FCoA Deputy Registrars is to be through the Principal Registrar FCoA.

### 3.3.3 Divorce Workload

The FCoA and FMC have concurrent jurisdiction to determine applications for divorce. All divorce applications are to be filed with the FMC, and an in principle agreement has been reached that FCoA deputy registrars in their capacity as FMC registrars, will undertake divorce workload in Canberra, Hobart, Cairns and subject to confirmation, the following rural and regional locations:

|                          |   |
|--------------------------|---|
| <b>South Australia:-</b> | Broken Hill, Mt Gambier                     |
| <b>Tasmania:-</b>        | Launceston, Devonport                       |
| <b>Victoria:-</b>        | Albury, Ballarat, Geelong, Mildura          |
| <b>New South Wales:-</b> | Armidale, Tamworth, Bathurst, Dubbo, Orange |
| <b>Queensland:-</b>      | Mackay                                      |

The jurisdictions will consult regarding the allocation of divorce workload in order to achieve a distribution of work based on the availability of resources.

### 3.3.4 After Hours Support

FCoA provides an after hours telephone support scheme, implemented by deputy registrars on call. The deputy registrar may deal with a matter or, as necessary, refer it to the judicial officer who is rostered for after hours support. The after-hours scheme includes federal magistrates.

FCoA deputy registrars will be provided with judicial rosters for both FCoA and FMC and call the appropriate judicial officer, based on the jurisdiction in which the existing application or order resides or where a new matter is most likely to reside.

Upon the duty federal magistrate being contacted on the after hours service the duty federal magistrate will assume all responsibility for the matter including preparation of orders, liaising with AFP and contacting the FCoA Marshal if necessary. If the federal magistrate requires additional support, the federal magistrate will contact FMC staff.

FMC agrees to reimburse all additional costs on a direct cost staff basis FCoA may incur in maintaining the after hours service as a consequence of the service being extended to include FMC.

The after hours service provided by the Marshal's Section will be made available to support this scheme.

### 3.3.5 Responsibility for outcomes in case management system

FCoA staff who provide litigation support services will complete all case management information and complete all Casetrack data requirements before returning a file to the Federal Magistrates Court.

## **3.4 Information Technology Services**

### 3.4.1 General

The FCoA recognises the need to support FMC as a key business stakeholder in its Information Technology environment and will support the FMC on that basis.

The FCoA will provide all Information Technology Services to the FMC. These services include:

- Electronic Mail;
- File and Print;
- Remote Access;
- Internet Access;
- Intranet Hosting and Access (Lotus Notes);
- Helpdesk;
- Casetrack; and
- Backups of data stored on FMC Network;

All services will be provided to the FMC on the same basis as that provided to the FCoA, unless otherwise noted.

Support provided to the FMC that requires effort that FCoA would not otherwise undertake will result in additional cost to the FMC. Before any additional work is to be commenced by the FCoA, the FMC must be consulted so as to assess and agree the cost and impact of additional work.

### 3.4.2 MAGCAMS

The FCoA will continue to provide access from the FMC Desktop to the MAGCAMS application until the implementation of Casetrack by the Federal Court is complete.

FCoA and FMC will cooperate with the Federal Court (FCA) to facilitate the development of a version of Casetrack that will operate the FMC general federal law environment.

### 3.4.3 Intranet Hosting

The FMC operate its own Intranet on the Notes Server that is supported by FCoA Information Technology Section. The internet is separate from the FCoA Intranet. Staff from the FCoA will not have access to the FMC Intranet, and vice versa. The FMC will be responsible for the content management of the FMC Intranet.

In the event the FMC wishes to change the implementation of their Intranet environment, eg web-based then any additional cost incurred by the FCoA in implementing such a change would be recovered from the FMC.

### 3.4.4 Standard Operating Environment (SOE)

The FCoA will provide a Standard Operating Environment that will be common to the FCoA and the FMC. The SOE will contain all 'hardware' and 'software' approved for use within either Court. The minimum SOE will be the Family Court's Standard Operating Environment.

The FMC may select applications from the SOE that are to be made available to FMC Staff, and when selected the FCoA will support those elements. The courts will consult regularly in relation to the content of the SOE.

FMC will pay licence costs associated with the FMC use of the SOE.

The FMC will consult the FCoA prior to purchasing any item of hardware with a view to using FCoA supplier contracts where appropriate. The purpose of this provision is to maintain the integrity of the SOE and to obtain savings from suppliers for the purchase of these items.

