

PART THREE: PERFORMANCE – THE WORK OF THE COURT

The work of the court

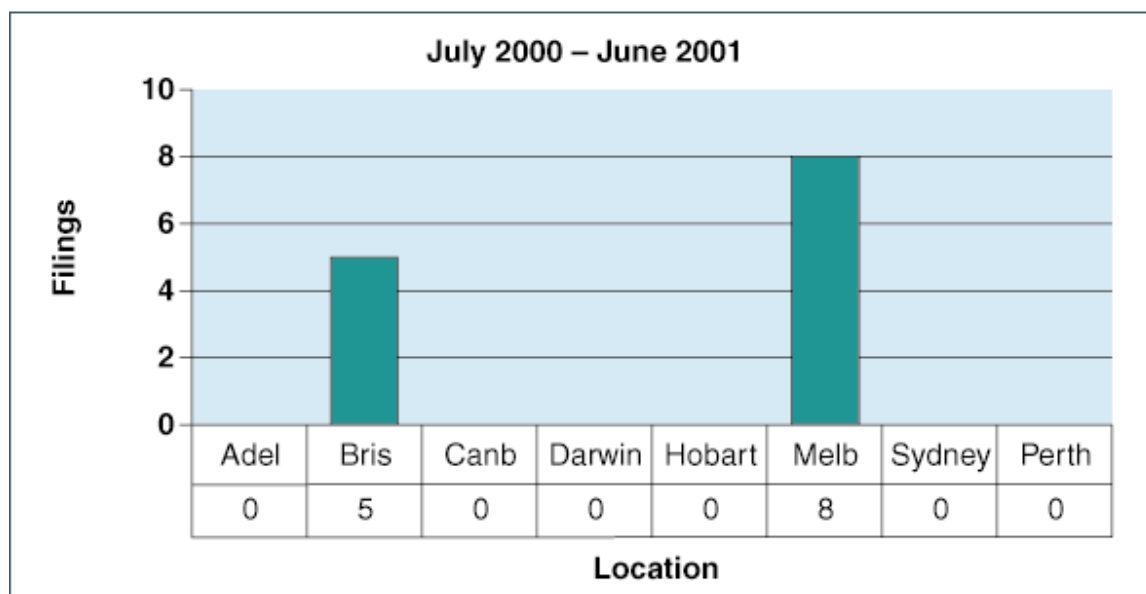
Administrative Law

The court has jurisdiction to hear applications made under the *Administrative Decisions (Judicial Review) Act 1977* and appeals from the Administrative Appeals Tribunal that are transferred to the Federal Magistrates Court by the Federal Court. These are matters in which judicial review of an administrative decision is sought by an applicant. It can concern any administrative decision other than migration matters⁵.

Highlights

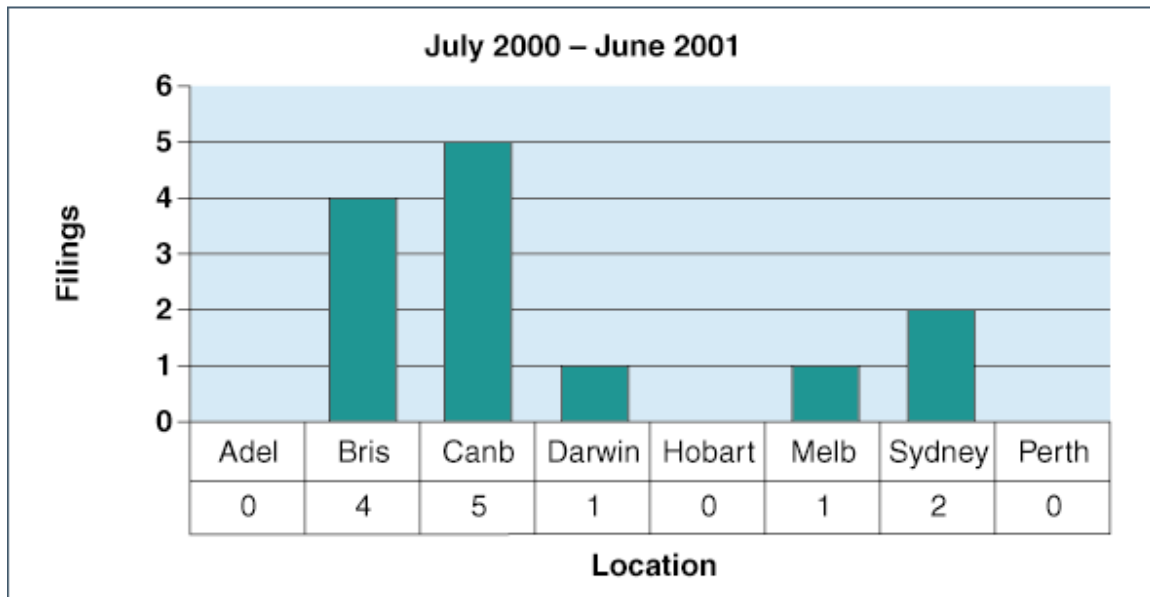
- 11 Administrative Appeals Tribunal appeals were transferred to the court, which had finalised three matters at 30 June 2001.
- 11 Administrative Decisions (Judicial Review) matters were received in the court, which had finalised six matters at 30 June 2001.

Figure 3.1: Administrative Appeals Tribunal matters



⁵ The government has introduced legislation that will have the effect of removing this restriction of the court's jurisdiction.

Figure 3.2: Administrative Decisions (Judicial Review) matters



Significant matters

***Hardcastle v Repatriation Commission* [2001] FMCA 42**

In this case, the applicant appealed from a decision of the Administrative Appeals Tribunal.

The Tribunal had affirmed a decision under review which was a decision by the Veterans Review Board. The Veterans Review Board had affirmed a Repatriation Commission decision which had found that hypertension and trigeminal neuralgia were not war-caused diseases within the meaning of that term in section 9 of the *Veterans Entitlements Act 1986* and did not satisfy the requirements of the Statement of Principles Instrument. Federal Magistrate McInnis found that no error of law pursuant to section 44 of the *Administrative Appeals Tribunal Act 1975* was made by the Tribunal. Accordingly the application was dismissed.

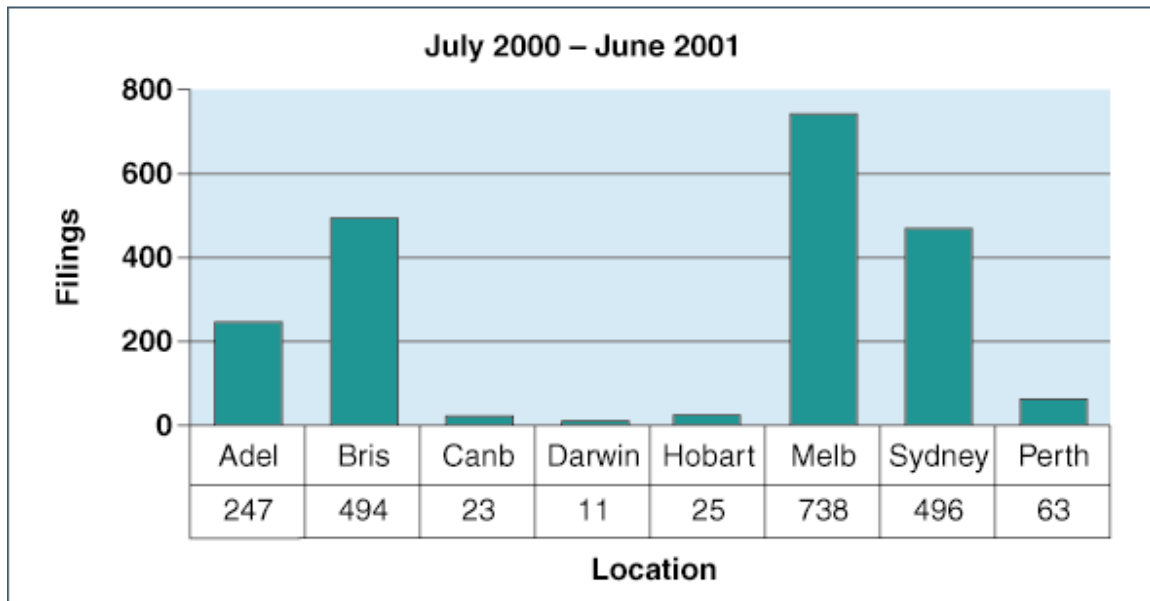
Bankruptcy

The Federal Magistrates Court has concurrent jurisdiction with the Federal Court in matters arising under the *Bankruptcy Act 1966*. The only exception is the capacity to undertake trials with a jury pursuant to section 30(3) of the *Bankruptcy Act*. That power is limited to the Federal Court.

Highlights

- The court finalised 1106 bankruptcy matters during the year.

Figure 3.3: Bankruptcy matters



Significant matters

The Federal Court decision of Moore J in *Lee v McNulty* [2000] FCA 1519 considered the validity of bankruptcy notices issued in the Federal Magistrates Court. Amendments to the prescribed form were not made at the time the Federal Magistrates Court was first able to exercise jurisdiction. Amendments were prescribed retrospectively and Moore J decided, at least in the present case, that this had no material legal consequence.

In *Derek George Shephard v Blueberry Farms of Australia (Corindi) Limited* [2001] FMCA 2 the court had to consider whether errors or omissions in the bankruptcy notice invalidated the notice.

