

## Governance

Schedule 2 of the *Migration Litigation Reform Act 2005* made consequential amendments to relevant provisions of the *Federal Magistrates Act 1999* ('the Act') to alter the governance structure of the Court. As a result, the Chief Federal Magistrate is now responsible for the management of the administration of the Court, rather than federal magistrates collectively, and for ensuring the orderly and expeditious discharge of the business of the Court. This Schedule came into effect on 15 November 2005.

This change aligns the arrangements for the management of the administrative affairs of the Court with those of the Federal Court and the Family Court and reflects the growth of the Federal Magistrates Court since its establishment. It provides a more practical arrangement for the management of the Court's administrative affairs.

Consistent with the model adopted in all federal courts, the Chief Federal Magistrate is assisted by the Chief Executive Officer in the management of the administrative affairs of the Court under section 96 of the Act. The Chief Executive Officer can exercise powers on the Chief Federal Magistrate's behalf in relation to the Court's administration and, for the purposes of both the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997*, has the responsibilities and powers of an agency head.

Section 117A of the Act empowers the Chief Federal Magistrate to delegate any powers under section 89 for the management of the administrative affairs of the Court to one or more federal magistrates. The Chief Federal Magistrate has continued the arrangements established in 2004-05 to appoint Coordinating Federal Magistrates in each region to assist in the management of administrative matters for federal magistrates in each of those regions and has delegated certain powers to each for this purpose.

Advisory committees may be appointed under subsection 93(2) of the Act to provide advice to the Court in relation to the powers of the Court under the Act and the making of the Rules of the Court and to the Chief Federal Magistrate and Chief Executive Officer on the management of the administrative affairs of the Court.

During the year advisory committees were established and met in the following areas:

- Governance
- Audit
- Court users and systems
- Finance
- Judgments
- Judicial education
- Legal (Rules)

Other committees or working parties are established from time to time to deal with particular issues.

## Governance Committee

The Governance Committee is the primary committee responsible for providing advice on the administration of the Court. The committee comprises the Chief Federal Magistrate, the Chief Executive Officer, Coordinating Federal Magistrates and a number of other federal magistrates who broadly represent the work of the Court in terms of location and jurisdiction. The committee meets approximately every month to review court performance, consider management issues and policies and review issues of strategic importance to the Court.

## Audit Committee

The *Financial Management and Accountability Act 1997* requires the Chief Executive of each Commonwealth agency to establish an Audit Committee to assist the Chief Executive in the financial governance of their agency. The Court's Audit Committee comprises two federal magistrates, an executive of the Court and an independent (external) chair. The committee also invites representatives of the Australian National Audit Office and the Court's internal auditor to attend audit committee meetings as observers.

The committee's role includes assessing the adequacy of the Court's internal audit program, scrutinising the results of audits on the Court's administrative activities and monitoring management performance in implementing auditors' recommendations. The committee also monitors the Court's adoption of and compliance with appropriate frameworks of risk management, fraud control and financial reporting.

## Court Users and Systems Committee

This committee assists in the development of policies relating to Court services and considers issues such as case management procedures, Court circuits to regional areas, improving forms, use of technology in Court hearings and other events, and use of pro forma documents within the Court.

## Finance Committee

The role of the Finance Committee is to provide a forum whereby federal magistrates can effectively oversee the financial administration of the Court while not being engaged in day-to-day financial management issues.

## Judgments Committee

The committee oversees the management of the Court's judgments and their accessibility through key legal research websites. The Court is grateful to the Australasian Legal Information Institute (AustLII) for providing a readily accessible and comprehensive online library of the Court's decisions.

## Judicial Education Committee

The primary role of the Judicial Education Committee is to foster the continuing professional development of federal magistrates and oversee appropriate access to information resources necessary to undertake the judicial function.

## Legal (Rules) Committee

The role of the Legal (Rules) Committee is to review the Court's Rules to ensure they continue to assist the Court to operate informally and efficiently. The Rules are regularly reviewed to accommodate new areas of jurisdiction. The committee also considers issues relating to the jurisdiction of the Court generally.

## Review of committees

A review of the Court's advisory committee structure commenced during the year; the changes resulting from that review will be implemented early in 2006-07.

## Strategic planning

Federal magistrates meet regularly to consider strategic planning issues and review strategic directions for the Court. Key tactical issues identified in 2005-06 included:

- managing workload
- strategic management for general federal law
- resource allocation and management
- service delivery

The Court is responding to these issues; for example, specialist panels to facilitate a better spread of workload are being introduced; physical accommodation issues are being addressed, particularly in Sydney, Brisbane and Newcastle; and Regional Services Coordinators will be introduced in Melbourne and Sydney as additional support to Coordinating Federal Magistrates.

