

# Part two: Year in review

## Review by Chief Federal Magistrate

This annual report is for 2001-02, the second full year of operations of the Federal Magistrates Court.

2001-02 was a year of consolidation in the court's work. A better picture has now developed regarding the impact that the Federal Magistrates Court will have on the federal judicial system although the relationship between this court and the other federal courts continues to develop.

### *Additional federal magistrates were appointed*

During the year, three additional federal magistrates were appointed; one in Darwin, one in Melbourne and one in Parramatta, bringing the total number of federal magistrates to 19. While the appointment of these additional federal magistrates has been a welcome development, the growth of the court's workload has outstripped the additional capacity provided. The appointment of three more federal magistrates has, however, permitted the court to provide enhanced services in the Northern Territory and in areas of high demand in the major capital cities. The appointment in Melbourne has permitted the court to expand the service provided at Dandenong.

It is critical that further appointments be made. The court's services are under great strain in some locations, especially in Newcastle and Brisbane. However, an appointment is not practical in Newcastle until adequate court accommodation is available.

### *The workload of the court has increased*

Following its establishment period, the nature of the court's workload is now stabilising and legal practitioners and litigants in person appear to have developed a greater understanding of the distribution of work between this court and the superior courts. They are also better acquainted with the different operating procedures that are used in this court. As a consequence, there is now a much greater demand for the court's services. This is the case in all locations where the court sits, whether permanently or on circuit. The court has, for example, seen the number of family law applications for final orders filed in the court double, compared to the previous year.

During the year, all federal magistrates were encouraged to hear matters across all areas of the court's jurisdiction. This has been an important development, which demonstrates the broad function that can be performed effectively in a lower level federal court. The court is not a specialist court and there is an expectation that all federal magistrates will exercise the full jurisdiction of the court.

The workload of the court in its general federal law jurisdictions has expanded, especially during the last quarter of 2001-02 when the court received a significant number of matters relating to migration.

### *The jurisdiction of the court has expanded*

The court has had a major expansion of its jurisdiction. At the time of its establishment the court was given jurisdiction in relation to most administrative law matters. However, jurisdiction in relation to applications to review visa-related decisions made under the *Migration Act 1958* was specifically excluded from the scope of the court's work. That was changed from 2 October 2001 when the court was given concurrent jurisdiction with the Federal Court. At the same time the jurisdiction of both courts was limited by the privative clause inserted into the Migration Act, which limits the capacity of the court to make orders if it finds that an error has been made by the administrative decision-maker.

At the time of writing, the validity of the privative clause is being tested in the Federal Court<sup>1</sup>. The outcome of those proceedings will be influential in determining the workload of the Federal Magistrates Court in migration matters. There has been, since May 2002, a significant shift of the Federal Court's migration workload to the Federal Magistrates Court. It is anticipated that the full impact of that shift will be more apparent after the law is clarified. The workload is, of course, also dependent on the number of applicants seeking review of tribunal decisions.

On 1 January 2002, the jurisdiction of the court in financial matters arising under the Family Law Act was increased to give the court jurisdiction in matters in which the property in question is less than \$700 000 (from \$200 000). The increase has not resulted in any significant change in either the character of the cases coming before the court or the volume of matters.

### *Simple and accessible procedure*

The Federal Magistrates Court has quite purposefully adopted procedures that differ from the procedures of the superior courts. It is a lower level court that has been established with the objective of providing enhanced accessibility and simplicity of procedures. The court's procedures are designed to be more suitable for the management of less complex matters. In achieving this objective, the court has adopted a range of simplified procedures, including:

- the use of preliminary affidavits to identify the issues early in the course of proceedings;
- reduction in the number of appearances by fixing hearing dates on the first hearing date in the majority of matters;
- providing a capacity for legal representatives and self represented litigants, especially those in country areas, to appear by telephone for mentions;

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<sup>1</sup> The provision has since been found to be valid by the Full Court of the Federal Court. The matter is, at the time of writing, awaiting the determination of the High Court.

- proceedings in the general federal law jurisdiction are not commenced by statement of claim, and pleadings are not used unless they would advance the identification of issues in a particular matter;
- use of video callovers of circuits; and
- availability of video for witnesses without the requirement for a written application and affidavit.

### *Communication of the court's work*

The work of the court often attracts public interest and the court has been able to respond effectively to the demand for information about the court's work through its media officer and its web site.

The media demands on the court are varied. For example, the court occasionally makes orders that permit the publication of information about family law proceedings, usually to assist in the recovery of a child. When a publication order is made there is a requirement for liaison with media outlets and the Australian Federal Police to ensure that appropriate information is published, in accordance with the law. Occasionally, matters before the court will have been the subject of public discussion and media comment. The court has a role in ensuring that accurate information is made available to properly inform debate and to ensure that the work of the court and its decisions are not misconstrued.