The conflicting decisions of the full Federal Court on the point (*Kirk v Ashdown* [1999] FCA 1664; *Bendigo Bank Ltd v Williams* (2000) 173 ALR 175; *Trustees of the Franciscan Missionaries of Mary v Weir* [2000] FCA 574) were considered. Federal Magistrate Driver noted that the approach taken in those cases varied between a strict approach in *Bendigo Bank* and a more liberal approach in *Kirk*. It was noted that in an attempt to resolve these differences, a full bench of five in the Federal Court heard three matters and gave judgment upon them on 22 December 2000 (*Australian Steel Company (Operations) Pty Ltd v Lewis* [2000] FCA 1915; *Royal and Sun Alliance Workers' Compensation Ltd v Oakes*; and *Metropolitan Fire and Emergency Services Board v Zemlic*). In this instance, the Federal Magistrates Court followed the full Federal Court decision in *Australian Steel Company v Lewis* and held that the bankruptcy notice contained an error which breached a requirement made essential by the Act and which had the capacity to mislead a debtor in the position of the applicant. Therefore the bankruptcy notice was held to be invalid by reason of irregularity.

In *Plant v Ken Smith Electronics* [2000] FMCA 7, Federal Magistrate Raphael considered an application for an order of annulment of bankruptcy. Federal Magistrate Raphael noted that it is

now well accepted that in order for an applicant to succeed in an application, the applicant must establish both that the sequestration order ought not to have been made and that it is proper for the court to exercise its discretion to annul the order. While Federal Magistrate Raphael found that there were grounds for setting aside the bankruptcy, in this instance it would be inappropriate to annul the bankruptcy as contrary to the public interest. This was considered particularly so when the result could well be that another petition might issue which, if successful, would put the applicant in the same position as he was before but his creditors in a worse position in that the relation back period referable to the current bankruptcy would no longer apply.

In *Alan Richard Nicholls v Anna Plant* [2001] FMCA 22, the Federal Magistrates Court considered the issue of antecedent transactions. This case involved a claim for moneys paid by a bankrupt to his wife and Federal Magistrate Driver had to consider whether monies were recoverable under section 120 of the *Bankruptcy Act 1966* in the absence of a "settlement".

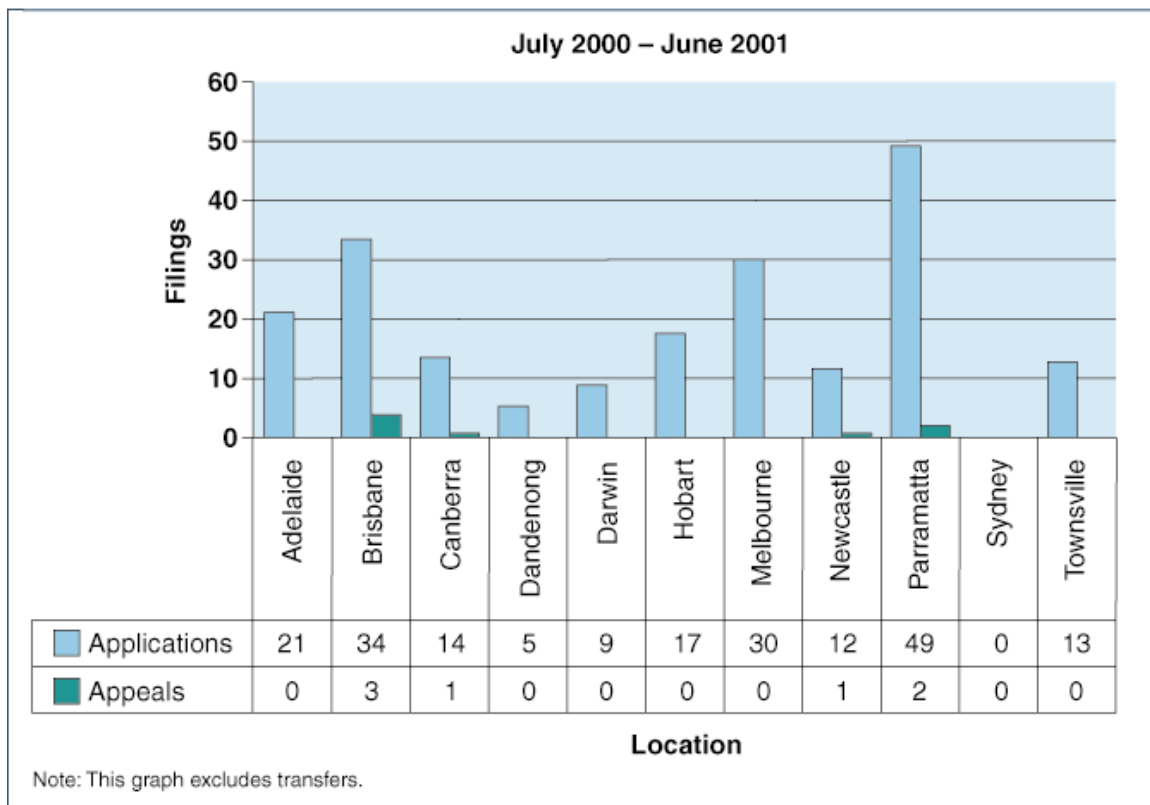
In *Inner Central Investment v Shore* [2001] FMCA 56, the court was asked to go behind a judgment and creditors petition. Federal Magistrate McInnis considered when it was appropriate for a court to exercise its discretion and go behind a judgment for determining whether there was a debt owed to the creditor.

Commonwealth Development Bank Of Australia v Tancock [2001] FMCA 37 considered the issue of the method of valuation ("forced sale" or "open market" valuation) of a debtor's assets where the petitioning creditor was a secured mortgagee. The interpretation of section 44 of *Bankruptcy Act 1966* was considered.

Child Support

The Federal Magistrates Court has the same jurisdiction as the Family Court in matters under the Child Support Act.

Figure 3.4: Child support matters



Family Law

In the family law area, federal magistrates have jurisdiction in the following matters:

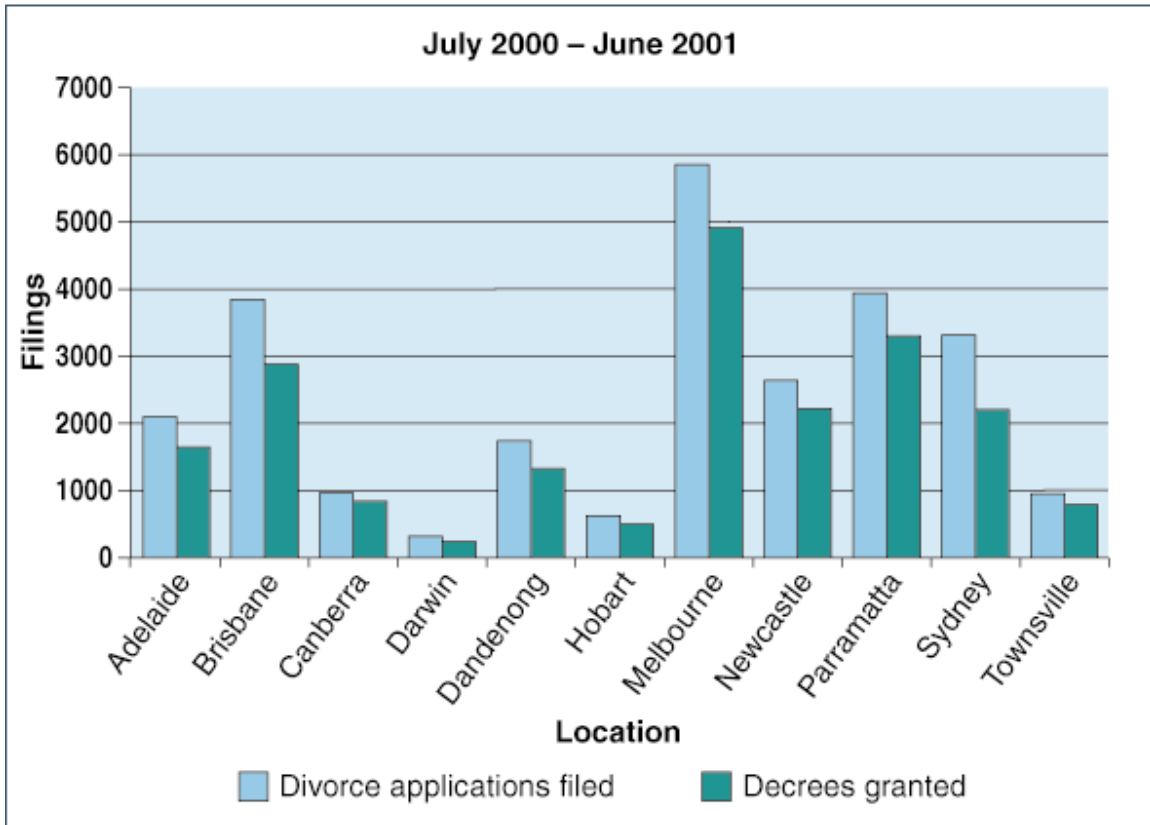
- Applications for divorce.
- Applications concerning spousal maintenance.
- Property disputes where the property in dispute is worth less than \$300,000, or property disputes worth more than this with the consent of the parties.
- All parenting orders, whether the parents are married or unmarried.
- Enforcement of orders made by either the Federal Magistrates Court or the Family Court.
- Location and recovery orders as well as warrants for the apprehension or detention of a child.
- Determination of parentage and recovery of child bearing expenses.

Highlights

- The court was invested with full jurisdiction in relation to residence matters by the *Family Law Amendment Act 2000*.
- During the last quarter of 2001, the court received 22 per cent of all ancillary applications made under the Family Law Act in federal courts.

- The court established a panel of providers of primary dispute resolution services for family law matters.