All devices connected to the FCoA/FMC network (including desktop PCs, Notebooks computers, printers, or any other network connected device) must be standard models, as tested and approved by Information and Technology Services. Each new device that requires network connection must be approved by ITS prior to installation using ITS Change Management procedures. The cost of any testing, approval effort, or the addition of hardware that is not already supported by the FCoA, maybe recovered from the FMC.

FMC may install software additional to that provided by the ITS SOE.

However, each item of software must be approved by ITS before being installed. FMC will provide support for any additional software or will negotiate with the FCoA to support that product on a fee for service basis.

#### 3.4.5 Helpdesk

The Helpdesk provides support to FCoA and FMC Staff for all hardware and software contained in the SOE. There is no provision to provide Helpdesk support to the FMC on software that is unsupported or not approved for inclusion in the SOE.

#### 3.4.6 Costing of IT Services

As a general principle, the FCoA will provide Information Technology Services at no cost to the FMC, except where detailed in this MOU, or as agreed in writing between the FMC and the Chief Information Officer.

#### 3.4.7 Software Licences.

The FMC will be responsible for the cost of all end-user licence for software used by the FMC. This includes:

- Desktop Operating System
- Novell Netware
- Oracle Discoverer
- Oracle User licences
- Microsoft Office Suite
- Citrix

The FCoA seeks to manage all licences related to the environment it administers. The FMC agrees to maintain licence and support arrangements in partnership with the FCoA to achieve licence, version and support equality for all system users.

#### 3.4.8 Separately Chargeable IT Items

The FCoA will charge the FMC for the following:

- Any PC, Notebook, or Printer purchased by FCoA for FMC use;
- Software development services, excluding Casetrack
- Support for hardware and software installed for FMC use only (including Helpdesk and testing for SOE)

#### 3.4.9 Lotus Notes Databases

FMC staff will have access to the following Lotus Notes databases, and other FCoA databases as agreed —

- LAN security management system
- SIRS
- Current awareness
- Judicial Benchbook
- National telephone directory
- Contracts

#### 3.4.10 Infrastructure Support

The FCoA will provide local support at each location where a local support officer is available. If local support is required at other locations (eg Queens Square) the Federal Magistrates Court will negotiate the basis on which that support is to be provided, including financial considerations, with the FCoA Chief Information Officer.

#### 3.4.11 Data Backup

The FCoA will provide backup of all FMC data stored on the network.

#### 3.4.12 Application Development Services

The FCoA will provide application development services on a user-pays basis and costed as appropriate and as defined in this MoU. This includes, but is not necessarily limited to—

- Lotus databases
- PC and LAN based applications.

### **3.5 Knowledge management services**

#### 3.5.1 Library

FCoA agrees to provide to federal magistrates and their staff access to all information and library services and resources under the management of the Family Law Information Service (FLIS) which can be provided to federal magistrates and their staff at no additional cost to FCoA.

In providing library and information services, priority will be given to the needs of Judges of FCoA. FMC will ensure its use of FLIS resources (print or electronic) does not breach any copyright laws or licensing arrangements and will indemnify FCoA in respect of any breach by FMC.

FCoA borrowing policies for different types of materials will be adhered to and a record will be left for any item borrowed from any FCoA library

Any items borrowed will be subject to immediate recall when required for the purposes of a Judge or other staff member of FCoA

FMC agrees to replace or pay the full replacement cost for any item lost through the use of the service by FMC.

#### 3.5.2 Library print collection

The library print collection constitutes a valuable resource paid for by the Commonwealth. Under this memorandum, FMC agrees to contribute to additional print resources required within libraries as a consequence of increased demand attributable to Federal Magistrates Court, through the purchase of print resources including periodicals and or loose-leaf services, to a value to be agreed.

#### 3.5.3 Research, reference work, literature searches, training, attendance at conferences

Agreed services such as reference works, training and attendance at conferences which involve the time of FLIS staff will be provided subject to the negotiation of an agreement which is either:

- calculated on a fee for service basis, rates for agreed services to be negotiated for an initial 12 month period based on salary and associated costs of staff; or
- a mutually agreed contribution by FMC to the staffing complement of FLIS.

Any travel and travel allowance costs incurred will be paid by FMC.

FCoA will invoice FMC on a monthly basis for services for which a cost is incurred.

The costs of other library and related information services required for chambers or offices of FMC will be provided on a pass through costs basis.

