

## **PART FOUR: ADMINISTRATION AND GOVERNANCE**

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### **BIENNIAL FEE INCREASE**

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Pursuant to regulations 14 and 15 of the Federal Magistrates Regulations 2000, from 1 July 2004, fees payable in the Federal Magistrates Court increased in accordance with movements in the consumer price index.

### **COURT ADVISORY COMMITTEES**

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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 89 of the *Federal Magistrates Act 1999*, the Federal Magistrates Court 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. The committees are as follows:

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

### **AUDIT COMMITTEE**

The *Financial Management and Accountability Act 1997* requires the Chief Executive of each Commonwealth agency to establish an Audit Committee to assist that Chief Executive in the financial governance of their agency. The membership of the court's audit committee has been constituted to comprise two federal magistrates, the registrar of the court and an independent (external) Chairman. The committee also benefits greatly from the input provided by Australian National Audit Office representatives who attend audit committee meetings as observers.

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The committee met on three occasions during 2003-04. The main issues it considered included: assessing the adequacy of the court's internal audit program; scrutinising the results of the various audits that were carried out on the court's administrative activities and, importantly, management's subsequent performance in implementing auditors' recommendations. The committee also monitored the court's adoption of and compliance with appropriate frameworks for risk management, fraud control and financial reporting.

## BUSINESS INFORMATION MANAGEMENT COMMITTEE

Business information includes information technology systems, knowledge management, training and corporate systems.

During 2003-04, the following key issues were considered by the committee:

- ~ Roll out of computer replacements
- ~ Acquisition of Dell computer and redeployment of Compaq notebooks
- ~ Installation of new software for Dragon Dictate (voice recognition package)
- ~ Transcription arrangements
- ~ Web-based interactive application for divorce
- ~ Casetrack roll-out (general federal law)
- ~ Digital recording equipment (circuit locations)
- ~ Network connection in Sydney

## COURT USERS AND SYSTEMS COMMITTEE

This committee assists in the development of policies relating to court services.

Of particular significance has been the ongoing oversight of the case management system, Casetrack.

The committee has made useful suggestions to enhance the reporting capabilities of the system, particularly in the context of individual docket management. The capacity of the system to provide useful statistical data on the overall performance of the court, is also an issue which the committee has considered.

The development of guidelines for the use of video or audio links, has been an ongoing issue, which the committee is pursuing in the context of similar guidelines being developed by the Federal Court and the Family Court.

In view of the increase in the divorce workload of the court, a divorce sub-committee has been established to consider practices and processes in conjunction with the legal (Rules) committee.

Another role of the committee has been to oversee registry performance and make recommendations for improvements. A key role of the committee is the oversight of the memorandum of understandings between the courts. In addition, it is responsible for recommendations resulting from a report by the Australian National Audit Office.

### JUDGMENTS COMMITTEE

This committee oversees the management of the court's judgments and provides recommendations on what decisions should be published. The court aims to have all written decisions available in electronic form through the court's website and other key legal research sites. The court is grateful to the Australasian Legal Information Institute for providing a readily accessible and comprehensive library of the court's decisions.

During 2003-04, 41 decisions were reported in law reports and approximately 1256 decisions were published on the court's website. The published decisions broadly reflect the court's workload in the various jurisdictions, however, in many family law and child support cases no written reasons are produced. During 2003-04, 482 decisions published on the court's website were in the migration jurisdiction, 445 in family law, 84 in bankruptcy, 20 in human rights, 59 in child support, 21 in administrative law, 1 in privacy, 3 in copyright and 13 in trade practices. Other decisions related to matters of practice and procedures.

Other achievements of the committee included:

- ~ Protocols for publication of family law decisions were reviewed as a result of amendments to section 121 of the *Family Law Act 1975*
- ~ Met with the major law publishers to discuss distribution processes
- ~ Completed a list of catchwords for the benefit of federal magistrates and their associates
- ~ Oversaw the development of two fact sheets regarding the court's judgment and appeal process
- ~ Approved changes to the court's standard template for judgments which is consistent with the Australian Institute of Judicial Administration's *Guide to Uniform Production of Judgments*

Managing the delivery of reserved judgments during a time of rapidly expanding jurisdiction and workload continued to present a challenge for the court. Over 1000

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written judgments were delivered during the year, many of which were reserved judgments. The court received 60 complaints during the year concerning overdue judgments.

In September 2003, the court adopted the following protocol concerning such complaints.

### COMPLAINTS REGARDING OVERDUE JUDGMENTS

Where a reserved judgment has not been delivered within eight weeks of the hearing completion or the receipt of written submissions, represented parties may approach the President of their local Law Society or Bar Association who should write to the Chief Federal Magistrate.

Self-represented litigants should write directly to the Chief Federal Magistrate.

Complainants will be assured of anonymity and the complaint will be treated in confidence.