Figure 3.5: Divorces filed and decrees granted



Significant matters

The reporting of family law proceedings is subject to section 121 of the Family Law Act. Significant family law decisions, edited for the purposes of that provision, are published on the court's website.

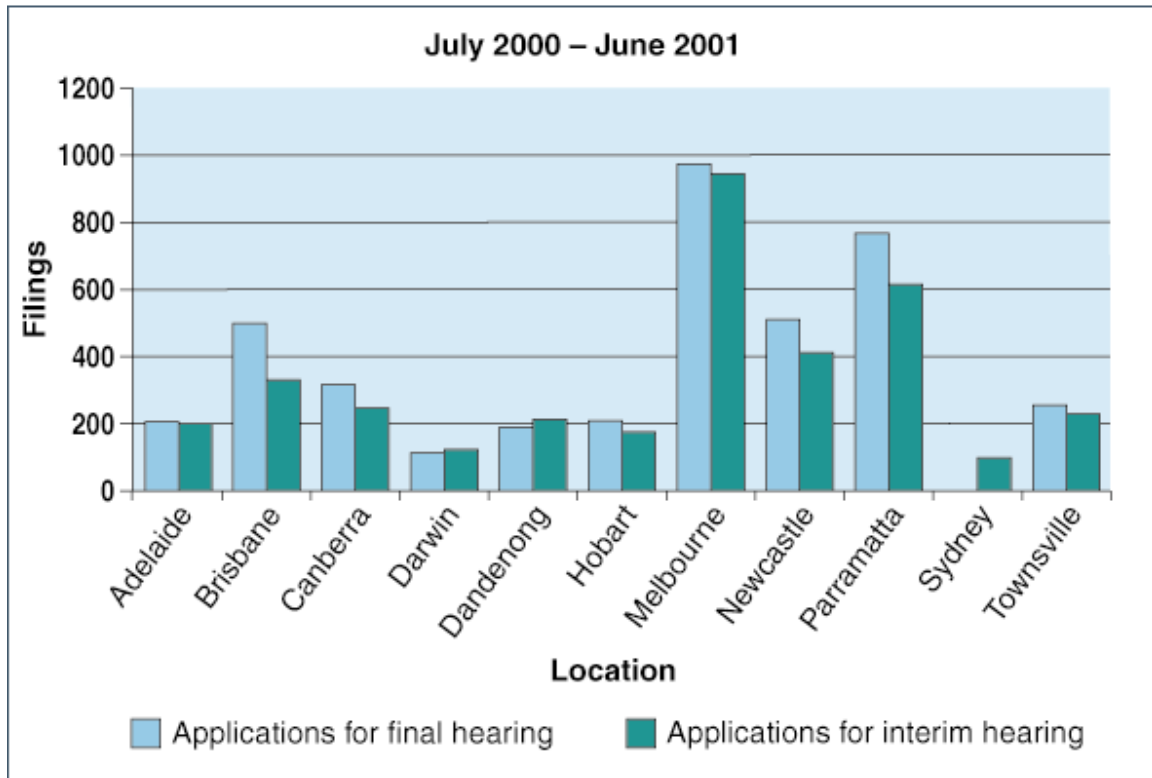
Re Bryant; Ex parte Guarino [2001] HCA 5

This matter involved an application for writs of certiorari and prohibition against the Chief Federal Magistrate (and presumably any other federal magistrate) in relation to proceedings for dissolution of marriage filed by the applicant's wife. In dismissing the application, Hayne J considered the constitutional reach of sections 71, 79 and 80 of the Constitution and whether provisions of the *Federal Magistrates Act 1999* and the *Federal Magistrates (Consequential Amendments) Act 1999* offended these sections. While Hayne J noted that section 79 uses the word "judges" and does not use the word "magistrate", nevertheless he considered " *...it is clear when regard is had to s71 and the power given to the Parliament to create "other federal courts" that the title given to the judicial officer by Parliament in creating such another federal court is not*

determinative of the constitutional reach of s79 and the other provisions in Ch III. The constitutional reach of s79 extends to the Federal Magistrates appointed to serve in the court created by the Parliament by the Act."

In considering the constitutional expression "Justices of a court created by the Parliament", Hayne J rejected the applicant's argument that this did not extend to federal magistrates. He decided 'there is therefore, no reason to consider that the provisions made in the Act about the term of office and conditions for resignation or removal from office of Federal Magistrates are invalid'.

Figure 3.6: Ancillary applications filed



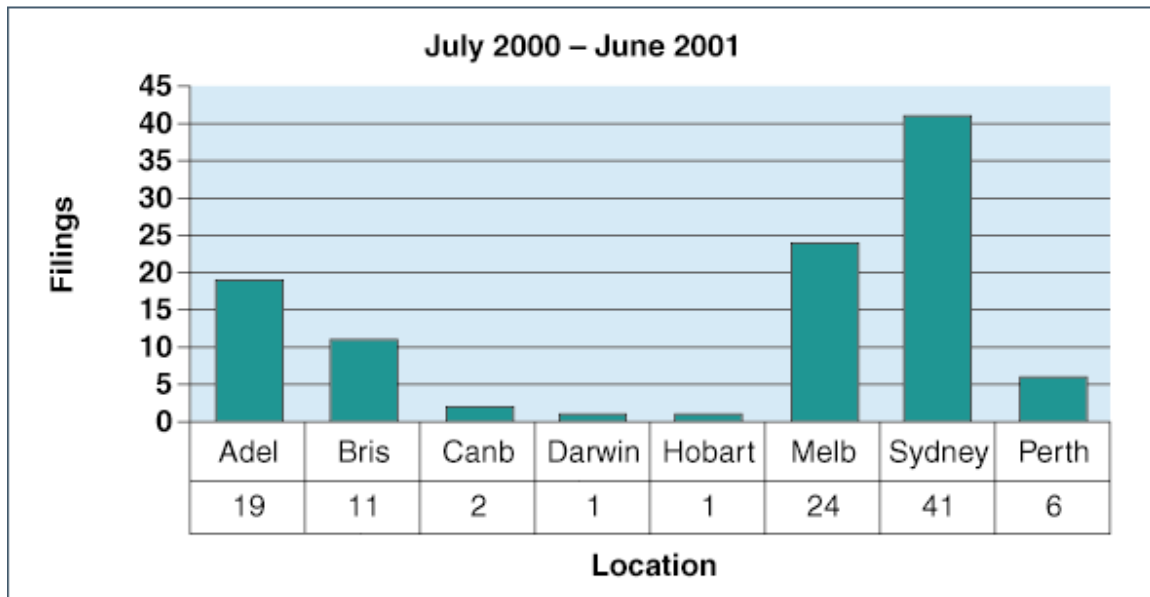
Unlawful Discrimination

The Federal Magistrates Court has the power to hear unlawful discrimination matters under the *Human Rights and Equal Opportunity Commission Act 1986*. This includes matters of racial, sexual or disability discrimination.

Highlights

- 105 matters were received in the court, which had finalised 37 matters at 30 June 2001.

Figure 3.7: Unlawful discrimination matters



Significant matters

***Johanson v Blackledge Meats* [2001] FMCA 6**

This was an action for damages under the *Human Rights and Equal Opportunity Act 1986* alleging sexual harassment and sex discrimination under the *Sex Discrimination Act 1984*.

The applicant claimed that she had been sold a bone prepared in the shape of a penis and that this caused her psychological harm and economic loss.

The respondents defended the claim on the basis that they had no knowledge of the sale of the object to the applicant, that the sale of the offending object was accidental and that they were not vicariously liable for the actions of the employee.

Federal Magistrate Driver found that the sale was accidental in that the employees of the respondents had not intended to sell that particular bone to the applicant. Nevertheless, the court found that the sale constituted sexual harassment in the provision of goods for the purposes of the *Sex Discrimination Act*. The court also found that the sale constituted discrimination against the applicant in that she had been treated less favourably than a male customer would have been in the same circumstances.

The court found that the applicant was entitled to damages for pain and suffering and for psychological counselling. However, the applicant's claim for damages for economic loss was unsuccessful.

***Xiros v Fortis Life Assurance Ltd* [2001] FMCA 15**

In this case, Federal Magistrate Driver found that the respondent insurance company was entitled to rely upon a defence available under section 46(2) of the *Disability Discrimination Act 1992* in a

claim by the applicant for damages for disability discrimination brought under the *Human Rights and Equal Opportunity Act 1986*.

Section 46(2) of the Disability Discrimination Act provides that it is not unlawful for an insurance company to discriminate in the provision of insurance where the discrimination is based upon reasonable actuarial/statistical data.

The court found that in this case a death and disability insurance company legitimately excluded cover for HIV/AIDS because substantial statistical data showed there was a proper basis for the exclusion over the period of time in question in the proceedings.

There was no doubt that the applicant suffered from a disability in that he was HIV positive and there was no doubt that he had suffered discrimination in the provision of insurance services. However, the court found that section 46(2) operated to protect the insurance company in the circumstances.

Costs awards in unlawful discrimination matters

In a series of cases, Federal Magistrate Driver developed jurisprudence relating to the awarding of costs in human rights proceedings.

In *Low v Australian Tax Office* [2000] FMCA 6, Federal Magistrate Driver said that the court should be slow to award costs at an early stage of human rights proceedings in order to give applicants a reasonable opportunity to take advice, to formulate their case and to assess their position.

In *Gibbs v Wanganeen* [2001] FMCA 14, Federal Magistrate Driver applied the principle he established in *Low v ATO* where the proceedings had been resolved at a preliminary stage without the need for a full hearing.

