

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. Federal magistrates take a collegiate approach to court administration. A number of advisory committees were established to provide direction on various aspects of court administration.

Court advisory committees

The federal magistrates are responsible for the administration of the court, subject to some specific matters that are the exclusive responsibility of the Chief Federal Magistrate. Pursuant to section 80 of the *Federal Magistrates Act 1999*, the Federal Magistrates Service is to administer its own affairs (subject to, and in accordance with the Act). In order to facilitate the administration of the court, federal magistrates have established a number of committees that met regularly throughout the year. Most are convened via teleconference either before court or during the lunch break. The committees that have been established are as follows:

- Audit committee
- Business information management committee
- Court users and systems committee
- Ethics committee
- Judgment committee
- Judicial education committee
- Legal (Rules) committee
- Pro bono committee
- Primary dispute resolution committee
- Self represented litigants committee

In addition, federal magistrates meet face-to-face twice a year to discuss issues affecting the operation of the court and develop strategic plans. These meetings usually take place in March and October and include a plenary discussion at which a mix of operational and strategic decisions are made by federal magistrates.

Audit committee

The audit committee is a statutory committee established in compliance with the *Financial Management and Accountability Act*. It 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 2001-02 year. The main issues considered during these meetings related to internal audit reviews undertaken as part of the internal audit plan for 2001-02. These included internal audit reports on revenues, expenses, assets, employee entitlements and travel. The committee also considered other matters associated with the financial management of the Federal Magistrates Service, including the preparation of financial statements, evaluation of the fraud control plan and the approach to risk management.

The committee benefited greatly from the input received from Australian National Audit Office representatives who attended the committee meetings as observers.

Business information management committee

This committee oversees the management of the Federal Magistrates Service business information and systems. It meets monthly via teleconference. Business information includes information technology systems, knowledge management, training and corporate systems.

The core functions of the committee are listed as follows:

- development of business information strategy;
- clarifying, at a high level, the information technology to support the strategy;
- establishing priorities;
- endorsing plans (including the approach, timeframes and costs) to deliver the benefits for the business strategy;
- setting, reviewing and monitoring the information management budget; and
- monitoring developments in knowledge management and information technology.

A primary task of the committee has been to oversee the implementation of Casetrack (a new case management system) throughout the Federal Magistrates Service.

The committee identified the need for an Information and Knowledge Manager. This position has been filled and a survey of information needs was conducted to assess the information technology needs of federal magistrates and staff. Other issues that were considered by this committee over the past year include transcript and videoconference protocols, which have been published on the court's web site, and the usefulness of voice recognition applications. |

Court users and systems committee

This committee is responsible for the development of policies relating to court services. It generally meets each month by teleconference, but committee members have also met in person throughout the year.

Case management and listing matters are referred to this committee for policy direction. In addition, the committee is responsible for advice and policy in relation to Federal Magistrates Service circuits, for the drafting of guidelines in relation to requests for research projects and settling various protocols to facilitate the delivery of court services.

The committee has been involved in overseeing the development and implementation of Casetrack. The committee has also been involved in the development of orders, templates, reporting requirements and the analysis of information needs.

The committee endeavours to develop useful links with user groups who are able to provide feedback on performance and suggestions for improvement. The identification of initiatives for improving client services is seen as an important role for this committee.

A sub-committee was formed to look at the operation of the docket system in the Federal Magistrates Court with the aim of evaluating its effectiveness. The docket system is one way of ensuring a federal magistrate has supervision of proceedings at all stages of the court process, from the first date to the hearing.

Ethics committee

This committee considers ethical issues and provides practical advice in relation to ethical matters. While recognising that the primary responsibility of deciding whether or not a particular activity is appropriate rests with the individual judicial officer, there are times when the guidance of colleagues is useful. The committee seeks to provide practical guidance on the ethical conduct expected of judicial office holders as well as general protocols in relation to matters such as the handling of complaints and protocols for complaints about delays in reserved decisions.

New appointees to the court are provided with the Australian Institute of Judicial Administration's discussion paper on judicial ethics and the *Guide to Judicial Conduct*.

Judgments committee

The Federal Magistrates Service is keen to ensure that its decisions are readily accessible. The judgments committee was established to help achieve this objective and to oversee issues relevant to judgments. The committee developed recommended standards for the timely delivery and publication of judgments.

Most written judgments are published on the court's web site (www.fms.gov.au) and legal research sites such as Austlii. Many decisions have also been published in law reports. One of the roles of the committee is to recommend decisions suitable for publishing. These judgments may include decisions of jurisprudential value or deal with issues of practice and procedure or provide an insight into the broad jurisdiction base of the court.