#### **3.5.4 Electronic resources**

In order to take advantage of the economies of scale that may be achieved, if FCoA negotiates the purchase of legal information titles in electronic formats. FCoA will consult with FMC about negotiating additional licenses on its behalf for any new titles FLIS intends to obtain for FCoA.

FMC will contribute to the total cost of any licensing on a pro rata basis (for legal materials the ratio will be Federal Magistrates compared with number of Judges and Judicial Registrars) and will either pay the amount separately or reimburse FCoA depending on the invoicing procedure of the publisher.

FMC agrees to observe all requirements under any licensing agreement and to indemnify FCoA against any breach by FMC.

#### **3.5.5 FLIS Database Search Costs**

Original literature searches on databases where FCoA incurs a charge on a pass through costs basis plus direct staff costs.

#### **3.5.6 Interlibrary loans**

Interlibrary loans will be charged on a pass through costs basis plus direct staff costs.

##### **3.5.6.1 Courier services for library materials**

FMC will meet the cost of delivery of interlibrary loans or research materials. Whenever possible, materials will be sent using courier services charged direct to FMC.

### **3.6 Security Services**

FCoA through its Marshal will provide FMC with protective security services in accordance with Section 109 of the *Federal Magistrates Act 1999* and the Commonwealth Protective Security Manual 2000 as it applies to the FCoA and FMC.

Section 109 of the Federal Magistrates Act states, among other matters, that the Marshal is responsible for the security of FMC and the personal security of the federal magistrates and staff of FMC. Agencies have an obligation under the Occupational Health and Safety (Commonwealth Employment) Act 1991 to provide a safe and secure working environment for staff.

#### **3.6.1 Security Management Policies and Procedures**

The FMC will be involved in the development of FCoA security policies and procedures as they apply to the FMC activities and to be included in the FCoA Protective Security Management Plan. The key objectives of security management are:

- Threat Management
- Federal magistrates protection
- Policy Development
- Education and Awareness
- Asset Protection
- Consultation and Advice

### 3.6.2 Security services provided by FCoA:

The Marshal of FCoA has been authorised as Marshal of FMC and as such does not have any responsibilities regarding the duties of the Sheriff of FMC ie enforcement issues. Services provided include:

- Provision of security advice to Chief Federal Magistrate, CEO, Magistrates and staff as required.
- Inclusion of FMC matters in FCoA Security Incident Report database. Initial assessment of threats and production of assessments to CEO FMC.
- On-call service, 24 hours a day seven days a week to respond to issues arising from home alarms. Specific costs associated with the installation, maintenance and monitoring of home security arrangements will be borne by FMC.
- Provision of additional security at registries and circuit locations as required by the FMC. Costs for such additional security at registries are to be met by FMC, unless funding for the FMC requirements has been separately identified in funding provided to the FCoA.
- Liaison and development of appropriate protocols for the conduct of FMC related activities with the AFP, State Police Forces, Corrective Services and State Sheriffs.
- Conduct of security awareness training with federal magistrates and FMC staff. FMC to contribute to the cost of development and delivery as determined on a case by case basis.
- Registry guarding services are provided at all major registries. Queries regarding day to day operations of the services should be directed to the relevant Registry Manager or a Registry nominated person in absence of the Registry Manager. Broader questions regarding policies and procedures should be directed to the Marshal
- Representation of FMC at appropriate security forums.

## **3.7 Accommodation services**

### 3.7.1 Chambers

FCoA will provide appropriate chamber facilities for use by Federal Magistrates Court, where they are available. Usage will be conditional — those chambers provided in existing FCoA judicial chambers areas may from time to time be required for the purpose of accommodating visiting Judges or Judicial Registrars of FCoA.

Where FCoA requires use of a chamber occupied by a federal magistrate, a minimum of one calendar month's notice will be given and reasonable efforts to find alternate accommodation will be made.