In *Xiros v Fortis Life Assurance Ltd*, Federal Magistrate Driver declined to award costs against the unsuccessful applicant on the basis that the proceedings contained a public interest element of substance because of the lack of judicial precedent on the point in issue in that case and because the respondent bore the onus of proving that it was entitled to the defence afforded by section 46(2) of the *Disability Discrimination Act*.

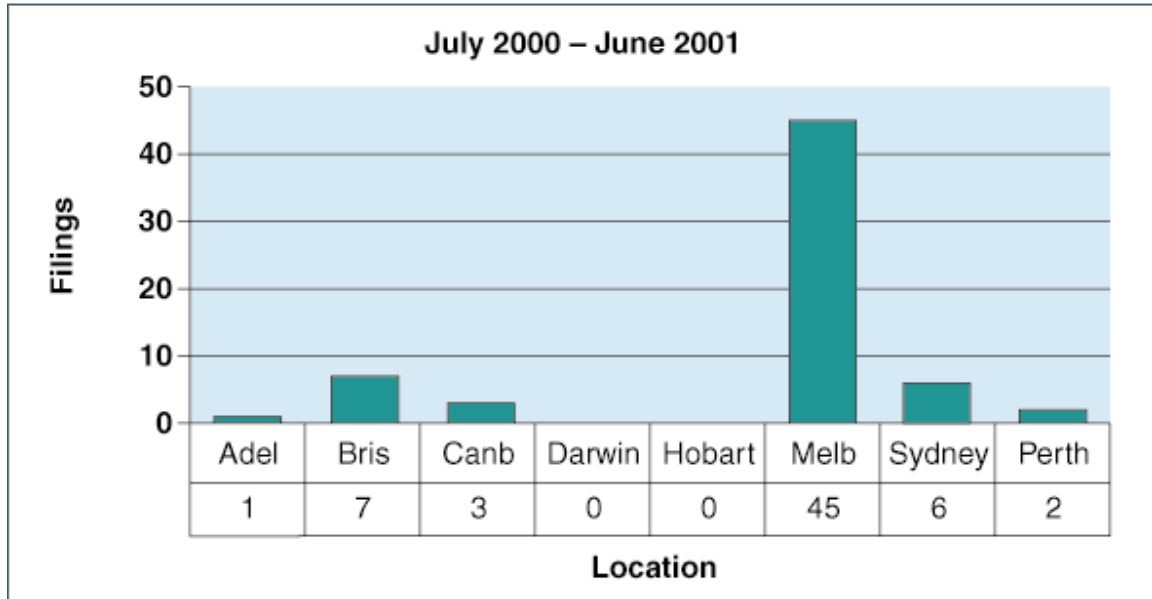
Federal Magistrate Driver held that the applicant was not in a position to properly assess the strength of his case because the case turned on the availability of the statutory exemption and the availability of that exemption depended upon the assessment of the actuarial and statistical data, which was evidence solely within the knowledge of the respondent.

In *Tadawan v State of South Australia* [2001] FMCA 25, Federal Magistrate Raphael referred to the costs decisions of Federal Magistrate Driver and declined to make an order for costs against the unsuccessful applicant because human rights proceedings were formerly considered to be “no costs” proceedings, as evidenced by the practice of state tribunals and the Human Rights and Equal Opportunity Commission and because it would be inappropriate to order costs against an unsuccessful applicant where the claim, although unsuccessful, was justifiable.

Trade Practices

The Federal Magistrates Court can hear unfair trade practices matters arising under Division I of Part V of the *Trade Practices Act 1974* and product safety and information matters arising under Division IA of Part V of the *Trade Practices Act 1974*, with power to award damages up to a maximum of \$200,000.

Figure 3.8: Trade practices matters



Performance measures

The performance measures included in the Federal Magistrates Service Portfolio Budget Statements were:

Quality

- Less than 1 per cent of cases litigated or divorces processed are subject to complaint. (See page 38).
- The time taken from filing to disposition is less than six months in 90 per cent of cases. (See page 36).
- Primary dispute resolution services resolve disputes for people who are referred to them by the court in more than 60 per cent of cases. (Data is not available for the reporting period.)
- Feedback from clients as to whether they are satisfied that their disputes have been handled quickly and simply. (See page 38).
- Feedback from clients regarding the simplicity and effectiveness of court rules. (The rules of court were not introduced until 30 July 2001, outside the reporting period).
- Feedback from clients regarding the availability of information about the service. (See page 37).

Quantity

- Number of cases litigated and divorce cases processed. (See pages 35 and 36).
- Number of counselling, mediation, conciliation and other primary dispute resolution services used. (See pages 44 and 45).
- Number of information session conducted and publications issued. (See page 59 and Appendix C).

Performance

Workload

In the initial weeks and months, the majority of the court's work came from transfers from the superior courts. However, very quickly in some places, and more slowly but steadily in others, the court's own workload began to build up.

By the end of June 2001, a consistent pattern of filings had emerged.

Excluding divorces, for the 12 months to 30 June 2001, 4010 applications were filed in the Federal Magistrates Court. This represented approximately 17.4 per cent of total filings in the Federal Magistrates Court and the Family Court. In addition, in the same period there were 2478 matters transferred from the Family Court.

In some locations such as Tasmania, Darwin and Dandenong, filing of ancillary applications did not start until late 2000.

For the last quarter, April to June 2001, the filings in the Federal Magistrates Court represented about 22 per cent of the total filings in both courts.⁶ Transfers to the court were occurring at the average rate of approximately 150 per month. There was a significantly lower rate of transfer from the court – about 25 per month. That is to be expected, although it is also anticipated that the frequency of transfer to the superior courts will increase in the next year.

The Federal Magistrates Court workload was initially constituted by matters transferred from the Family Court. Throughout the year, the rate of filings in the Federal Magistrates Court continued to grow.

A total of 26,070 applications for divorce were filed in the Federal Magistrates Court for the year. The number of these applications filed in the Federal Magistrates Court grew steadily throughout the year. The filings for the quarter July to September 2000 numbered 5533 as compared with 7273 in the final quarter.

In the area of general federal law, 2097 bankruptcy applications were lodged in the Federal Magistrates Court. A total of 103 human rights applications and 64 Trade Practices Act applications were filed with the court.

The Federal Magistrates Court set a benchmark of six months for completion of 90 per cent of all applications. The period of six months is measured from commencement in the court to final disposition of an application. In order to measure the effectiveness of the Federal Magistrates Court against this standard, a data collection method was established. Filing dates and dates of finalisation were recorded to measure the time taken for cases. That data shows the Federal Magistrates Court was effectively meeting the six month benchmark with the average time taken for cases being 3.36 months. Of course, some matters do take longer than six months. That occurs usually because the litigants, and their advisers, have sought to conduct the litigation over an extended period.

⁶ Other than divorces, there are no Federal Magistrates Service family law filings in the Sydney registry. The Federal Magistrates Service does not have family law jurisdiction in Western Australia.

Survey on awareness and performance

After almost 12 months of operation, the Federal Magistrates Service sought feedback about whether its objectives were being met and any suggestions for improvement. In particular, the Federal Magistrates Service sought feedback from lawyers about their awareness of the court's services and whether their clients were satisfied that disputes had been handled quickly, simply and economically.

The Federal Magistrates Service engaged Profmark Consulting Pty Ltd to conduct the survey. Profmark contacted a limited sample of legal practitioners who had used the court during the previous 12 months. The Federal Magistrates Service has not yet sought to directly survey the individual parties to proceedings in the court.

The results of the survey are intended to contribute to assessment of organisational performance for the Federal Magistrates Service, and to provide data relating to the qualitative performance measures identified in the Federal Magistrates Service budget statements.

Summary of results

Most respondents (82 per cent) had been involved in family law matters. This is consistent with the proportion of family law work done by the court during its first 12 months of operation.

The survey sought response to two major issues: awareness of services provided by the Federal Magistrates Service and satisfaction with the services provided.

Awareness of the services provided by the Federal Magistrates Service

Availability of information

In relation to availability of information, 75 per cent of respondents indicated that there was sufficient information available about the Federal Magistrates Service.

Some practitioners indicated that the interaction between the Federal Magistrates Service and other courts could be clearer and that further information could be provided about the general federal law jurisdiction of the Federal Magistrates Service.

Many believed the Federal Magistrates Service had done a good job in promoting its services, with the website being frequently mentioned.

Legal practitioners believed the general public did not have sufficient information about the Federal Magistrates Service.

Preferred method of communication

Approximately 55 per cent of practitioners would prefer to receive information by email, 38 per cent by mail, and 7 per cent by fax.

Information on proceedings in the court

Approximately 87 per cent of respondents believed the Federal Magistrates Service had kept them sufficiently informed about progress in matters in which they were involved.

Satisfaction with the services provided by the Federal Magistrates Service

Quicker and simpler outcomes for clients

Approximately 88 per cent of respondents believed the Federal Magistrates Service was meeting its objectives of providing a simpler and more accessible forum.

The concept of the Federal Magistrates Service was widely applauded. However, many practitioners commented that, due to its success, the court was becoming busier and this was affecting hearing dates and, therefore, accessibility.

Extent to which the Federal Magistrates Service operates informally

Many respondents (85 per cent) commented that federal magistrates were appropriately informal while maintaining the decorum and dignity expected of a court.

Overall rating of service

Approximately 21 per cent rated Federal Magistrates Service services excellent, 42 per cent very good and 34 per cent good.

Complaints

During the period that the Federal Magistrates Service has been in operation, the court has received 28 written complaints. A written complaint is one that is received by mail, fax or email.

The court has also received numerous compliments during the same period.

The Federal Magistrates Service has developed complaint-handling procedures to ensure that complaints are dealt with expeditiously and with a degree of urgency. Associates and other staff have received instructions on how to process complaints.