If the complaint is about a judgment of the Chief Federal Magistrate, the letter will be referred to the Chair of the Judgments Committee.

The protocol is not intended to inhibit parties or their legal representatives making an informal enquiry of a federal magistrate's associate concerning the timing of the delivery of a reserved judgment. With the appointment of additional federal magistrates it is possible to provide some relief to federal magistrates to ensure they can have time out of court to deal with outstanding decisions.

Managing the delivery of the court's reserved judgments will be a high priority for the court over the coming year.

### JUDICIAL EDUCATION COMMITTEE

The judicial education committee has met regularly throughout the year.

Some of the key work of the committee has been:

- ~ Preparation of an orientation and education program for new federal magistrates
- ~ Developing the protocol for federal magistrate's study tours
- ~ Assessment and re-prioritising of library services and book allocation for federal magistrates
- ~ Settling a recommended judicial education program for the October Plenary meeting of federal magistrates

In addition, the committee has overseen presentations made by federal magistrates at various conferences throughout the year.

As a newly established court with a diverse and increasing jurisdictional base, significant importance is placed upon providing new federal magistrates with training upon appointment and on a continuing basis. The committee has sought feedback from the newer members of the court to ensure that the program which has been developed is relevant to their needs. This program includes placement in the Melbourne registry for a week and thereafter placement in a registry other than the home registry with provision for a mentor.

The committee continues to develop proposals for the educational component of the plenary meeting of federal magistrates and is presently developing segments devoted to judgment writing as well as jurisdictional overviews.

The ongoing supervision of library acquisitions / subscriptions is an important component of the work of the committee. A survey was conducted of the purchases with a view to avoiding duplication and to ensure sharing of resources where appropriate. Considerable cost savings have been achieved by withdrawal of 'non performing' services and elimination of over provision of titles on a whole of registry basis. The committee has been well served by the court's information and knowledge manager.

#### LEGAL (RULES) COMMITTEE

The role of the legal (Rules) committee is to review the court's Rules ensuring that they continue to assist the court to operate informally and efficiently. The Rules are regularly reviewed to accommodate new areas of jurisdiction.

The committee was heavily involved in amendments that were made to the Federal Magistrates Court Rules 2003, resulting in *Federal Magistrates Court Amendment Rules 2003 (No 1)* and *Federal Magistrates Court Amendment Rules 2004 (No 1)*.

#### FEDERAL MAGISTRATES COURT AMENDMENT RULES 2003 (NO 1)

These amendment Rules came into effect on 3 November 2003. The amendment Rules made some miscellaneous changes. Of significance was the inclusion of Rules to facilitate the legislative changes permitting the splitting of superannuation interests on marriage breakdown. In particular the requirement for full and frank disclosure in relation to any superannuation interest of a party and Rules to facilitate the procedural fairness requirements.

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### FEDERAL MAGISTRATES COURT AMENDMENT RULES 2004 (NO 1)

The committee considered what changes were to be made to the *Federal Magistrates Court Rules 2001* (FMC Rules) as a consequence of the changes to the Family Law Rules which took effect from 29 March 2004. On that date, the now repealed *Family Law Rules 1985* were completely replaced by the *Family Law Rules 2004*.

There was a need to amend the FMC Rules to retain the operation of the repealed Family Law Rules or adopt the replacement rules.

Consistent with the court's earlier policy, it sought to ensure there was not an unnecessary variation between the forms used in family law proceedings in the courts. However, it was not possible to achieve a single set of forms that could be interchanged in each of the courts.

The *Legislative Instruments Act 2003*, which is of significance to this court, received royal assent during the year but is not expected to come into operation until 1 January 2005. Although Rules of Court are not legislative instruments for the purposes of the Act, they are treated as if they were legislative instruments by express amendment of the legislation providing for them to be made. One of the key reforms introduced by this Act is the establishment of an electronic Federal Register of Legislative Instruments to provide access to legislative instruments.

### PRIMARY DISPUTE RESOLUTION COMMITTEE

The role of the primary dispute resolution committee is to develop policy on and monitor the delivery of primary dispute resolution (PDR) services of the Federal Magistrates Court.

During 2003-04, the committee monitored the following projects:

- ~ Implementation of the recommendations of the Family Law Pathways Advisory Group, in particular, the membership of the PDR Coordinator in various projects which have been implemented across Australia
- ~ Referrals to community based organisations
- ~ Conciliation conferences in family law property matters conducted by Relationships Australia in Melbourne and Brisbane
- ~ Referral of family reports to external report writers
- ~ Provision of family reports by the Family Court
- ~ The development of a new PDR brochure
- ~ The performance audit by the Australian National Audit Office
- ~ A proposal by the Victorian Bar for a trial scheme for external mediation

- ~ The evaluation of PDR referrals to community based organisations
- ~ The development of a new Marriage, Families and Separation brochure

### SELF-REPRESENTED LITIGANTS COMMITTEE

The role of this committee is to address and monitor issues affecting self-represented litigants. The committee met on a regular basis to discuss issues concerning self-represented litigants. The committee's interest in self-represented litigants extends across all jurisdictions of the court.

