

PART TWO: YEAR IN REVIEW

REVIEW BY THE CHIEF FEDERAL MAGISTRATE

The Federal Magistrates Court has continued to demonstrate the important role of an independent lower level court within the federal system during the past year. The work of the court has expanded considerably in direct response to community demand and the government has now announced that four more federal magistrates will be appointed. The proposed appointment of additional federal magistrates, to be located in Adelaide, South East Queensland, Melbourne and Newcastle, will take the total number of federal magistrates to 23. The court welcomes the appointments, which will significantly improve the court's capacity to meet the growing demand for its services.

GROWTH IN DEMAND FOR THE SERVICES OF THE FEDERAL MAGISTRATES COURT

At the time of the last annual report about 30 per cent of all family law children's and property applications, most bankruptcy and a relatively small amount of migration work constituted the bulk of the court's workload. The character of the court's workload has changed considerably in the intervening year.

Over half of all migration matters and more than 40 per cent of family law children's and property applications are now completed in this court. These two areas of activity now provide the core of the court's hearing workload. It has been apparent to the court for some time that at least half of all family law work commenced in federal courts is suitable for a lower level court. Similarly, a significant part of the workload in relation to the review of migration decisions, which has expanded dramatically in the last year, appears to be suited to consideration in a lower level court. The only constraint on the court's capacity to undertake a greater volume of work in these and other areas is the availability of sufficient judicial resources.

Additional judicial capacity will assist the court to provide better services in regional Australia, including the significant upgrading of our support for major regional centres.

SIMPLE AND ACCESSIBLE COURT PROCEDURES

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. Higher level court procedures are designed for the conduct of more complex proceedings.

The court's procedures are suitable for the management of less complex matters and include:

- ~ 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
- ~ 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
- ~ Availability of video links for witnesses without the requirement for a written application and affidavit.

THE MEASUREMENT OF THE COURT'S EFFICIENCY

The need to identify appropriate workload indicators was considered by the court in the context of discussions about appointing federal magistrates or superior court judges. Indicators are essential when comparing the workloads of judicial officers at various levels within the federal judicial system. Indicators also allow workloads and potential changes to workloads to be better managed and to provide appropriate benchmarks for regular review of achievements.

The nature of judicial work cannot be measured simply by counting the number of files opened or applications commenced. It is necessary to make a more detailed analysis of the applications that actually reflect the demands on judicial time.

The work of federal magistrates and superior court judges is driven substantially by applications for final orders. In family law that means applications for final orders about children or property, but also includes some ancillary applications such as applications related to the contravention of orders (including the contravention of orders about children) and applications related to child support. In the general federal law jurisdictions nearly all applications, except bankruptcy proceedings, require some judicial time. Registrars, rather than federal magistrates, resolve most bankruptcy matters. It is exceptional for a migration matter to be resolved without a hearing and a delivered judgment. Due to the current state of the law, migration hearings are more time consuming than they have been in the past.

High volume applications such as applications for divorce, bankruptcy and interim orders in family law matters are not a source of significant judicial workload in this court because registrars generally deal with such matters, or most applications resolve themselves without a hearing (such as interim work). The number of interim applications has steadily decreased over the past 12 months. An interim application is filed in combination with less than 90 per cent of final order applications and a response is filed in less than a third of those matters. Most interim applications relate to children's matters.

Improvements in the court's capacity to analyse workload data have arisen for two reasons. The first is that improved data is now available through Casetrack, which was developed as a case management system by the Family Court and is available to the Federal Magistrates Court. Casetrack has proved to be a powerful tool for collecting operational information about the court's work – although much still needs to be done to build the systems to interrogate that data effectively.

Secondly, during the past year a review of the court's operations was conducted by three Commonwealth departments, assisted by this court, the Family Court and the Federal Court. Qualitative information and analysis about the court's work was essential for the conduct of the review.

PUBLICATION OF THE COURT'S DECISIONS

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. Occasionally, matters before the court have been the subject of public discussion and media comment. The court has a role in ensuring that accurate information is made available to contribute to informed debate and to ensure that the work of the court and its decisions are not misconstrued. The court publishes most of its judgments on its web site although not every judgment is published in that way.

The court's judgments committee examines judgments to determine whether there is some value in their publication. The primary value of publication is to inform the public about the work that the court does and how decisions are made. Accordingly, the judgments published on the court's web site represent the court's work rather than act as a repository of judgments that are considered to be important as legal precedents – the traditional function of a law report. Legal precedent judgments are generally found in the reported judgments of the superior courts.

Judicial decision-making involves careful application of the law to the facts presented in each case. It does not involve the application of some form of corporate policy or a general rule to similar types of matters. Each case must be decided individually and according to law. For this reason, the court believes that it should publish as many

decisions as possible in order to show the full range of issues that come before the court and the matters that are considered by federal magistrates in those proceedings.

The media demands on the court are varied. 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.

The number of decisions that have been published during the year provides one indication of the court's output. The preparation of written reasons for decisions is a complex and time consuming task and, therefore, not all decisions are published. The provision of adequate time for the preparation of written reasons for decision, including the essential research, is often underestimated. In reaching a balance between time in court and time required for research and writing, the court now provides federal magistrates with 22 days a year for judgment writing. This allocation will be kept under review.