The number of decisions that have been published during the year provides an indication of the workload of the court's members. The preparation of written reasons for decisions is a complex and time-consuming task and, therefore, not all decisions are published. Many of the court's reasons for decision are delivered orally at the conclusion of a hearing. Some oral judgments have to be provided in writing, for the purposes of an appeal, for example. In the past year, members of the court have delivered approximately 485 judgments that have been made available in written form, many of which are published on the court's web site.

The majority of judgments relate to family law disputes but many cover bankruptcy, unlawful discrimination, trade practices and administrative law and an increasingly large number in the migration jurisdiction. Some examples of the court's judgments are described in part three of this report.

### *The Remuneration Tribunal's major review of judicial remuneration*

The court has participated in the major review of judicial remuneration being conducted by the Remuneration Tribunal. This is the first major review conducted by the Tribunal since the establishment of this court and has provided the first opportunity for the court to participate actively in an objective analysis of the value of the work done by federal magistrates. The court made a substantial submission in which it argued that the current determination of work value has not achieved a proper valuation of the work that is actually being done within the court. The submission has also referred to major deficiencies in the employment arrangements that have been established for federal magistrates in relation to superannuation and income protection.

Federal magistrates have found it necessary to take out private income protection insurance in order to address the gap created by current arrangements, which provide no security of income in the event of disability.

### *Self represented litigants*

Self represented litigants continue to comprise a large section of people appearing in the court with both parties being represented in less than 65 per cent of family law matters finalised in the court. In 11.5 per cent of matters, both parties are unrepresented. There is also a high level of self representation in unlawful discrimination and migration cases. Although the court has been unable to recruit staff to pursue a project planned in 2001, its self represented litigants committee has continued to address issues relevant to managing the high level of litigation in which legal professionals are not engaged. The court continues to seek to staff its own self represented litigants project. The court has identified the need to provide enhanced information to litigants about the court's operations and procedures and on the litigation process. The court is also monitoring the progress of the Family Court's self represented litigants project, which has considerable relevance to the work of this court.

The court has been active in promoting the development of legal aid assistance. Duty solicitor schemes are now operating in Melbourne, Dandenong and Parramatta. The provision of duty solicitor schemes is an essential adjunct to the efficient operation of the court.

### *The court's new case management system*

A new case management system, Casetrack, was introduced during 2001-02 for family law matters. The system was developed by the Family Court of Australia and has been made available to the court. The Federal Magistrates Service shares the Family Court's information technology platform and registry facilities. Casetrack will be an important tool for developing the capacity of the court to monitor its workload, to identify opportunities to simplify procedures and for making court services more accessible. It is hoped that Casetrack will enable the unification of the court's case management systems, which currently mirror the separate case management systems of the Federal Court and the Family Court.

The new system has been implemented in the Newcastle, Parramatta, Canberra, Hobart, Melbourne and Dandenong registries. It is intended that all registries will be operating the new system by the end of 2002.

### *Community based primary dispute resolution*

There has been considerable growth during the year in the court's use of community based dispute resolution services. Contracts were made with providers around the country at the beginning of the year. After a slow start, the rate of referral of disputes to the community agencies has expanded to the level anticipated by the funding that has been made available for that purpose. The use of community agencies is greater in some areas than others. The court's view is that community agencies provide a valuable option for litigants and federal magistrates who are seeking a mechanism to assist in the resolution

of a dispute without recourse to litigation. Community agencies also provide a valuable service in assisting litigants to implement orders made after a hearing.

### *The review of the court's first two years of operation*

A review of the court's first two years is being conducted by the government and will be completed in 2002-03. The review will examine matters such as the jurisdiction of the court and the arrangements that have been made for the provision of registry and related services. The court will be making a major submission to the review, which will be critical in determining the future development of the federal judicial system.

The court will assist in the review and has already committed resources to ensure that useful information is available for the reviewers.

The court welcomes the finding of the review, which will come at a critical time in the development of the court as it moves from its start-up phase to one of more established, although expanding, operations.

## **Review by Chief Executive Officer**

### *The staff of the court*

The staff of the Federal Magistrates Service comprises; a national administrative office, which is responsible for financial administration, the administration of court services delivery, legal issues, primary dispute resolution and the development and implementation of the court's strategies, and; associates and deputy associates provide direct support for federal magistrates.

At 30 June 2002, there were 19 federal magistrates and 50 staff (excluding temporary and casual employees), comprising 36 judicial support staff and 14 national administration staff.