Complaints and compliments are viewed as providing valuable information about community perceptions of the work of the court, client satisfaction and service delivery. For this reason, one of the performance standards is that less than 1 per cent of cases litigated or divorces processed are subject to complaint. The number of complaints filed is well within this performance benchmark.

Some of the matters that have been treated as complaints could more broadly be defined as general grievances. The Federal Magistrates Service adopts a broad interpretation and includes such general grievances in the figures reported.

The complaints received have included concerns about:

- The performance of lawyers.
- Delay in the delivery of a judgment.
- Concerns about the outcome of proceedings.
- Frustration about the level of information provided by a registry.
- Confusion over arrangements in relation to transfer of proceedings between courts.

- Difficulty in obtaining a copy of the transcript of proceedings for the purpose of seeking legal advice as to whether or not to lodge an appeal.
- Delays in processing applications.

Some of the issues raised by correspondents are more appropriately dealt with by the appeal process or should be referred to state or territory legal bodies or professional practice tribunals. Complainants are often advised that their concerns can only be addressed by an appeal – about which they might be best advised to obtain legal advice – or by reference to a state or territory legal body.

Complaints about the judicial work of the court are not appropriately handled by the court's complaints system. Complaints about a judicial decision are appropriately dealt with by the appeal processes. Complaints about the behaviour of a federal magistrate are referred to the Chief Federal Magistrate, who will generally refer the complaint to the relevant federal magistrate.

The Federal Magistrates Service has established a protocol for the reporting of complaints about delays in delivery of reserved judgments and benchmarks for handing down reserved decisions. The protocol is designed to ensure that decisions are handed down and reasons given as expeditiously as possible. The protocols provide:

- A benchmark for the handing down of reserved judgments within six weeks of hearing or receipt of submissions in writing. A judgment which is outstanding for in excess of eight weeks will be regarded as outside the guidelines for delivery of judgments and reportable for statistical purposes as outstanding.
- That complaints about delivery of a reserved judgment may be directed to the president of the appropriate law society or bar association. The president will then refer the inquiry to the Chief Federal Magistrate for attention without disclosing which of the parties raised the matter.

The Federal Magistrates Service seeks to utilise complaint handling as an important indicator of client satisfaction with the administration of the court. This is particularly important in an organisation such as the Federal Magistrates Service, where a significant part of the client service functions are performed by registry staff who are not employed directly by the Federal Magistrates Service. Information from complaints can be fed back through the organisation to ensure continuous improvement of service delivery and compliance with standards established in the relevant memorandum of understanding.

Other means of monitoring client satisfaction include calls made to the national telephone line (1300 367 110) together with queries received via the customer service email address.

Anyone may lodge a complaint with the court. Complaints should be in writing and should be sent to:

Chief Executive Officer
Federal Magistrates Service
305 William Street
Melbourne 3000

If the complaint relates to specific proceedings, complainants are asked to provide a file reference number.

National telephone number

The 1300 number receives an average of 62 calls per day, with Monday being the busiest day.

Of these calls, approximately 28 per cent originate from Victoria, 31 per cent from Queensland and 28 per cent from NSW. The other states are lightly represented.

Many calls relate to divorce (33 per cent) or requesting a divorce kit (10 per cent). Half of the callers are identified as not having a lawyer, with 32 per cent of queries coming from solicitors.

Queries on individual cases on a federal magistrate's docket are dealt with by direct calls to the relevant associate.

Appeals

Appeals are possible as of right from final decisions of federal magistrates to the full court of the Federal Court or the Family Court, depending on the jurisdiction exercised.

Leave is required to appeal from interlocutory decisions (sections 24 and 25 of the *Federal Court of Australia Act 1976*, sections 94AA and 94AAA of the *Family Law Act 1975*). An appeal is not by way of a hearing *de novo*. However the statutory nature of an appeal to the Family Court provides for a re-hearing by the full court when discretion is re-exercised: *CDJ v VAJ* (1998) 197 CLR 172; *Allesh v Maunz* (2000) HCA 40.

During the financial year 2000-01, 30 appeals were filed in the Family Court from orders made by federal magistrates.

In one divorce matter that went to the Family Court on appeal, the applicant sought special leave to appeal to the High Court.

Of the 30 appeals filed (this figure includes appeals against interim decisions), 10 were dismissed, six were allowed, seven were withdrawn and seven were still proceeding at the end of the 2000-01 financial year.

In the same period, eight appeals were filed in the Federal Court from orders made by federal magistrates. One appeal was dismissed, three were withdrawn, two were resolved by consent orders and two remain current with no result at the end of the 2000-01 financial year. No appeal was allowed.

The Chief Justice of either the Federal Court or the Family Court has a power to direct that an appeal shall be heard by a single judge, who will constitute a full court. This has occurred in all appeals to date.

The *Federal Magistrates Court Rules 2001* contain rules in relation to a review of the exercise of power by a registrar (exercising delegated judicial powers). The application should be listed within 14 days of filing and must be served within seven days of filing. The following time limits apply:

- 21 days – delegated bankruptcy power.

- 28 days – dissolution power.
- Seven days for other matters.

Figure 3.9: Appeals to Family Court

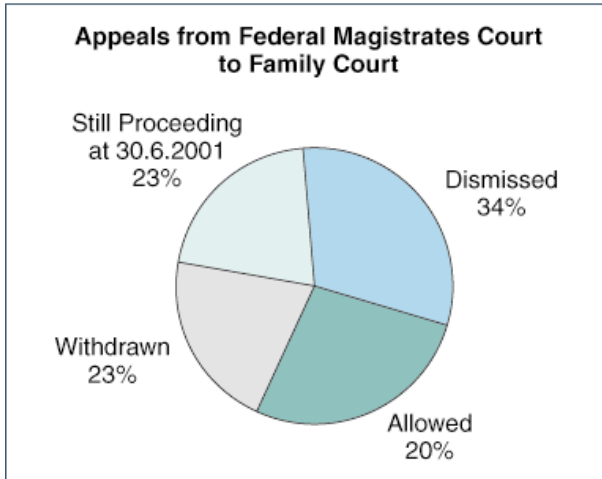
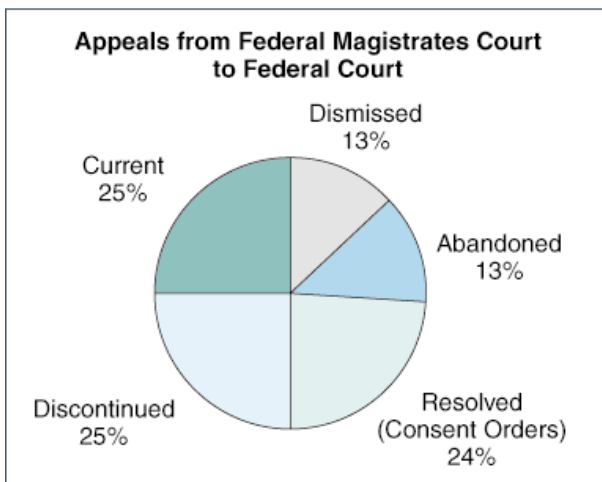


Figure 3.10: Appeals to Federal Court



Transcript arrangements

All matters before the Federal Magistrates Court, excluding uncontested dissolution and bankruptcy applications, are recorded. Various service providers undertake the recording in all locations.

In certain situations the federal magistrate will order that a transcript of the proceedings be produced. A transcript is generally ordered when an appeal is lodged; an *ex tempore* judgment is given or if the federal magistrate feels it is appropriate to retain a transcript on the court's file.

A party to proceedings can obtain a copy of the transcript by contacting the relevant service provider. The cost of the transcript is payable by the party seeking the transcript and is payable to the service provider, not to the court.

Working in regional Australia

The Federal Magistrates Service identified as a priority the need to provide services to regional areas. A circuit roster was structured to accommodate this priority.

The Federal Magistrates Service, along with conducting circuits in regional areas, aims to use technology such as audio and video links to conduct hearings in remote locations and to service areas between circuits.

The following list sets out areas circuited to during the reporting period.

Victoria

There were regular circuits to Warrnambool (sitting in Hamilton), Morwell, Sale, Geelong, Bendigo and Shepparton. There was one circuit to Albury-Wodonga. In addition, the Federal Magistrates Service sat in Dandenong for two and a half weeks each month and heard one matter in Moe.

New South Wales and Australian Capital Territory

The court sits regularly at Sydney, Parramatta, Canberra and Newcastle. There were no circuits in New South Wales during the reporting period, although the court did sit in Armidale to hear one matter. Arrangements for circuits in 2001-02 have been made and circuits will commence in October 2001 to Dubbo, Lismore, Coffs Harbour and Wollongong.

Queensland

The Federal Magistrates Service circuited to Mackay, Rockhampton and Cairns.

Tasmania

The Federal Magistrates Service heard cases in Devonport, Hobart and Launceston.

South Australia

The Federal Magistrates Service circuited to Berri, Port Augusta, Port Lincoln, Port Pirie and Whyalla.