Considerable time was devoted to the establishment of judgment protocols to assist associates and federal magistrates in ensuring that all judgments are formatted to a standard template that is consistent with the Australian Institute of Judicial Administration's *Guide to Uniform Production of Judgments*.

The production of judgments is primarily the responsibility of federal magistrates and their associates. However, a judgment officer, who is based in Melbourne, has been appointed to provide assistance when required and to provide technical advice regarding publishing issues. Computer facilities were provided to enable remote coaching of associates, covering the areas of technical production, style and monitoring of the internal judgment database.

The committee also had involvement in the development of protocols that reflect appropriate benchmarks for dealing with complaints regarding judgments in the Federal Magistrates Court. During 2001-02, the majority of the court's decisions were delivered well within the benchmark.

Judicial education committee

This committee was convened to provide a coordinated approach to judicial education.

The role of the committee is to oversee the following areas:

- Delivery of education segments at the federal magistrates conferences.
- Judicial orientation for new federal magistrates.
- Review requests for federal magistrates to attend conferences.
- Review applications for participation in legal education programs.

Another role of the committee is to highlight any significant changes in the law.

While having a key role in developing appropriate judicial education specifically aimed at meeting the needs of the Federal Magistrates Service, the committee will also take an interest in the establishment of the National Judicial College of Australia and ongoing professional development for judicial officers generally.

Federal Magistrate Driver has been appointed as a regional coordinator for the National Judicial College of Australia.

Legal (Rules) committee

A significant amount of the work undertaken by this committee has been involved in drafting the rules of the court and prescribed forms. The *Federal Magistrates Court Rules 2001* were released following extensive consultation and took effect from 30 July 2001. The Federal Magistrates Court was mindful of the unique opportunity offered to it in starting afresh and creating new rules consistent with its legislative objectives.

The committee is keen to facilitate ongoing consultation with members of the profession and other stakeholders to ensure the rules are meeting their requirements. Revised rules subsequently came into effect on 18 April 2002. One of the amendments to the rules was the formalisation of the so-called 'two day rule'. The amendment requires federal

magistrates when deciding whether to exercise the discretion to transfer a proceeding to the Family Court to consider, in addition to other factors, whether the proceeding is likely to take longer than two days. The consideration of the additional factor is confined to proceedings for family law and child support.

This committee has developed useful links with comparable Federal Court and Family Court committees and sub-committees. In particular, the Harmonisation of Bankruptcy Rules Committee (Federal Court) and the Rules Revision Committee (Family Court). The Federal Magistrates Service has representation on both these committees which aim to ensure consistency in practice and procedure in the rules and forms of the courts. Such consistency is considered useful in view of the shared jurisdiction in many areas with the Federal and Family Court.

The committee also considered proposed legislative amendments and drafted submissions relevant to jurisdictional issues. In particular it has considered:

- Amendments to the *Family Law Act 1975* which will come into force on 28 December 2002 will enable superannuation interests to be treated as property which can be divided on a marriage breakdown.
- Amendments to the *Family Law Regulations 1984* came into affect on 1 January 2002 and increased the jurisdiction of the Federal Magistrates Court in relation to contested property matters to \$700 000.
- Amendments to the *Migration Act 1958* came into affect on 2 October 2001 and gave the Federal Magistrates Court concurrent jurisdiction with the Federal Court to review visa-related decisions of the Migration Review Tribunal, the Refugee Review Tribunal and the Administrative Appeals Tribunal.
- Recommendations from the Federal Costs Advisory Committee.
- Reports and discussion papers raising issues pertaining to the jurisdiction of the Federal Magistrates Court, prepared by bodies such as the Australian Law Reform Commission, Family Law Council and others.

The committee is grateful for the help and assistance provided throughout the year from the Office of Legislative Drafting.

Primary dispute resolution committee

The role of the primary dispute resolution committee is to develop policy on the delivery of primary dispute resolution (PDR) services of the Federal Magistrates Service. The committee monitored the following projects:

- Contracting of additional services in areas where there were no successful tenderers.
- Implementation of counselling prior to the first court date.
- Conciliation conferences in family law property matters by community based organisations.
- The Federal Magistrates Service's response to the Attorney-General's Department discussion paper, titled, *Raising the Standard: A Quality Framework for Primary Dispute Resolution*.

- The Federal Magistrates Service's response to the report of the Family Law Pathways Advisory Group, titled, *Out of the Maze*.
- Implementation of the recommendations of the Family Law Pathways Advisory Group.
- Referrals to community based organisations.