The committee played an active role in monitoring and providing invaluable input into the development and research phase of the 'day in the life' project. The committee supported many of the recommendations made in the report and will continue to manage the implementation of the report's recommendations.

During 2003-04, the committee reviewed existing court publications and oversaw the development of new court brochures and fact sheets. The committee has ensured that all new publications meet the needs of self-represented litigants and avoid the use of legal jargon.

The committee promoted new assistance programs for self-represented litigants and continued to strengthen relationships with existing legal aid commissions and other services that provide support to self-represented litigants.

The committee will continue to develop and monitor the following projects:

- ~ Self representative statistics
- ~ Contravention pilot in Brisbane
- ~ Website links for self-represented litigants
- ~ Court brochures and fact sheets
- ~ National duty lawyer services
- ~ Identify new target areas or issues concerning self-represented litigants in the court

## CORPORATE PLAN

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The 2004-06 corporate plan for the Federal Magistrates Court is based around an overall goal of providing a simple and accessible venue for the resolution of less complex federal law disputes. It identified four key result areas:

- ~ Delivery of dispute resolution services
- ~ Building organisational capacity
- ~ Effective use and management of resources
- ~ Developing relationships with key 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
- ~ Maintaining the independence of the court

Federal magistrates meet biannually to consider strategic planning issues and to review strategic directions for the court. Key strategic goals for the next five years include:

- ~ Delivering affordable, user friendly and accessible justice for all parties
- ~ Being a broadly-based, multi-jurisdictional court, dealing with less complex federal matters
- ~ Achieving growth necessary to meet increasing demand by the end of this next developmental period
- ~ Developing robust court-wide practices, procedures and systems to benefit all users

Organisational objectives of the court are linked to individual performance of staff through the performance management program.

## RISK MANAGEMENT

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The Federal Magistrates Court has implemented a risk management policy and plan.

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.

During 2003-04, the court received an independent report from Deloitte Touche Tohmatsu on a review of the system the court uses for identifying and managing risks, including a review of the court's fraud risk assessment and fraud control plan. The review found that the risk management framework, for both business risk and the more specific area of fraud risk, meets current better practice and the Commonwealth's Fraud Control Policy and guideline standards.

## FRAUD CONTROL AND INTERNAL AUDIT

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A fraud control plan is in place based on a fraud risk assessment covering all aspects of the work of the Federal Magistrates Court. The plan was revised in 2004 based on an updated fraud risk assessment. The fraud control plan includes appropriate fraud prevention, detection, investigation, and reporting procedures and processes that meet the needs of the Federal Magistrates Court and comply with the Commonwealth Fraud Control Guidelines.

Internal audit services are provided by Deloitte Touche Tohmatsu. Audits were conducted during 2003-04 relating to: expenses, leave entitlements, payroll and allowances, fixed assets and GST administration. No control or compliance deficiencies involving unacceptable risk were identified.

## THE APS CODE OF CONDUCT

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The APS values and code of conduct are central to the terms and conditions of staff of the Federal Magistrates Court as reflected in the Certified Agreement 2003-06.

The APS values and code of conduct are also promoted in the Federal Magistrates Court through induction, on the intranet, and through a performance management and development program linked to values associated with professionalism, integrity, teamwork and innovation.

## SENIOR APPOINTMENTS

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The Chief Executive Officer of the Federal Magistrates Court is Peter May. The Chief Executive Officer assists the Federal Magistrates Court 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 Court comprises:

Adele Byrne, Registrar.

Brian Scammell, Chief Finance Officer.

Steve Agnew, Coordinator of Court Services.

Susan Cibau, Coordinator of Primary Dispute Resolution Services.

## REMUNERATION

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The Remuneration Tribunal determines remuneration for the federal magistrates and Chief Executive Officer.

During 2003-04, the senior executives were remunerated at the Australian Public Service Executive Level 2 range, in accordance with the Federal Magistrates Court Certified Agreement 2003-06. There are no employees at the Senior Executive Service level.

The performance management program for staff of the Federal Magistrates Court provides for performance linked advancement within a salary range 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 three per cent performance based bonus. Performance bonuses for 2003-04 were paid following the end of the reporting period. The aggregate amount of performance pay was \$24,979 in relation to 19 employees. The Chief Executive Officer was paid \$20,205 in 2003-04 for the 2002-03 financial year in accordance with a determination made by the Remuneration Tribunal.

## FINANCIAL PERFORMANCE

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The Federal Magistrates Court is a prescribed agency under the Financial Management and Accountability Act 1997.