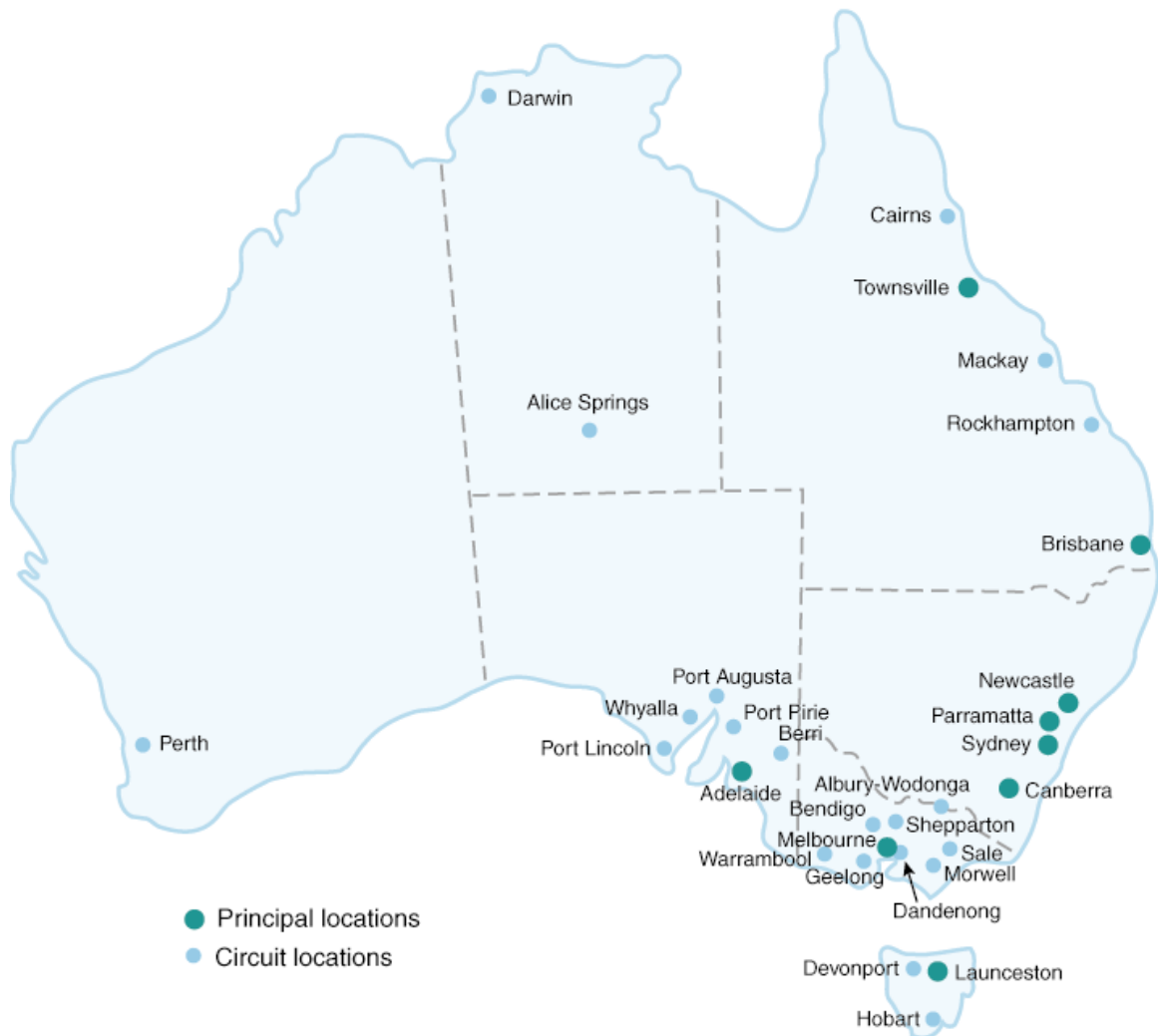
Northern Territory

Until the appointment of a further federal magistrate, the Federal Magistrates Service services Darwin and Alice Springs from Adelaide by video and audio link and visits Darwin monthly to hear cases.

Western Australia

The Federal Magistrates Service cannot exercise any family law jurisdiction in Western Australia, but the Federal Magistrates Court sits in Perth to hear general federal law cases every two months.

Figure 3.11: Federal Magistrates Court principal and circuit locations



Primary dispute resolution

The Federal Magistrates Service is committed to the delivery of primary dispute resolution (PDR) services to people near where they live. So that people can access services in their communities, public tenders were invited for the delivery of counselling, mediation and conciliation services in family law matters from community organisations in those states where the Federal Magistrates Service has jurisdiction.

PDR in family law

Tender

The invitation to tender was advertised on 3 March 2001 and tenders closed on 4 April 2001. Tenders were sought from community organisations to deliver counselling, mediation, and conciliation services in family law matters. Forty-three tenders were received and 33 tenderers were successful. Deeds of Standing Offer have been entered into with the successful tenderers. Service providers are in both urban and regional areas. See Appendix D for a list of successful tenderers.

In family law matters, federal magistrates now have the option of ordering or referring parties to a PDR process in either the Family Court's mediation service or a community organisation.

Following the tender process, there were a number of areas where there were still no PDR service providers. Consequently, a number of organisations that did not tender for the delivery of services have been approached to deliver PDR services for the Federal Magistrates Service.

Protocols have been finalised for the ordering or referring of matters to community organisations.

A PDR brochure has been produced to give clients information about PDR in family law matters.

PDR information and a list of service providers are published on the Federal Magistrates Service website.

Services delivered by the Family Court Mediation Section

Pre-first court date counselling

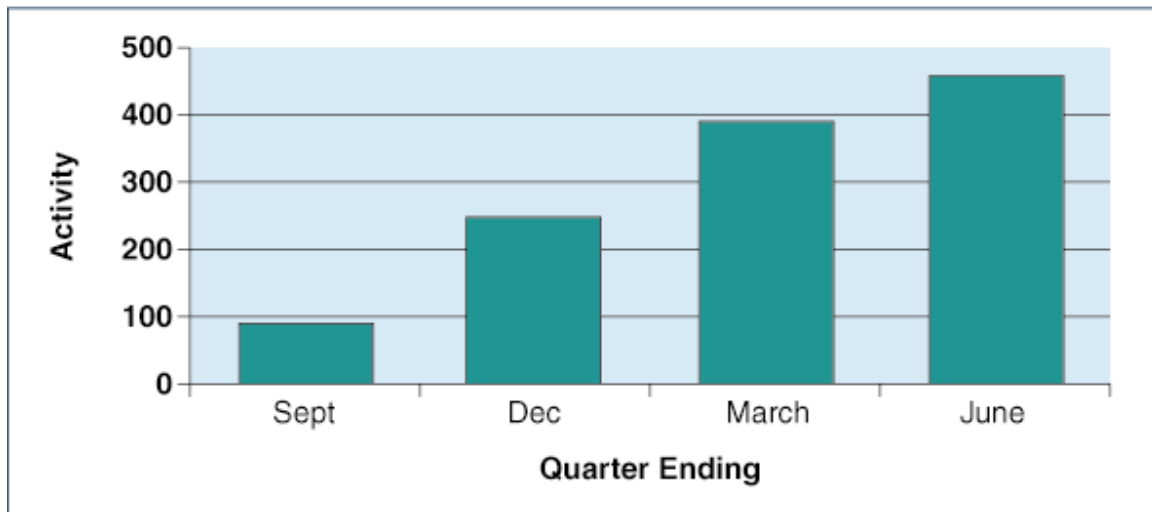
In family law matters, parties are ordered to attend counselling prior to the first court date. Appointments are made for clients with the Family Court Mediation Section at the time of filing of documents. Clients are advised of the appointments by letter. The letters are given to the applicant with the service documents. The applicant retains one letter and the other is served on the respondent with the documents. Pre-first court date counselling assists settlement negotiations at an early stage in proceedings.

Conciliation counselling

Other services delivered by the Family Court Mediation Section for Federal Magistrates Service clients are conciliation counselling and family reports.

The following graph indicates the counselling numbers for the September, December, March and June quarters.

Figure 3.12: Quarterly family law mediation figures



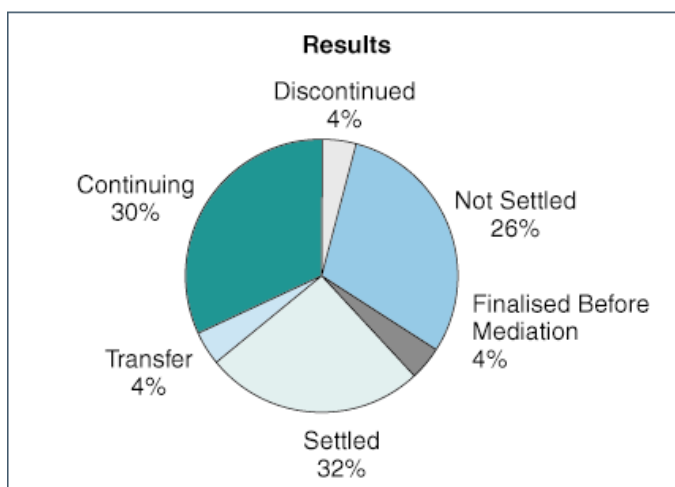
Family reports have been prepared by both Family Court counsellors and welfare officers appointed pursuant to Regulation 8 of the Family Law Regulations. Family reports are prepared for trials of matters where a federal magistrate considers that an assessment of the family will assist in determining the issues in dispute between the parties. Family reports are prepared in cases where confidential counselling and other PDR processes have been completed.

A total of 221 family reports have been prepared by the Family Court Mediation Section for the Federal Magistrates Service.

PDR in general federal law

In general federal law matters, the registrars of the Federal Court have conducted mediations in general federal law matters. Forty-five matters were ordered to mediation. Of those 14 settled, 12 did not settle, two matters were discontinued, two were finalised before mediation and two were transferred. Thirteen were still ongoing at the end of the 2000-01 financial year.