### *The court developed robust commercial arrangements for the delivery of courtroom support*

During the year, the court negotiated new arrangements for the delivery of court recording and transcription of proceedings. The arrangements were concluded in cooperation with the Family Court, which has similar requirements. A competitive tender resulted in the appointment of two providers. The selected providers of recording and transcription services have also been engaged by the court to transcribe recordings prepared by federal magistrates in chambers.

Following a similar competitive tender a contract has been negotiated for the delivery of logistical support for the court, especially when on circuit. The arrangements provide, for example, secure transport of court records to regional courthouses.

*Systems were developed to support the production and distribution of the court's judgments in a cost-effective manner.*

The distribution of the court's decisions is an essential element of the court's accountability. By making its decisions readily available the court provides a basic method by which litigants can develop an understanding and appreciation of the court's work and the probable application of legal principles to the facts of their dispute.

The court's decisions are distributed to a range of electronic and print publishers, including the court's web site ([www.fms.gov.au](http://www.fms.gov.au)). It is a critical aspect of the distribution that judgments be made available to the public as soon as possible after the formal delivery of a judgment in court. The court aims to have judgments published electronically within three days from delivery in court.

To assist the court to integrate the production and publication of judgments an Access database has been developed. The database allows the court to monitor the production of reserved judgments from the date of reservation and to maintain a record of publication details. Judgments that have been delivered *ex tempore* are included in the database (from the time that a decision to publish the judgment is made) once settled in a written form.

*The court consolidated its Melbourne accommodation in the Melbourne Commonwealth Law Courts building*

During the past two years the court has occupied accommodation on three levels of the Melbourne Law Courts building. The court has now been able to consolidate all of its accommodation on level 12 of the building after space was vacated by the Family Court.

The new accommodation provides an area for the national administrative office, accommodation for the Chief Federal Magistrate and her associate staff and separate accommodation for the chambers of the Melbourne-based federal magistrates and their associate staff. An upgrade of the Melbourne chambers area, which had been designed for the different requirements of judicial registrars of the Australian Industrial Court, is proposed for the next year. The renovation will provide sufficient accommodation for expansion in the number of federal magistrates located in Melbourne and provide suitable space for visiting federal magistrates and their staff.

*The court participated in projects to improve accommodation in Adelaide, Newcastle, Parramatta, Brisbane and Sydney*

In Adelaide, a project has commenced to provide chambers for federal magistrates on level 7 of the Grenfell Street building. These will be temporary premises pending the construction of the new Adelaide Law Courts building which is due to be completed during 2004. The new accommodation will provide space for the resident Federal Magistrate and her support staff and for visiting federal magistrates and staff.

In Newcastle, the court has provided new furniture for the Federal Magistrate and associate staff to improve the effectiveness of work areas.

In Parramatta, preliminary work has been undertaken to develop suitable accommodation for the needs of the court in future years.

In Brisbane, space has been transferred from the Administrative Appeals Tribunal to the court. That space has been renovated to provide chambers accommodation for an additional federal magistrate and visiting federal magistrates or court staff.

In Sydney, separate chambers are to be constructed for the two resident federal magistrates and their associate staff within the Queens Square joint Law Courts building. At present the two federal magistrates are accommodated in visiting chambers that do not provide sufficient accommodation for their associate staff. The new area will provide a separate area for the court.

#### *A new case management system was implemented in some locations*

Implementation of the court's new case management system, Casetrack, has involved considerable commitment for the court, particularly in terms of staffing and training. The court has made two full-time staff available during the year to work on the modification of Casetrack to meet the specific needs of the Federal Magistrates Service, to coordinate training for federal magistrates and staff and to implement the new system within the organisation.

#### *Performance management program for all court staff*

Staff of the court agreed to participate in a performance management program in the certified agreement that commenced on 1 July 2001. The program was initially implemented for the staff working in the national administrative office and has subsequently been extended to associates and deputy associates working in the offices of federal magistrates.

#### *Information and knowledge management*

In 2001-02, the court employed an Information and Knowledge Manager to provide specialised support in this area. The role involves the development and implementation of an information and knowledge management strategy including information, collection, storage and access policies; privacy compliance; records management policy and practice; library holdings and access to on-line services. It also involves managing the judicial education and staff legal education programs.

#### *New payroll system was implemented*

The Federal Magistrates Service uses relatively inexpensive 'off-the-shelf' software for finance and payroll systems. During 2001-02, the existing payroll system was replaced with Micropay software, which is a payroll system used by many small businesses and a number of small government agencies. The new system will improve leave recording and reporting.