All chambers and other accommodation provided are on an 'as is basis' in terms of fittings, fixtures and furniture. In relation to any proposed modification to any courtroom or other accommodation that is transferred and/or for which access or occupation is provided to FMC by FCoA, the written approval of FCoA is required before such modification can take place. In addition FMC undertakes, if required in writing by FCoA, to 'make good' any modification of the courtroom or other accommodation and effect restoration to the condition and standard that applied at the date of access or occupation by FMC.

| Location   | Arrangement  |
|------------|--|
| Adelaide   | Pending the construction of the new Adelaide Commonwealth Law Courts, the federal magistrate will have accommodation provided on Level 7 of the Grenfell Centre. |
| Canberra   | Chambers 4   |
| Darwin     | Chambers 2   |
| Launceston | Chambers 1.  |
| Newcastle  | Chambers 1.8   |
| Parramatta | The FCoA currently provides 4 chambers within the judicial chambers area.  |
| Townsville | Chambers 2 were purpose built for FMC  |

### 3.7.2 Courtrooms

In recognition that each jurisdiction requires consistency in relation to the availability of courtrooms, and having regard to the practices that have evolved over the past three years it is recognised that the Federal Magistrates Court is the nominal occupier of the following courtrooms located in Commonwealth Law Courts buildings:

FCoA will, subject to listing schedules and availability, arrange for the hearing of matters that are covered by the concurrent jurisdiction of FCoA and FMC by sharing courtroom resources etc as set out in the following table:

| Location   |                                   |   |
|------------|-----------------------------------|---|
| Adelaide   | 1                                 | Pending the construction of the new Adelaide Commonwealth Law Courts, the courtroom located on Level 7 Grenfell Centre. |
| Brisbane   | 3                                 | Courts 4 5 & 6 Level 1  |
| Canberra   | 1                                 | Court 3   |
| Dandenong  | 1                                 | Court 3   |
| Darwin     | 2 (shared by three jurisdictions) | Court 1   |
| Hobart     | 1                                 |   |
| Launceston | 1                                 | Court 1   |
| Melbourne  | 2                                 |   |
| Newcastle  | 2                                 |   |
| Parramatta | 3                                 | Courts 2, 7 level 2; Court 3 level 3  |
| Sydney     | Not Applicable                    |   |
| Townsville | 1                                 | Court 2   |

As the nominal occupier, the Federal Magistrates Court will be responsible for the provision of additional infrastructure, eg computers and printers, in those courts and will have priority in the allocation of those courts.

The courts may be made available to the FCoA as required. Discussion to make courts available should occur at the registry level with local federal magistrates in the first instance.

FMC will be responsible for the costs of any additional security associated with FMC' use of courtrooms.

Before any change in these arrangements occurs there will be consultation between the respective heads of jurisdiction. FCoA will, subject to listing schedules and availability, arrange for the hearing of matters that are covered by concurrent jurisdiction of FCoA and FMC by sharing other available courtroom resources.

#### 3.7.2.1 Availability of courts for matters in the non-concurrent jurisdiction

It is intended that matters in Federal Magistrates Court's federal law jurisdiction will generally be heard in courtrooms and other facilities provided by the Federal Court of Australia. However, if Federal Magistrates Court is unable to obtain a courtroom from another court for its work in the non-concurrent jurisdiction a courtroom may be provided subject to availability and provision of appropriate security on a pass through basis. The Federal Magistrates Court may sit in the non-concurrent jurisdiction in FCoA premises where there is no Federal Court presence, eg Parramatta, Townsville, Launceston, Darwin and rural/regional registries.

#### 3.7.3 Impact of the commercialisation of Commonwealth Court Buildings

Pursuant to government policy, Commonwealth-owned properties are being moved towards more commercial-style occupancy agreements.

All tenants and occupants will be subject to the terms and conditions that are introduced by such agreements. In this context, FMC agrees that any provisions of this memorandum so affected may be amended by FCoA to the extent necessary to reflect and be consistent with the terms and conditions of any such occupancy agreement.

#### 3.7.4 Reversion

Whether or not this memorandum has expired and whether or not any subsequent memorandum is in force at the time, Federal Magistrates Court agrees that, should it cease to occupy or have no further practical need to occupy courtrooms and other accommodation provided by FCoA, it will meet any and all costs and 'make good' any courtroom or other accommodation.

In similar circumstances FMC will propose and actively recommend that any Property Operating Expenses (POE) appropriated in its budget in respect of those courtrooms and other accommodation, including maintenance and other related funds, be transferred to the budget appropriation of FCoA.

#### 3.7.5 Energy Efficiency

FMC agrees to implement and comply fully with any energy management plan requirements for tenancy areas and Law Court Buildings, consumption targets and reduction targets in green house emission levels as set by the Australian Green House Office.

### 3.7.6 New requirements for accommodation

Requirements of FMC for special accommodation or tenancy items such as furniture, signage, additional notice boards or specific arrangements at registry counters, are the responsibility of FMC pending approval from the existing building committees and FCoA. Any fitout work required, as opposed to purchases of furniture, signage, etc, will generally be undertaken by FCoA at FMC expense, after consultation on costs with FMC. FCoA agree to consult in respect of any refurbishment of accommodation.