Figure 3.13: General federal law mediations



PART FOUR: ADMINISTRATION AND GOVERNANCE

Section 89 of the *Federal Magistrates Act 1999* provides for the Federal Magistrates Service to administer its own affairs. Under section 12 of the Act, the Chief Federal Magistrate is responsible for the orderly and expeditious discharge of the business of the court. A collegiate approach is taken by federal magistrates to court administration. A number of advisory committees were established to provide direction on various aspects of court administration.

Court advisory committees

Business Information Management Committee

The Business Information Management Committee is a committee of federal magistrates established for the purpose of examining and developing processes to better manage the work of the court.

The formation of the Federal Magistrates Service has provided a unique opportunity for the implementation of appropriate business management practices unfettered by past systems or practices.

The role of the committee has necessarily involved it, therefore, in attempting to identify priorities in this area for the court given budgetary and operational constraints. Areas examined include, for example, the allocation of information technology resources; specification and development of the Federal Magistrates Service's case management system; training in relation to information technology facilities for federal magistrates and staff; voice dictation facilities; development of, and access to research facilities; provision of information technology facilities to the courtroom; and case management system integration with document management, website and office automation products.

The proposed use by the Federal Magistrates Service of the Family Court Casetrack system will occupy much of the committee's attention in the immediate future together with investigations resulting in recommendations for the further provision of appropriate technology and training to the Federal Magistrates Service.

The committee oversees the management of the court's business information systems.

Court Users and Systems Committee

This committee is responsible for developing policy on the delivery of court services.

Issues discussed include case management and listing arrangements and the development of pro forma orders and benchmarks for disposition of cases.

The committee seeks to devise best practice processes and procedures that will facilitate the legislative objectives of providing a simpler and accessible alternative to litigation in the superior courts.

Information material has been prepared and is available to provide litigants and practitioners with an understanding of the practices and procedures of the court. The committee was responsible for overseeing the preparation of information material in relation to the rules.

In addition, the committee has sought to develop links with court users and members of the profession to ensure that there is regular contact with those who use the courts and who can assist with suggestions for improvements and provide a means of continuing performance evaluation.

Ethics Committee

This committee, which is composed exclusively of federal magistrates, was established to take on an advisory role regarding ethical issues that arise from time to time and on which federal magistrates might like some guidance or to discuss with their peers.

The committee is also to act in an advisory capacity in considering ethical issues referred to it by the Chief Federal Magistrate.

The committee has made contact with the St James Ethics Centre. The committee has dealt with protocols for surveys involving federal magistrates and protocols relating to how complaints regarding federal magistrates should be handled.

The committee has also considered a protocol in relation to dealing with practitioners when a breach of ethics may have occurred.

Legal (Rules) Committee

The role of this committee is wider than merely a consideration of appropriate rules of court and practice and procedure generally. This committee also has an important function of considering proposed legislative changes and preparing submissions in relation to jurisdictional and other legal issues of relevance to the Federal Magistrates Service. For example, the committee considered:

- Amendments to the *Privacy Act 1998*, which will confer concurrent jurisdiction with the Federal Court to enforce determinations of the Privacy Commissioner and private sector adjudicators.
- Amendments to the *Family Law Act 1975*, which introduced a new parenting compliance regime and financial agreements, arbitration and other miscellaneous amendments.
- Amendments introduced by way of the *Family Law Legislation Amendment (Superannuation) Act 2001*, which will allow couples to split their superannuation interest in the same way as other assets. This amendment will, when in force, have an impact on the property jurisdiction of the Federal Magistrates Service and there are discussions with government in relation to the best way of dealing with this.
- A submission to the Australian Law Reform Commission report, *The judicial power of the Commonwealth: A review of the Judiciary Act 1903*.

However, a considerable amount of the committee's time so far has been devoted to drafting rules of court and accompanying forms. (The *Federal Magistrates Court Rules 2001* commenced on 30 July 2001). The committee considered it appropriate to consult widely prior to settling the rules and was assisted by the many useful submissions that were received. The committee met frequently to consider all these submissions before federal magistrates approved a final draft. It is the intention of the committee for further consultation in relation to any changes to the rules and to assess their workability. The committee is especially keen to ensure that the rules are widely available, easily understood and facilitate the legislative objectives of the Federal Magistrates Service.

The committee has links with the comparable committees of the Federal Court and Family Court in areas where jurisdiction is shared. In addition, the Office of Legislative Drafting in the Attorney General's Department provided much valuable assistance.

Audit Committee

The Audit Committee is chaired by Maurie Kennedy PSM and has two federal magistrates and the registrar of the court as members.

The committee met on three occasions during the year. The main issues considered during these meetings were:

- The audit committee charter.
- The engagement of an internal auditor and an internal audit charter.
- Fraud risk assessment and a fraud control plan.
- An overall risk management plan.
- Internal audit plans.
- Budgeted financial statements.
- Financial delegations.

Judgments Committee

The role of the Judgments Committee is to provide general guidance on format, style and layout of judgments. It has developed a document template for judgments consistent with the Australian Institute of Judicial Administration *Guide to Uniform Production of Judgments*.

The committee is responsible for considering the publication of judgments. It developed a protocol for referral of judgments for publication and has otherwise ensured that all judgments (with catchwords) are placed on an internal database. Final judgments (with catchwords) in family law matters are edited pursuant to section 121 of the Family Law Act and electronically forwarded to the registrar and then forwarded to Austlii and SCALEplus. Subject to acceptance of a recommendation by the author of a judgment, edited judgments (with catchwords) are forwarded to publishers.

The committee has developed protocols in relation to the forwarding of judgments to Administrative Appeals Tribunal members whose decisions may be the subject of appeal in the Federal Magistrates Court.

The designation on judgments in general federal law matters is "FMCA" and in family matters "FMCA fam".

The objective of the committee in relation to judgments of the court is to ensure that all judgments, apart from interim matters, are readily available to the public.

Pro Bono Committee

This committee was set up to coordinate the approach of the Federal Magistrates Court to pro bono assistance for unrepresented parties.

In the year 2000-01, the committee has concentrated on the creation of a pilot program for pro bono assistance in general federal law matters. Meetings were held with members of the profession, both barristers and solicitors, legal advice centres and specialist disability advice groups in both Sydney and Melbourne. It was agreed after the meetings that work on the pilot program would proceed separately in Sydney and Melbourne. Discussions are still continuing in Melbourne but in Sydney a pilot program has been established.

The Sydney pilot program consists of four firms of solicitors: Blake Dawson Waldron, Clayton Utz, Allens Arthur Robinson Group and Gilbert & Tobin. Access to the program will be available to any unrepresented litigant who comes before the Federal Magistrates Court in New South Wales in a general federal law matter. It is expected that pro bono advice will be provided after the first court hearing date. The proceedings will be adjourned for the litigant to receive pro bono advice. The participants in the scheme have promised a turnaround time of not more than two weeks. The pro bono providers will, in conjunction with the unrepresented litigant, decide on the extent of legal assistance to be given. All referred litigants will receive initial advice upon their claim. In appropriate cases assistance can extend to representation at hearing.

The Federal Magistrates Court will utilise Rule 12 of the Federal Magistrates Rules where an unrepresented litigant is provided with pro bono representation at hearing.

The pro bono pilot scheme will be complementary to an independently funded legal aid advice scheme operating in the Federal Court and in the Federal Magistrates Court in Sydney for human rights matters. Under this scheme advice can be given to an unrepresented litigant by a duty solicitor who will attend at the Federal Court approximately once a month and who will give assistance to unrepresented litigants in relation to matters affecting their case. The legal aid service will not represent parties at hearings unless those parties otherwise qualify for legal aid.

The pilot scheme was expected to operate until 30 June 2001 but will be the subject of constant monitoring by the pro bono committee. It is also hoped that a similar scheme can be started during the course of the year 2001-02 at other centres.

The pro bono committee of the Federal Magistrates Court is extremely proud of having put in place the first pro bono scheme directly related to the needs of a particular court. It is anticipated that almost all unrepresented litigants coming before the court in general federal law matters in New South Wales will have an opportunity to access the scheme.

Primary Dispute Resolution Committee

This committee is responsible for policy on the delivery of primary dispute resolution (PDR) services. Services have primarily been delivered by the Family Court in family law matters and the Federal Court in federal law matters. The committee monitored the PDR tender process for the delivery of PDR services by community organisations, the introduction of pre-first court date counselling, the ordering of family reports by federal magistrates, and the production of the PDR brochure.

Self Represented Litigants Committee

The committee's role is to consider how the Federal Magistrates Service can best address the needs of unrepresented litigants and to implement a plan to assist them. The committee considered the recommendations of the Australian Institute of Judicial Administration as outlined in its paper, *Litigants in Person Management Plans: Issues for Courts and Tribunals*. A plan is being formulated based on the recommendations in that paper.

The Federal Magistrates Service will not replicate the work being done by other organisations but will highlight areas where the Federal Magistrates Service differs from those organisations. The Federal Magistrates Service plans to use the resources and networks already providing assistance to litigants in person while targeting material to facilitate the specific needs of litigants appearing in the Federal Magistrates Court.

Corporate plan

A corporate plan was established for the first year of operation. The plan is based around an overall goal of providing a simple and accessible venue for the resolution of less complex federal law disputes. It identified six key result areas:

- Primary dispute resolution.
- Public information.
- Effective court services.
- Technology.
- Effective use and management of resources.
- Developing relationships with stakeholders.

It is intended that a longer-term plan be developed in the next reporting period.

Risk management

The Federal Magistrates Service participated in a series of workshops on risk management sponsored by Comcover, the Commonwealth's insurable risk scheme. Flowing from the workshops, the Federal Magistrates Service has identified major risks and developed a risk management plan.