Pro bono committee

The court established a pro bono scheme due to the growing number of litigants who appear before the Federal Magistrates Court without legal representation. In setting up such schemes, the court is conscious of the demands that are placed upon the profession who agree to act on a pro bono basis. Accordingly, the schemes complement other programs and are not intended to be a substitute for legal aid. Litigants are encouraged to explore other avenues of assistance if available.

The court based pro bono scheme in operation is similar to the Federal Court's program. Part 12 of the *Federal Magistrates Court Rules 2001* sets out rules in relation to the court administered scheme which are similar to Order 80 of the *Federal Court Rules*. Federal magistrates decide whether a person will be referred for assistance, not the litigants.

Referrals will only be made where a federal magistrate believes that representation is appropriate in the interests of the administration of justice. When deciding whether to refer a litigant under the scheme, a federal magistrate may consider the litigant's financial circumstances, their ability to obtain assistance from elsewhere and the nature of the case. Referrals are usually confined to general federal law matters. If a referral is made, a registrar will attempt to engage a barrister who has indicated they may act pro bono.

During 2001-02, the court coordinated a pilot scheme in its Sydney registry. The 'Sydney pilot' consisted of solicitors who would provide initial advice and, in appropriate cases, assist with representation at the client's hearing. It is intended that the pilot scheme will be extended to other registries.

A court committee has been established to facilitate pro bono assistance and this committee works in close consultation with the self represented litigants committee.

The Federal Magistrates Court is grateful for the Federal Court's help in assisting with the administration of the scheme. In addition, it appreciates the generosity of the profession who have given their time voluntarily.

Self represented litigants committee

The role of this committee is to identify issues and implement programs that will assist self represented litigants throughout all stages of the court process. As part of this role, the committee has accepted the recommendation of the Australian Institute of Judicial Administration as set out in its paper, *Litigants in Person Management Plans: Issues for Courts and Tribunal* and will develop a Litigants in Person Plan. It is proposed that a project officer will be employed specifically to prepare such a plan and to ensure information is readily available to assist unrepresented litigants.

This committee also works with other court committees to ensure that the rules and practices of the court facilitate procedural simplicity.

Corporate plan

The 2001-04 corporate plan for the Federal Magistrates Service is based on the overarching goal of providing a simple and accessible venue for the resolution of less complex federal law disputes. To help achieve this goal, the court has identified six key result areas, which are as follows:

- primary dispute resolution;
- public information;
- effective court services;
- technology;
- effective use and management of resources; and
- developing relationships with stakeholders.

Priorities identified within these key result areas are:

- developing systems to manage high workloads;
- providing regional services;
- managing stakeholder expectations;
- developing the relationship between the judiciary and the staff of the court; and
- maintaining the independence of the court.

Risk management

The Federal Magistrates Service has a risk management policy and plan in place. These were developed after participating in a series of workshops on risk management sponsored by Comcover, the Commonwealth's insurable risk scheme and following a process of identifying major risks.

Fraud control and internal audit

A fraud control plan is in place based on a fraud risk assessment covering all aspects of the work of the Federal Magistrates Service. The fraud control plan includes appropriate fraud prevention, detection, investigation, and reporting procedures and processes that meet the needs of the Federal Magistrates Service and comply with the Commonwealth Fraud Control Guidelines. There were no instances of fraud detected during the year and no investigations undertaken.

Internal audit services are provided by Deloitte Touche Tohmatsu. Audits were conducted during 2001-02 relating to: travel, administered and departmental expenses (including credit card usage), payroll and leave entitlements. No significant control or compliance deficiencies were identified.

The APS code of conduct

The Australian Public Service (APS) values and code of conduct are central to the terms and conditions of staff of the Federal Magistrates Service as reflected in the Certified Agreement 2001-03.

The APS values and code of conduct are also promoted in the Federal Magistrates Service through induction programs, on the court's intranet, and through promotional material provided by the Australian Public Service Commission.

A major initiative during 2001-02 relating to the APS values and code of conduct was the introduction of a staff performance management and development program, which linked to values associated with professionalism, integrity, teamwork and innovation.

Senior appointments

The Chief Executive Officer of the Federal Magistrates Service is Peter May. The Chief Executive Officer assists the Federal Magistrates Service in conducting its administrative affairs. The Chief Executive Officer has the authority to exercise powers of an agency head under the *Public Service Act 1999* and 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

The Remuneration Tribunal determines remuneration for the federal magistrates and the Chief Executive Officer. During 2001-02, the senior executives were remunerated at the Australian Public Service Executive Level 2 range, in accordance with the *Federal Magistrates Service Certified Agreement 2001-03*. There are no employees at the Senior Executive Service level.