### 3.7.7 Participation in building management

To the extent that FMC occupies accommodation in a FCoA tenancy area on a daily basis, FCoA supports inclusion of a representative of FMC on the local building committee. As an occupier or user of most court buildings in Australia FCoA supports inclusion of a representative of FMC on the National Law Courts Building Management Committee.

### 3.7.8 Office Support Services

In the places where chambers and other accommodation are provided by FCoA, the Court will, in relation to matters of concurrent jurisdiction, and as agreed in writing between the courts, provide:

- Office security (excluding personal security and courtroom security personnel), including, after hours access, to standards applied within FCoA.
- Cleaning as per existing contracts' terms.
- Telephone services and other office services agreed in writing with the local Registry Manager.
- Access to various other facilities within the tenancy control of FCoA such as conference and amenities areas.

FMC agrees to comply with usual local arrangements at local Registries to obtain approval or effect bookings of these facilities or services and to meet usual local requirements pertaining to care and usage. The effect and impact of usage is subject to review by January 2001.

### 3.7.9 Ancillary Services

The provision of ancillary services, such as light and power, telephone services etc in FCoA tenancy areas will be provided by FCoA as a normal property operating expense and subject to prevailing building management policies and practices.

### 3.7.10 Building advisory services

The FCoA will make the services of its National Property Manager available on a case-by-case basis to support FMC building projects in shared premises. The cost of provision of those services may be the case on a fixed price, project or other basis.

### 3.7.11 Pricing for accommodation services

The component of property operating expense attributable to FMC will be calculated where possible by reference to any meters in place for that purpose or by attribution based on apportionment of tenancy area, numbers of persons in occupation, available facilities (eg telephone handsets) or other appropriate method. This attribution will also take into account any known factors about the level of usage based on the practices, procedures and working arrangements of FMC.

Where FMC practices, procedures or working arrangements introduce substantial changes to the normal operating environment of any building, resulting in materially increased building/ancillary service costs as quantified by the Building Manager, FMC is to fund those additional costs.

## **4 General**

### **4.1 Service standard**

Services provided by FCoA under this MOU will be performed in a like manner and to the same standard and quality as would apply day to day in relation to services provided to staff, including the judiciary, and using a like process and procedure in FCoA.

### **4.2 Change Management Procedures**

If FMC proposes a change of its services or a change to its practices or procedures that is assessed by FCoA as likely to have a resource impact that will increase the cost of provision of the services provided under this MOU, that change shall not be implemented unless and until agreement has been reached in writing as to the manner in which the change will be implemented and the allocation of the identified financial costs associated with the proposed change

### **4.3 General Principles for the Costs Of Change**

Generally where approved practices or procedures provide for services and/or service processes or standards greater than those normally applied day to day in FCoA, FMC will pay any additional cost

### **4.4 Service Quality Feedback**

Quality of service delivery from the FCoA to the FMC will be monitored by the Federal Magistrates Court. The CEO FMC will provide a quarterly report to the General Manager Client Services detailing any service delivery issues as appropriate.

### **4.5 Consultation in relation to service delivery**

The FCoA General Manager, Client Services will consult the Federal Magistrates Court in relation to any FCoA proposal that is likely to have an impact on the delivery of Federal Magistrates Court services.

### **4.6 Correspondence**

When writing on behalf of the Federal Magistrates Court registry staff will use Federal Magistrates Court letterhead and comply with the correspondence style policies of the Federal Magistrates Court.

The Federal Magistrates Court will issue style guides for commonly used correspondence, including standard Casetrack correspondence templates.

FCoA staff will not use FCoA letterhead or correspondence templates when corresponding in relation to proceedings in the Federal Magistrates Court.

#### **4.7 Provision of statistical information**

The FCoA and Federal Magistrates Court will each have access to statistical information available in Casetrack. The courts will develop a separate protocol in relation to access and use of statistical data.

#### **4.8 Provision of appeal information**

FCoA will provide to the FMC a quarterly report of appeals from the decisions of Federal Magistrates. In addition, the FCoA will provide copies of the Notice of Appeal to the FMC Registrar and copies of delivered judgments to the FMC Registrar and the Federal Magistrate whose decision was appealed.

#### **4.9 Complaint handling**

##### **4.9.1 Customer complaints**

FCoA will refer complaints received by it in relation to FMC matters to the Registrar of the FMC.