A fraud risk assessment was also undertaken during 2000-01 and a fraud control plan is in place, which complies with the Commonwealth's fraud control policy. There were no instances of fraud detected during the year.

Internal audit services are provided by Deloitte Touche Tohmatsu. Audits were conducted during 2000-01 relating to fixed assets, expenses, revenues and employee entitlements.

The APS code of conduct

During 2000-01, the Federal Magistrates Service promoted the APS values and code of conduct by:

- Including relevant material in staff induction.
- Reference to the APS values and code of conduct in offers of employment.
- Distribution of posters to each office highlighting the values and code of conduct.
- Conducting a survey of staff to contribute to the Public Service Commissioner's *State of the Service* report.

Senior appointments

The Chief Executive Officer of the Federal Magistrates Service is Peter May. The Chief Executive Officer assists the Federal Magistrates Service in the conduct of its administrative affairs. The Chief Executive Officer has the power of a secretary under the *Public Service Act 1999* and the responsibilities of the chief executive of an agency under the *Financial Management and Accountability Act 1997*.

The principal executive group of the Federal Magistrates Service comprises:

- Adele Byrne, Registrar.
- Brian Scammell, Chief Finance Officer.
- Steve Agnew, Coordinator of Court Services.
- Susan Cibau, Coordinator of Primary Dispute Resolution Services.

Remuneration

Remuneration for the federal magistrates and Chief Executive Officer is determined by the Remuneration Tribunal. During 2000-01, the senior executives were remunerated at the Australian Public Service Executive Level 2 range, in accordance with a determination made by the Chief Executive Officer under Section 24 of the *Public Service Act 1999*. There are no employees at the Senior Executive Service level.

Performance pay for 2000-01 was paid following the end of the reporting period. The aggregate amount of performance pay was \$32,653. APS staff were paid 1.5 per cent in accordance with provisions in the Chief Executive Officer's determination under section 24 of the *Public Service Act 1999*. The Chief Executive Officer was paid 15 per cent in accordance with a determination made by the Remuneration Tribunal.

Financial performance

The Federal Magistrates Service became a prescribed agency under the *Financial Management and Accountability Act 1997* with effect from 1 July 2000. The first set of financial statements for the Federal Magistrates Service is included with this annual report.

The major source of revenue for the operations of the Federal Magistrates Service is an appropriation from government. The original appropriation amount for 2000-01 was \$11.679 million. For 2000-01, the appropriation was initially included in the Attorney-General's Department budget statements. The amount was subsequently transferred to the Federal Magistrates Service under section 32 of the *Financial Management and Accountability Act* and separate budgeted financial statements were published for the Federal Magistrates Service with the Attorney-General's portfolio additional estimates for 2000-01. An amount of \$721,000 was subsequently transferred to the Family Court under section 32, leaving an appropriation balance of \$10.958 million.

During 2000-01, operating expenses were significantly less than revenues from appropriations. This largely reflects the timing of appointments of federal magistrates and deferral of other start-up costs. The major expenses in 2000-01 were \$4.6 million in respect of employee expenses and \$2.2 million relating to supplier payments.

The Federal Magistrates Service relies on infrastructure and support provided by the Family Court and Federal Court. In particular, those courts provided registry services for the Federal Magistrates

Service as the Federal Magistrates Service does not have its own registries. Both of those courts have supplied estimates of resources provided to the Federal Magistrates Service free of charge. The aggregate amount is approximately \$8.4 million, and is reflected in the financial statements included with this annual report. The work that the Federal Magistrates Service now undertakes is work that would have previously been undertaken by the Federal Court and Family Court. The cost of resources provided by those courts is therefore a cost that those courts would otherwise have incurred as part of their operating costs had the Federal Magistrates Service not been established.

The Federal Magistrates Service receives revenue on behalf of the government (administered revenue not available for Federal Magistrates Service operating costs) mainly relating to court fees. The amount received in 2000-01 was approximately \$6.7 million.

Arrangements with the Federal Court and Family Court

Arrangements have been made by the Chief Federal Magistrate, pursuant to legislative provisions, for the Federal Court and the Family Court to carry out certain functions on behalf of the Federal Magistrates Court.

In addition, arrangements have been made to use the courtrooms and to share the registries and other facilities of those courts. Both courts provide registry services for clients of the Federal Magistrates Service. The Family Court provides information technology infrastructure and support services to the Federal Magistrates Service. During 2000-01, a memorandum of understanding was signed with each court detailing support arrangements.

Management of human resources

Certified agreement

The terms and conditions for staff appointed under the *Public Service Act 1999* were initially determined by the Chief Executive Officer under section 24 of that Act.

During 2000-01 a certified agreement was negotiated with staff of the agency, to commence from 1 July 2001. The agreement was ratified by the Australian Industrial Relations Commission on 16 August 2001.

The agreement is intended to provide a fair reward for staff in return for their commitment to the Federal Magistrates Service objective of providing a simple and accessible forum for the resolution of less complex disputes. Federal Magistrates Service staff will need to be skilful, enthusiastic, innovative, adaptable and committed to service to the community. They will need to embrace new technologies and systems of work.

Key features of the agreement are:

- Salary increases of 5 per cent on 1 July 2001 and 4 per cent on 1 July 2002.
- The introduction of a performance management program linked to Federal Magistrates Service objectives, and salary advancement linked to performance.

- Increased flexibility in managing leave and attendance, recognising the need for staff to balance work and non-work priorities.
- Streamlining leave processing and salary advancement dates.
- A commitment to training and staff development.
- Emphasis on the APS values and code of conduct.

Review of the role of associates

During 2000-01, Results Consulting was engaged to review and assess the work and performance management of the associates in the Federal Magistrates Service. This review examined the role of the associate; integration with the federal magistrate and other staff of the Service; interaction with the Family Court and Federal Court registries; the functions and level of workloads; the level of autonomy and need for supervision; use of technology; the standard of contribution expected and how performance is managed.

The major recommendation from the report was the appointment of deputy associates to relieve the workload of associates by undertaking, under direction, the lower level functions of the associate role, and to undertake the role previously performed by court officers. This was intended to provide leave and training relief, as well as succession planning for the associate position. This recommendation was accepted and implemented during 2000-01.

The court continues to obtain some court officers from the Family Court. They are provided under arrangements made subsequent to the creation of the deputy associate positions in order to meet the requirements of the court when a federal magistrate is on circuit, when an associate or deputy associate is on leave for any purpose or to meet occasional high demand requirements of the court.

Workplace diversity

The Federal Magistrates Service developed a workplace diversity plan during 2000-01, which was signed by the Chief Federal Magistrate and Chief Executive Officer and circulated to all staff.

Disability strategy

The Federal Magistrates Service's workplace diversity plan includes strategies relating to people with disabilities. In relation to court clients, the Federal Magistrates Service also has a complaints/grievance mechanism and participates in court building forums which address issues relating to court access for people with disabilities. The Federal Magistrates Service plans to develop a formal service charter during the next reporting period which will address accessibility to the Service for people with disabilities.

Occupational health and safety

The Federal Magistrates Service aims to provide a safe and healthy work environment for staff.

During 2000-01, an occupational health and safety handbook was developed and circulated to staff, which highlighted the need to maintain a safe and healthy work environment and identified

staff roles and responsibilities in relation to health and safety. The Federal Magistrates Service also signed an occupational health and safety agreement with the Community and Public Sector Union.

Initiatives taken during the year included the following:

- Ergonomic assessments for staff undertaken by CRS Australia. These assessments provided staff with advice and information on work station set-up, working posture, stretching and work breaks. Where necessary, additional or replacement equipment has been provided.
- An agreement was entered into with a professional employee assistance provider, IPS Pty Ltd, to provide staff and their immediate families with access to voluntary, free and confidential counselling about any problems which affect their lives, work performance or job satisfaction.
- A session on judicial stress, diet and exercise was included in the biannual federal magistrates conference.
- A review of associate positions in the Federal Magistrates Service included, among other things, addressing workload issues. Recommendations arising from this aspect of the review resulted in the engagement of additional support staff (see previous section relating to the review of associates' positions).

In relation to security, the Federal Magistrates Service is co-located with the Family Court and Federal Court and relies on the safety measures put in place by those courts regarding security and building management. The marshal of the Family Court is also the marshal of the Federal Magistrates Service, and provides security advice and management for both courts. During 2000-01 a security assessment of the homes of federal magistrates was conducted and, where necessary, work was undertaken to ensure an appropriate level of security.

There were no accidents or dangerous occurrences during the year and no investigations were conducted. The Federal Magistrates Service was not required to give any notices under section 68 of the *Occupational Health and Safety (Commonwealth Employment Act) 1991*. No directions under section 45 or notices under sections 29, 46 or 47 of that Act were given to the Federal Magistrates Service during 2000-01.

Training and staff development

The focus in 2000-01 was on developing staff competencies in the main computer applications in use in the Federal Magistrates Service, particularly Lotus Notes and the standard Microsoft Office applications. The majority of this training was provided through one-on-one sessions provided by Drake Training.

On-the-job training was also provided in the case management systems operated by the Family Court and Federal Court.

Associates conference

Associates of the Federal Magistrates Service met in October 2000 for a conference marking the first time together as group. This inaugural meeting was held at the Commonwealth Law Courts

complex in Melbourne. The conference was opened by the Chief Executive Officer and attended in part by the Chief Federal Magistrate.

The forum provided instructional information regarding the Federal Magistrates Service, court procedures and the handling of complaints amongst other items. The need for consistency of practice was highlighted, initiating the first steps towards an associate's manual.

A high level of enthusiasm was evident throughout the conference with associates demonstrating a strong desire to achieve the aims of the Federal Magistrates Service.