The major source of revenue for the operations of the Federal Magistrates Court is an appropriation from government. The appropriation amount for 2003-04 was \$15.749 million. During 2003-04, operating expenses were \$14.9 million. This resulted in an operating surplus of \$0.9 million. The major expenses in 2003-04 were \$9.2 million in respect of employee expenses, \$5.4 million relating to supplier payments, and \$0.3 million in depreciation.

The Federal Magistrates Court relies on infrastructure and support provided by the Family Court and Federal Court. In particular, those courts provide registry services for the Federal Magistrates Court. Both courts have supplied estimates of resources provided free of charge to the Federal Magistrates Court.

The Federal Magistrates Court receives revenue on behalf of the government (administered revenue not available to offset Federal Magistrates Court operating costs), mainly for court fees. The amount received in 2003-04 was \$11.2 million.

## ARRANGEMENTS WITH THE FEDERAL COURT AND THE FAMILY COURT

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Arrangements were made in 2000 by the Chief Federal Magistrate for the Federal Court and the Family Court to carry out certain functions on behalf of the Federal Magistrates Court. Supporting arrangements have been made, under section 100 of the Federal Magistrates Act, for staff of the superior courts to be made available for the purposes 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. The Family Court also provides information technology infrastructure and support services to the Federal Magistrates Court. A memorandum of understanding with each of the superior courts supports these arrangements.

## PROPERTY AND ENVIRONMENTAL MANAGEMENT

The activities of the Federal Magistrates Court do not have implications for Ecologically Sustainable Development that require reporting under section 516A of the Environmental

## FEDERAL MAGISTRATES COURT

Protection and Biodiversity Conservation Act 1999. However, the Federal Magistrates Court adopts measures, with other jurisdictions within Commonwealth law courts buildings, to minimise impacts on the environment. These include recycling schemes and measures to reduce energy and water consumption in those buildings.

## MANAGEMENT OF HUMAN RESOURCES

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### CERTIFIED AGREEMENT

Terms and conditions for staff of the court are contained in the Federal Magistrates Service Certified Agreement 2003-06, which was certified by the Australian Industrial Relations Commission on 30 June 2003.

### AUSTRALIAN WORKPLACE AGREEMENTS

During 2003-04, the Federal Magistrates Court 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 Court certified agreement. Eight sessional registrars were a party to Australian Workplace Agreements as at 30 June 2004. A further AWA was made to provide postgraduate studies assistance.

### WORKPLACE DIVERSITY

The Federal Magistrates Court developed a revised workplace diversity plan during 2003-04. The plan, covering the period 2004-08 was signed by the Chief Federal Magistrate and Chief Executive Officer and is available to all staff on the intranet.

### DISABILITY STRATEGY

The Federal Magistrates Court's workplace diversity plan includes strategies relating to people with disabilities. In relation to court clients, the Federal Magistrates Court 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 Court has a charter which provides a commitment to assisting people that might have physical, hearing, visual, language or geographical barriers to accessing the court. 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 Court aims to provide a safe and healthy work environment for staff.

The Federal Magistrates Court 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 the year included the following:

- ~ Ergonomic assessments conducted by CRS Australia on an identified needs basis. These assessments provide 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 with a professional employee assistance provider is in place to provide staff and their immediate families with access to voluntary, free and confidential counselling about any problems that affect their lives, work performance or job satisfaction.
- ~ The new certified agreement that came into effect on 1 July 2003, includes health promotion initiatives for employees.
- ~ Flexible working arrangements are in place to assist in managing work and family issues, and staff are encouraged to access recreation leave provisions for a reasonable rest break each year.

In relation to security, the Federal Magistrates Court is co-located with the Family Court and the 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 Court, and provides security advice and management for both courts.

There were no accidents or dangerous occurrences during the year and no investigations were conducted. The Federal Magistrates Court 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 Court during 2003-04.

## TRAINING AND STAFF DEVELOPMENT

During 2003-04, a significant effort has gone into implementing a revised induction program for new staff. The program is conducted over five days and provides new staff with information and training relating to their role in the court. Training was also conducted throughout the year on the use of on-line databases for legal research, the case management system, and major office applications.

The Federal Magistrates Court also supports continuing professional development through staff attendance at seminars and conferences and through a study assistance program. The study assistance program provides financial assistance and access to leave for studies relevant to the objectives of the organisation.

Staff have an opportunity to identify other training and development needs as part of the performance management program.

The majority of staff attended a national conference conducted during the year where they had opportunity to be briefed on new work practices and systems, exchange views on best practice, and workshop particular issues.

The total amount spent on externally provided training (including seminars and conferences), study assistance and computer-based training in 2003-04, was \$94,551. This figure excludes staff wage costs for the time spent at training, and excludes on-the-job training.