The performance management program for staff of the Federal Magistrates Service provides for performance linked advancement within salary ranges at various levels. The higher pay point then becomes the employee's nominal salary. If employees are at the top point of the salary range for their level there is no further advancement in salary, but those employees are eligible for a 3 per cent performance based bonus. Performance bonuses for 2001-02 were paid following the end of the reporting period. The aggregate amount of performance pay was \$11 986, in relation to six employees. The Chief Executive Officer was also paid a performance bonus in 2001-02 for the 2000-01 financial year, of \$18 100, in accordance with a determination made by the Remuneration Tribunal.

Financial performance

The Federal Magistrates Service is a prescribed agency under the *Financial Management and Accountability Act 1997*, effective from 1 July 2000.

The major source of revenue for the operations of the Federal Magistrates Service is an appropriation from government. The appropriation amount for 2001-02 was \$11.338 million.

During 2001-02, direct operating expenses were \$11.3 million. The major expenses were \$7.1 million in respect of employee expenses and \$3.9 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 it 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 \$9.9 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 (not retained to offset for Federal Magistrates Service operating costs) mainly relating to court fees. The amount received in 2001-02 was \$8.7 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 also provides information technology infrastructure and support services to the Federal Magistrates Service. A memorandum of understanding between the courts supports these arrangements.

Management of human resources

Certified agreement

The terms and conditions for staff appointed under the *Public Service Act 1999* are included in a certified agreement which 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; and
- emphasis on the APS values and code of conduct.

Fifty staff, including part-time staff, were covered by the certified agreement as at 30 June 2002. Staff engaged through employment agencies on a temporary basis are paid by the agency and are not covered by the Federal Magistrates Service certified agreement.

The salary ranges for staff are shown in part eight of this report. Staff are eligible for membership of the Commonwealth public sector superannuation schemes. Apart from assistance with study, there are no fringe benefits available to staff engaged by the Federal Magistrates Service under the Certified Agreement or under Australian Workplace Agreements.

Australian workplace agreements

During 2001-02, the Federal Magistrates Service engaged suitably qualified and experienced legal professionals to perform the statutory functions of registrar on a sessional basis to deal primarily with undefended dissolution of marriage proceedings (excluding certain orders relating to children). These positions are filled on a casual basis at a level equivalent to an Executive Level 2 and under terms and conditions specified in individual Australian Workplace Agreements, rather than under the Federal Magistrates Service Certified Agreement 2001-03. Four sessional registrars were a party to Australian Workplace Agreements as at 30 June 2002.

Workplace diversity

The Federal Magistrates Service has a workplace diversity plan in place, which was signed by the Chief Federal Magistrate and Chief Executive Officer and which is available to all staff on the court's intranet.

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 court is co-located with other federal courts and participates in a national building management committee, which addresses building access issues on a periodic basis.

Occupational health and safety

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

The Federal Magistrates Service has issued an occupational health and safety handbook for staff which highlights the need to maintain a safe and healthy work environment and identified staff roles and responsibilities in relation to health and safety.

Initiatives undertaken during 2001-02 included the following:

- Ergonomic assessments conducted by CRS Australia on an identified needs basis. These assessments provided staff with advice and information on workstation set-up, working posture, stretching and work breaks. Where necessary, additional or replacement equipment has been provided.
- An agreement with a professional employee assistance provider was established to provide access for staff and their immediate families to voluntary, free and confidential counselling about issues which affect their lives, work performance or job satisfaction.
- A session on managing stress was included in the annual conference of associates and deputy associates.
- The certified agreement consolidated flexible working arrangements to assist in managing work and family issues and staff are encouraged to access recreation leave provisions for a reasonable rest break each year.

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 Family Court's marshal provides security advice and management for Federal Magistrates Service. During 2001-02, security assessments of the homes of new federal magistrates were 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 2001-02.

Training and staff development

The main training focus in 2001-02 has been on the introduction of the new case management system, Casetrack. Training on the system has been provided progressively to all staff.

The Federal Magistrates Service provided training through external providers on frequently used computer applications, particularly Lotus Notes and Microsoft Office applications. Training was also conducted for time management and use of the court's intranet. The Federal Magistrates Service supports continuing professional development through staff attendance at seminars and conferences and study assistance.

The court's study assistance program provides financial assistance and access to leave for studies relevant to the objectives of the organisation.

The total amount spent on externally provided training (including seminars and conferences), study assistance and computer based training in 2001-02 was approximately \$52 000. This figure excludes staff wage costs for the time spent at training.

During 2001-02, two conferences were held for associates and deputy associates of federal magistrates. These conferences provided training in a range of matters associated with the work of the court and provided the opportunity for staff to exchange ideas on better practice and innovation.