

PART TWO: YEAR IN REVIEW

REVIEW BY CHIEF FEDERAL MAGISTRATE

EXTERNAL REVIEWS OF THE COURT AND ITS ADMINISTRATION

During 2003-04, an inter-departmental committee reviewed the court's first three years of operation. The committee was represented by the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the Department of Finance and Administration.

A performance audit was conducted by the Australian National Audit Office which reviewed the court's client service, the provision of primary dispute resolution and the court's coordination with the Family Court.

Other reviews during the year were as follows:

- ~ A discussion paper about the future development of the federal court system, which was prepared by the Attorney-General's Department
- ~ An inter-departmental taskforce conducted a review of the judicial review of migration decisions
- ~ The House of Representatives Standing Committee on Family and Community Services conducted an inquiry into child custody and related family law issues

The outcomes of the reviews are expected to impact on the operations of the Federal Magistrates Court.

In response to a review of the judicial review of migration decisions announced in the 2004 Federal Budget, the government announced the appointment of eight federal magistrates. The appointments will ensure that the court has a greater capacity to reduce the existing backlog of migration review applications, especially those that relate to protection visa applications. They will also allow the court to better handle the ongoing migration review workload.

NEW APPOINTMENTS TO THE COURT

Four federal magistrates were appointed in 2003-04. Three were appointed in Brisbane, Adelaide and Newcastle early in 2004. The fourth appointment was made in Melbourne, in May 2004. The appointments brought the court's membership to 23, more than double the number of federal magistrates on the court's first day of operation on 2 July 2000.

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FEDERAL MAGISTRATES COURT RULES 2004

Amendments to the Federal Magistrates Court Rules came into effect from 3 November 2003 and 29 March 2004. The second set of amendments were necessary because of the Family Court's new Family Law Rules, which commenced on the same day. The court had in the past adopted many of the previous Family Law Rules in order to avoid unnecessary duplication of Rules for the conduct of family law and child support litigation. That approach was not possible with the introduction of the new Family Law Rules as an integral part of those Rules is the prescription of the Family Court's case management Rules, which are designed for the conduct of more complex litigation.

INTERACTIVE DIVORCE APPLICATION

On 29 March 2004, the court launched its interactive divorce application form. The interactive application form is a web-based question and answer program that takes an applicant through all of the questions essential to make an application for a divorce.

Major benefits of the interactive process include a substantial reduction in the frequency of errors in the completion of divorce applications. The interactive application is hosted on the internet by the Legal Aid Commission of Tasmania.

The interactive form is being used by approximately 20 per cent of applicants for divorce.

COURT INFORMATION PRODUCTS

In response to a growing demand for information about the court and its operations, information sheets and brochures were developed for a wide range of court users. Some of the brochures provide information about contravention applications and variation of parenting orders, which are complex issues often misunderstood by litigants.

Information sheets were published to address frequently asked questions and to cover topical issues such as the release of new Rules and forms.

CASETRACK

A project to implement the case management system, Casetrack, for use in the court's general federal law work commenced during this year. Casetrack has been successfully used in family law since 2002-03. This court will benefit from the introduction of Casetrack for general federal law work, as the court will then operate all case management on a single system.

TIMELY DELIVERY OF JUDGMENTS

The former Chief Federal Magistrate commented last year on the need for the court to provide its judgments promptly. The court has established a standard for the timely delivery of judgments. During the past year the court's capacity to meet that standard has been affected by the considerable demand of the court's filings, which have been greater than the court's capacity to finalise matters. The new appointments made in the second half of the financial year will allow the court to finalise outstanding matters and achieve a balance between hearing matters and finalising them.

One way that the court can ensure timely delivery of judgments is to deliver them orally at the time of the hearing. Federal magistrates do that as often as is practical. Some applications, however, do not lend themselves to *ex tempore* delivery of decisions. In particular, the decisions in migration matters often involve highly technical legal issues that are likely to be the subject of appeal. A written copy of the decision is provided to the appeal court in any matter that is appealed. Accordingly, it is necessary that most migration litigation decisions be provided in writing.

It has been difficult for the court to deliver timely decisions in locations where the volume of work has been substantially greater than could be handled by the available judicial resources. The increase in judicial numbers will provide the court with a capacity to more effectively respond to existing levels of demand.

FAMILY REPORTS

It has been a challenge for the court to meet the requirement of providing family reports. Family reports are prepared by experts to provide evidence to the court about the welfare of children. They are an essential part of the process in determining where the best interests of the children lie.

Family reports are provided in three ways. Firstly, they are prepared at no cost to the litigants by a Family Court employee. Secondly, they are prepared, again at no cost to the litigants, by a counsellor engaged by the court. Thirdly, they are prepared by an expert, whose fees are paid for by one or both of the parties. The primary source of reports has been the Family Court. The volume of reports provided by the Family Court, however, has not been increased in response to the growing proportion of children's matters that are heard in the Federal Magistrates Court. The court has been advised that it can have only a fixed number of reports in each year, with that number being based on the number of reports provided by the Family Court in 2002-03. This has placed great pressure on the conduct of litigation in the court and on the court's finances, because the availability of reports provided by Family Court employees are such a significant part of the total number

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of reports used by the court. In the absence of an adequate supply of reports provided by Family Court employees, the court has had little choice but to transfer much of the cost of reports to litigants and legal aid commissions. However, the court has also had to divert \$605,124 to provide family reports in 2003-04.

SELF-REPRESENTED LITIGANTS

Self-represented litigants form an important element of the court's litigants. For some types of applications, such as divorce and contravention applications, as much as 70 per cent of applicants are not represented by a lawyer. For other types of applications there is a greater use of lawyers.

Self-represented litigants are more likely to require a hearing rather than reaching a compromise through negotiation. During a hearing, litigants representing themselves generally require more of the court's time to present their case than litigants who have legal representation.

Whether a litigant is represented or not, the court cannot step into the role of legal adviser. Accordingly, the court's information products are aimed at giving all litigants a better understanding of what the court can do and how it operates. The court's procedures are simplified and attempt to strike a balance between providing a fair system and hearing for all parties and enabling self-represented litigants to best present their legal argument to the court.