FCoA registry managers are authorised to respond personally to complaints that relate to local administrative issues and will copy that correspondence to the FMC Registrar. Where a complaint is to be referred to the Registrar, the registry manager should acknowledge receipt of the complaint and advise the complainant of any action that has been taken.

##### **4.9.2 Ombudsman**

Any matter referred to the FCoA by the Ombudsman that relates to Federal Magistrates Court proceedings or administration shall be referred to the CEO of the Federal Magistrates Court.

The Federal Magistrates Court will consult FCoA in relation to any complaint referred to it by the Ombudsman that relates to services provided by FCoA under this of the memorandum of understanding.

##### **4.9.3 Freedom of information**

FOI requests received by FCoA in respect of Federal Magistrates Court administration shall be transferred to the CEO of the Federal Magistrates Court.

Freedom of information requests received by the FCoA in relation to court documents held by it under the terms of this memorandum may be refused by the registry under Section 5 of the Freedom of Information Act.

##### **4.9.4 Privacy Commissioner**

Privacy Act requests received by FCoA in respect of Federal Magistrates Court proceedings or administration shall be transferred to the CEO of the Federal Magistrates Court.

#### 4.9.5 Ministerial or parliamentary

Ministerial correspondence concerning FMC proceedings or administration shall be referred to the CEO of the Federal Magistrates Court.

#### **4.10 Risk Management**

FCoA and FMC recognise the complementarity of their businesses and will co-operate to develop business continuity and business risk management strategies that are mutually supportive and consistent.

The FCoA will have a AS/NZS 4360:1999 compliant risk management plan in place incorporating risk management strategies relating to the services provided to the FMC by the FCoA.

The FCoA will have in place a fraud control plan, which complies with the Fraud Control Policy of the Commonwealth, and a Protective Security Management, incorporating fraud and security risk areas relating to services provided to the FMC by the FCoA.

The FCoA is responsible for investigating fraud or security breaches relating to services provided to the FMC (eg relating to revenue collection or unauthorised release of FMC client information). The FCoA will report immediately to the CEO FMC by telephone, then in writing, any suspected fraud or security breaches, including unauthorised disclosure, which, in the reasonable opinion of FCoA, could impact on the FMC.

The FCoA will have a Business Continuity Plan in place for the services it provides to the FMC.

## **5 Federal Magistrates Court Obligations**

### **5.1 Provision of training for FCoA staff**

FMC will provide all training including face to face tuition, ongoing help desk support, manuals and training materials necessary to ensure that the staff of FCoA are properly trained, skilled and competent in the procedures and requirements of FMC, including from time to time in any revision or enhancement of those procedures and requirements.

All training requirements of FMC including dates, times, location, duration and participants shall be determined in conjunction with the relevant registry manager.

To the maximum extent possible any training shall be held locally and on-site and will avoid any adverse impact on the delivery of day-to-day registry services to the community.

### **5.2 Payment**

FMC will pay all amounts owing under this memorandum in accordance with normal Commonwealth policy and practices.

### **5.3 FMC obligations to provide information materials**

Federal Magistrates Court will identify the need for, develop and publish information materials (in consultation with FCoA, as appropriate), to assist registry staff, litigants and their representatives in the conduct of proceedings in the Federal Magistrates Court.

#### **5.3.1 FCoA responsibilities concerning information materials**

FCoA will advise Federal Magistrates Court of information needs identified by it when dealing with Federal Magistrates Court matters.

FCoA will provide suitable facilities in each registry for the distribution of information materials and distribute information materials provided by Federal Magistrates Court.

## **6 Management of the memorandum**

### **6.1 Liaison**

#### **6.1.1 Role of the FCoA General Manager, Client Services**

The General Manager, Client Services will provide the principal point of liaison within the FCoA in relation to all matters arising under this memorandum.

#### **6.1.2 Role of the FCoA Principal Registrar**

The FCoA Principal Registrar has a specific function in relation to the work of registrars within the FCoA and may be consulted directly in relation to any matter affecting the work of registrars made available for the purposes of the FMC under section 100 of the Federal Magistrates Act.

#### **6.1.3 Role of Chief Information Officer**

The CIO provides vision, leadership, strategic planning and coordination of information, communication and technology services within the FCoA. The Chief Information Officer leads the development and implementation of applicable strategies to delivery of significant business benefit to the organisation and achieves real improvements in information, communication, and technology services.