Many of the court's reasons for decisions 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 897 written judgments, of which, 728 are available on the court's web site. Almost all written judgments in the general federal law jurisdictions were published, together with just over half of the family law and child support judgments.

THE TIMELY DELIVERY OF RESERVED JUDGMENTS

It is always a matter of considerable concern when reserved judgments are not delivered promptly. The court has established procedures that enable appropriate enquiries to be made about the preparation of judgments in a way that does not compromise the independence of the judicial process. In general, those arrangements involve the channelling of requests for information about overdue judgments through the state or territory legal professional bodies.

Thirty-one complaints were received during the year regarding the timely delivery of the judgments.

Information about the court's benchmark for the delivery of reserved judgments is provided in the judgments committee overview in part four.

WEB-BASED INTERACTIVE DIVORCE APPLICATION

The court has developed a web-based interactive form for divorce applications with the aim of developing a capacity to provide electronic access to the court and to improve the quality of information that is provided to the court.

It is expected that in 2003-04 nearly all applications for divorce (except in Western Australia) will be filed in the Federal Magistrates Court. In some locations up to 75 per cent of divorce applications are completed by the applicant – without the assistance of a lawyer. That is understandable because divorce applications rarely raise a legal issue – the primary question to be decided is whether the parties have been separated for 12 months.

Many applications completed are handwritten and some are difficult to read. There is an error in about one-third of applications. The common errors are failure to complete essential information or the incorrect provision of information, for example, providing the wrong date of marriage.

The interactive form has been designed to reduce the frequency of errors by ensuring that all mandatory fields are completed before the application form can be printed and to provide a legible application. The form is being trialed in the Canberra and Dandenong registries before being made more widely available.

This is not an e-filing project. The output of the interactive form is currently a printed form that must be filed at a registry in the usual way. The project has, however, provided some indication of the problems that are likely to be encountered in efforts to develop an e-filing capacity for court lodgements.

SELF REPRESENTED LITIGANTS

Many people represent themselves in court – across all jurisdictions, but particularly in the areas of family law, child support, migration and bankruptcy. The court is committed to addressing the needs of self represented litigants and has employed a project officer to exclusively identify issues and develop programs that are relevant to people representing themselves.

In addition, the court has established a pro bono scheme similar to the scheme that operates in the Federal Court. This has generally been confined to assisting self represented litigants involved in migration matters. In Melbourne, assistance to migration litigants is also available through Victoria Legal Aid, which has established a Migration Duty Solicitor Scheme.

More information about self represented litigants is in part three.

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 2001. 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 Attorney-General's Department provided supplementary funding of \$150 000 during the year.

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 after a hearing to help implement orders.

A review of the use of community agencies will be conducted during 2003 - 04, prior to the commencement of a new tender cycle.

The existing deeds of standing offer have been extended for a year to provide time for the review and tender process.

THE REVIEW OF THE COURT'S FIRST TWO YEARS OF OPERATION

The Federal Government conducted a review of the court's first two years during 2002-03. The review examined 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 made a major submission to the review. The report of the review will be provided to the government and had not been released to the court at the end of the reporting period.

The Australian National Audit Office has indicated that it will conduct a performance review of the Federal Magistrates Court and the Family Court during 2003-04.

REVIEW BY CHIEF EXECUTIVE OFFICER

THE STAFF OF THE COURT

The staff of the Federal Magistrates Court 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. Administrative staff include associates and deputy associates who provide direct support for federal magistrates.

At 30 June 2003, there were 19 federal magistrates and 53.4 full-time staff (excluding temporary and casual employees), comprising 36.6 judicial support staff and 16.8 national administration staff. In addition, there were seven sessional registrars engaged under Australian Workplace Agreements.

This can be compared to staffing at 30 June 2002, when there were 19 federal magistrates and 50 staff (excluding temporary and casual employees), comprising 36 judicial support staff and 14 national administration staff.

The Australian Industrial Relations Commission certified the court's second certified agreement on 19 June 2003. It came into effect on 30 June 2003 when the previous agreement ended. The agreement provided for salary increases of 11 per cent for all staff over a three year period.

IMPROVED ACCOMMODATION IN ADELAIDE, NEWCASTLE, PARRAMATTA, BRISBANE AND SYDNEY

In Adelaide, a project was completed to provide temporary chambers for federal magistrates on level seven 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. Further accommodation will be needed, on the same temporary basis, during the next year when a second federal magistrate is appointed in Adelaide.

In Newcastle, the Family Court has provided new judicial chambers, which will provide space for the proposed second appointee and staff.

In Parramatta, work has been undertaken to develop suitable accommodation for current support staff and for the needs of the court in future years. That work will be completed early in the next financial year.

In Brisbane, office 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 were completed for the two resident federal magistrates and their associate staff within the Queens Square joint Law Courts building.

PERFORMANCE MANAGEMENT PROGRAM FOR ALL COURT STAFF

All staff of the court now participate in a performance management program that is established under the Federal Magistrates Court's certified agreement. The program was extended to the staff providing direct support to federal magistrates during the year.