

PART ONE: YEAR IN REVIEW

Continued evolution of the federal civil justice system

Eight federal magistrates were appointed to the Court during 2004-05 — four in Sydney, two in Parramatta and two in Melbourne. As a result, there were at 30 June 2005, a total of 31 federal magistrates, including the Chief Federal Magistrate, compared with 23 at 30 June 2004 — an increase of 35 per cent.

The Government announced in the May 2005 Budget that funding would be made available in 2005-06 for a further two federal magistrates to be appointed.

This continues the evolution of the federal civil justice system, increasing the capacity of the Federal Magistrates Court to deal with the less complex matters brought to the federal courts to enable the superior courts to focus on the more difficult cases and appellate work.

Notwithstanding the growth in judicial numbers during 2004-05, the Court remains very busy and expects a further increase in its workload. In addition there are significant areas of jurisdiction appropriate to the work of the Court yet to be conferred. As noted in the *Federal Civil Justice System Strategy Paper* issued by the Attorney-General's Department in December 2003, change in the size and workload of the federal courts needs to occur incrementally.

Broadening of the work of the Court

The work of the Court has broadened during 2004-05. In previous years, more than 80 per cent of the judicial resources of the Court were allocated to family law. The eight federal magistrates appointed to the Court in 2004-05 were to undertake predominantly work related to migration review matters. This has altered the balance of work in the Court, so that over 30 per cent of the resources of the Court are now allocated to hearing general federal law matters (currently mainly migration matters), with the balance allocated to family law.

The broadened workload of the Federal Magistrates Court should, over time, allow the Court to deal more flexibly with variations in demand within the federal civil justice system, by redirecting judicial resources to meet the most urgent needs.

Whilst it is intended that federal magistrates undertake a variety of work, the increasing size of the Court provides an opportunity for the development of expertise in specialised areas of the law. This should facilitate more effective integration with the work of specialist panels in the superior courts.

Migration litigation

With the eight new appointments made to the Court in 2004-05 and some internal reorganisation of federal magistrates, the Court has been able to focus on reducing the existing backlog of migration review applications and better handle the ongoing migration review workload. Eight federal magistrates located in Sydney are devoted primarily to hearing migration matters. Courtrooms and chambers have been leased from the NSW Attorney-General's Department in John Maddison Tower to accommodate the Sydney appointments. Melbourne appointees are accommodated within the existing Commonwealth Law Courts facilities with two full-time equivalents devoted to migration work.

As the new appointments were made in the second half of the 2004 — their full-year impact on the migration review workload will not be fully apparent until early 2006.

At 30 June 2004, 2736 migration matters were pending in the Federal Magistrates Court. During 2004-05, 2445 migration matters were filed in or transferred to the Court and 2748 matters were finalised. As a result, at 30 June 2005, there were 2439 migration matters pending.

New approach to the family law system

Throughout 2004-05, the Court has been working with the Family Court of Australia on ways to simplify access to the family law system. This has been undertaken in the context of the Government's response to the parliamentary report into child custody arrangements in the event of family separation, *Every Picture Tells a Story*.

The intent of the Government's proposed reforms is to help as many families as possible to resolve their differences outside the court system. However, there will always be cases where a court needs to make the final decision, and the courts are looking at ways to make those decisions in a quicker, simpler and less costly manner.

Work has primarily focussed on developing a model for managing cases which facilitates the overwhelming majority of applications being lodged in the Federal Magistrates Court in the first instance. The challenge for the Courts over the coming 12 months is to develop ways to resource the model.

The changes being considered are about establishing simpler and less expensive methods to deal with cases that do not warrant the procedural refinements often associated with complex litigation. As the Chief Justice of the High Court of Australia noted in his 2005 *State of the Judicature* address:

It is sometimes assumed that procedural uniformity is self-evidently desirable, especially if it enables practitioners to use common forms. There is a balance to be struck here. There is plenty of room for constructive change. However, complete procedural uniformity self-evidently would be a bad thing. The procedures that are appropriate to the resolution of a complex ... dispute would be inappropriate to the resolution of ... a dispute involving straightforward factual and legal issues. ... Inappropriate uniformity is just as bad as inappropriate diversity...

If its procedures simply replicated those of the Federal Court or the Family Court, it [the Federal Magistrates Court] would have no reason to exist.

Timely delivery of judgments

The Court is required to deal with a high volume of matters expeditiously. The majority of judgments are delivered orally, by the federal magistrate, at the time of the hearing or shortly afterwards. However, some judgments necessarily involve more complex considerations, which may not be apparent when the matter is first listed. These judgments are reserved at the hearing and delivered at a later date, normally in writing.

Balancing the finalisation of reserved judgments in a timely way, against the competing demand of hearing an increasing volume of new matters, has and will continue to present a significant challenge for the Court. In an effort to address this issue, more time has been allocated to judgment writing throughout the year. In addition, better systems and procedures have been implemented to record and monitor progress of reserved judgments. As a result there was a substantially reduced level of complaints about undelivered reserved judgments — to the extent that there are no outstanding complaints at the end of the reporting year.

This is an area that requires ongoing focus to achieve an appropriate balance between hearing and finalising matters in the Court, and ensuring that appropriate cases are referred to the superior courts.

Governance

A new Chief Federal Magistrate was appointed on 14 July 2004 and a new Chief Executive Officer was appointed on 26 April 2005.

In view of the increased size of the Court, the Government introduced legislation in the Parliament to align the arrangements for the management of the administrative affairs of the Court with the arrangements for the management of the administrative affairs of the Federal Court of Australia and the Family Court of Australia.

The Federal Magistrates Court and the Family Court of Australia agreed during the year to new arrangements for governing the joint registry. A board has been established comprising the Chief Justice of the Family Court, the Chief Federal Magistrate and the Chief Executive Officers of each court to oversee the operations of the registry.

Continuing development of the Court

With the increase in the range and volume of the Court's work, its role as a national trial court has become well accepted. To continue to provide simple and accessible dispute resolution with its limited judicial resources across higher volumes of less complex federal civil litigation, the Court will need to develop further its practices, procedures and systems. This will require careful balancing of the need for efficiency against the constitutional requirements of a federal court of record and federal judicial officers.