#### **6.1.4 Role of Principal Mediator**

The FCoA Principal Mediator has a specific function in relation to the work of mediators within the FCoA and may be consulted directly in relation to any matter affecting the work of mediators made available for the purposes of the FMC under section 100 of the Federal Magistrates Act.

#### **6.1.5 Role of FCoA Registry Managers**

Registry managers are responsible for the day to day implementation of this memorandum within their registries.

#### **6.1.6 Federal Magistrates Court Contact Officers**

The day to day management of the delivery of services under this memorandum will be the responsibility of:

|  |                                   |
|--|-----------------------------------|
| Registry Services                            | FMC Coordinator of Court Services |
| Mediation Services                           | FMC PDR Coordinator               |
| Litigation Support Services                  | FMC Registrar                     |
| Information Services - network               | Chief Finance Officer             |
| Information Services – knowledge information | FMC Knowledge Manager             |
| Accommodation Services                       | Chief Finance Officer             |
| Security Services                            | FMC Coordinator of Court Services |

## **6.2 Dispute Management**

Any disagreement about the implementation of this memorandum shall be referred in the first instance to the respective CEO of FMC or FCoA. If they are unable to reach an agreement the matter shall be referred to the heads of jurisdiction for discussion and resolution.

## **6.3 Term of these arrangements**

This memorandum commences on 1 July 2004 and will remain in force until reviewed or until 30 June 2006, whichever date is the earlier. In the event that a further memorandum has not been entered into prior to 30 June 2006, this memorandum will continue to be in force until such time as it is terminated.

## **6.4 Review**

Either court may request a review of this Agreement or any part of it. Such requests shall be in writing, specifying the reasons for the request and making reference to the relevant clauses of this memorandum, if applicable. Reviews may be either formal or informal, depending on the nature of the issues that require consideration.

## **6.5 Variation**

This memorandum may be amended or varied by agreement in writing.

## **6.6 Early Termination**

This arrangement may be terminated by either court giving notice to the CEO of the other court at least twelve months prior to the proposed termination date. The arrangement will only be terminated early if agreement is reached on the terms of the termination.

## **7 Signature to Agreement**

Memorandum of Understanding between the Family Court of Australia and the Federal Magistrates Court for the provision of services commencing on 1 July 2004 and remaining in force until reviewed or until 30 June 2006.

### **7.1 Signed**

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Richard Foster  
Chief Executive Officer  
Family Court of Australia

30 / 07 / 04

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Peter May  
Chief Executive Officer  
Federal Magistrates Court

30 / 07 / 04

## **8 Attachment A Section 90 Agreement**

### **Section 90 of the Federal Magistrates Act 1999 provides that:**

- (1) The Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, arrange with the chief Judicial officer (however described) of another Australian court for an officer or officers of that court to perform on behalf of the Federal Magistrates Court any or all of the following functions:
  - (a) The receipt of documents to be lodged with or filed in the Federal Magistrates Court;
  - (b) The signing and issuing of writs, commissions and process for the purposes of any proceedings in the Federal Magistrates Court;
  - (c) The authentication of orders of the Federal Magistrates Court;
  - (d) The administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Federal Magistrates Court;
  - (e) Such other non-judicial functions as are permitted by the Rules of Court to be performed under such an arrangement.
  - (f) Such other non-judicial functions as the Federal Magistrates Court considers appropriate.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an officer of an Australian court of a function on behalf of the Federal Magistrates Court, the officer may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Magistrates Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Federal Magistrates Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.
- (5) For the purposes of this section, a member of the staff of an Australian court is taken to be an officer of that court.

## **Section 90 Agreement<sup>2</sup>**

This arrangement is made on the 12 July 2000 between Diana Bryant, Chief Federal Magistrate of the Federal Magistrates Court of Australia and Alastair Bothwick Nicholson AO RFD, Chief Justice of the Family Court of Australia.

Section 90 of the Federal Magistrates Act 1999 provides that the Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, arrange with the Chief Judicial Officer (however described) of another Australian Court for an officer or officers of that Court to perform certain functions that are defined in the section on behalf of the Federal Magistrates Court.

The Chief Federal Magistrate and the Chief Justice of FCoA have agreed that such an arrangement should be made in relation to the work of the Federal Magistrates Court that relates to its jurisdiction under Section 10 of the Federal Magistrates Act in relation to matters arising under the Family Law Act and Child Support Assessment and Registrations Act.

Staff of the Family Court of Australia who are employed in a Registry of the Family Court of Australia are authorised by this arrangement to:

- (a) receive documents to be lodged with or filed in the Federal Magistrates Court;
- (b) sign and issue writs, commissions and process for the purposes of any proceedings in the Federal Magistrates Court;
- (c) authenticate orders of the Federal Magistrates Court; and
- (d) administer oaths and affirmations, and witness affidavits, for the purposes of any proceedings in the Federal Magistrates Court.

Diana Bryant CFM

Alastair Bothwick Nicholson AO RFD

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<sup>2</sup> A signed copy of this agreement is available from the Chief Executive Officers of the respective courts

## **9 Attachment B. Section 92 Agreement**

### **Section 92 of the Federal Magistrates Act 1999 provides that:**

The Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, make arrangements with the chief judicial officer (however described) of another Australian court for:

- The Federal Magistrates Court to sit in rooms of the other court; and
- The Federal Magistrates Court to share registry facilities and other facilities with the other court.

### **Section 92 Agreement<sup>3</sup>**

#### **Arrangement pursuant to Section 92 Federal Magistrates Act 1999**

This arrangement is made on the July 2000 between Diana Bryant, Chief Federal Magistrate of the Federal Magistrates Court of Australia and Alastair Bothwick Nicholson AO RFD, Chief Justice of the Family Court of Australia.

Section 92 of the Federal Magistrates Act 1999 provides that the Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, arrange with the Chief Judicial Officer (however described) of another Australian Court for:

the Federal Magistrates Court to sit in rooms of the other court; and  
the Federal Magistrates Court to share registry facilities and other facilities with the other court.

The Chief Federal Magistrate and the Chief Justice of the Family Court of Australia have agreed that such an arrangement should be made in relation to the work of the Federal Magistrates Court that relates to its jurisdiction under Section 10 of the Federal Magistrates Act in relation to matters arising under the Family Law Act and Child Support Assessment and Registrations Act. This arrangement is subject to the arrangements put in place pursuant to the Memorandum of Understanding to be executed on behalf of the respective courts.

Diana Bryant CFM

Alastair Bothwick Nicholson AO RFD

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<sup>3</sup> A signed copy of this agreement is available from the Chief Executive Officers of the respective courts

## 10 Attachment C. Section 99 Agreement

### Section 99(7) of the Federal Magistrates Act 1999

Pursuant to Section 99(7) of the Federal Magistrates Act 1999, officers of FCoA have been appointed as officers of FMS.

### Letter of Appointment<sup>4</sup>



### *Federal Magistrates Act 1999*

### Section 99

## APPOINTMENT

I, Simon Peter Valance May, Chief Executive Officer of the Federal Magistrates Court of Australia, pursuant to sub-section 99(7) of the *Federal Magistrates Act 1999*, appoint each of—

as a registrar of the Federal Magistrates Court of Australia.

Date: 12 July 2000

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Peter May  
Chief Executive Officer  
Federal Magistrates Court

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<sup>4</sup> A signed copy of this appointment is available from the Chief Executive Officers of the respective courts

## 11 Attachment D. Section 100 Agreement

### Section 100 of the Federal Magistrates Act 1999 provides:

The Chief Executive Officer may, on behalf of the Federal Magistrates Court, arrange with:

- (a) The Secretary of a Department of the Australian Public Service; or
- (b) An authority of the Commonwealth;

for the services of officers or employees of the Department or authority to be made available for the purposes of the Federal Magistrates Court.

### Section 100 Agreement<sup>5</sup>



12 July 2000

Mr Peter May  
Chief Executive Officer  
Federal Magistrates Court  
Level 6 Commonwealth Law Courts  
305 William Street  
MELBOURNE VIC 3000

Dear Mr May

#### **Appointment of Registrars of the Federal Magistrates Court**

I refer to your correspondence of 16 June 2000.

I confirm that in accordance with the provisions of Section 100 of the Federal Magistrates Act 1999 I authorise for the services of the Registrars and Deputy Registrars of the Family Court to be made available for the purposes of the Federal Magistrates Court. The names of the Registrars and Deputy Registrars are shown in the attached Schedules 1 and 2 respectively.

I confirm that the Marshal, Mr Hermie Colina, is also to be made available for that purpose.

This arrangement is subject to the provisions of the Memorandum of Understanding which is currently being negotiated.

Yours sincerely

**Richard Foster**  
Chief Executive Officer

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<sup>5</sup> A signed copy of this agreement is available from the Chief Executive Officers of the respective courts