## Organisational plan

The overall goal of the 2006-2009 organisational plan is the provision of simple and accessible justice to ordinary Australians. The plan addresses the major challenges for the foreseeable future, which lie in the expanding jurisdiction of the Court and its rapid growth, putting pressure on existing resources and systems. A staff survey demonstrated the high level of commitment that staff have to the Court and their overall satisfaction with their work.

The plan prioritises:

- improving the Court's operating environment
- change readiness and capability
- organisational development and improvement, and
- relationship management.

## Arrangements with the Federal Court and Family Court

The Court continued to work closely with the Federal Court and the Family Court, with which it has memoranda of understanding surrounding the provision of services. The superior federal courts carry out certain functions on behalf of the Court, including making staff available for the purposes of the Federal Magistrates Court. They share their registries and other facilities, including courtrooms. The Family Court also provides information technology infrastructure and support services to the Court.

New memoranda of understanding between the Federal Magistrates Court and the other courts will be developed in 2006-07 to reflect the dynamic nature of the relationships.

The Court's relationship with the Family Court in terms of the Combined Registry Program has been outlined earlier in this report.

## Risk management, fraud control and internal audit

The Federal Magistrates Court has reviewed its risk management plan and reviewed areas of risk and their rating. A risk treatment plan has been developed and is being implemented.

A fraud control plan is also in place that includes measures to prevent and detect fraud. The plan complies with the Commonwealth Fraud Control Guidelines (see certification at Appendix G).

Internal audit services are provided by Deloitte Touche Tohmatsu. Audits conducted during 2005-06 related to: expenses, leave entitlements, employee entitlements, fixed assets and GST administration. No control or compliance deficiencies involving unacceptable risk were identified.

## The APS code of conduct

The APS values and code of conduct are central to the terms and conditions of staff of the Federal Magistrates Court and underpin the provisions of the Court's Certified Agreement 2003-06.

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

## Senior appointments

The Chief Executive Officer assists the Federal Magistrates Court in the conduct of its administrative affairs. The Chief Executive Officer has the power of an agency head under the *Public Service Act 1999* and the responsibilities of the chief executive of an agency under the *Financial Management and Accountability Act 1997*.

At 30 June 2006, the principal executive group of the Federal Magistrates Court comprised:

- John Mathieson, Chief Executive Officer
- Adele Byrne, Registrar
- Charlotte Stockwell, Executive Director Operations
- Russell Nash, Chief Finance Officer
- Louise Kenworthy, Coordinator of Court Services (acting), and
- Susan Cibau, Coordinator of Primary Dispute Resolution Services.

## Remuneration

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

The Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006 ('the Bill') was introduced into Parliament and referred to the Legal and Constitutional Legislation Committee for inquiry and report. The Bill seeks to amend the *Federal Magistrates Act 1999* to provide statutory disability cover and death benefits for federal magistrates. As noted in the Explanatory Memorandum accompanying the Bill:

*The lack of insurance against disability for Magistrates is potentially problematic. Magistrates hold office until age 70 unless they resign, die in office or are removed by the Parliament on the ground of proven misbehaviour or incapacity before this age. In the absence of adequate protection in the event of serious disability, a magistrate whose performance is significantly impaired for medical reasons may nonetheless be unwilling to resign.*

In the Second Reading Speech it was noted:

*The Bill provides federal magistrates, their spouses and dependants with income protection and death benefits that have until now been lacking. The Government acknowledges the significant contribution federal magistrates make to an efficient federal civil justice system, and is committed to ensuring that they are provided with fair and adequate remuneration and conditions.*

The Senate Report on the Bill made recommendations consistent with submissions made to the Committee to amend the age limit of eligibility specified in the Bill limiting eligibility from 65 years to 70 years. The Report also recommended that the death benefits payable to an eligible spouse or children under the Bill be reviewed to provide more adequate compensation payments.

The Government is still considering these recommendations.

There is one employee 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 percent performance-based bonus. Performance bonuses for 2005-06 were paid following the end of the reporting period. The aggregate amount of performance pay was \$29,267 in relation to 18 employees. Details by classifications are included in Appendix D.

## Financial performance

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

### Operating revenues and expenses

The major source of revenue for the operations of the Federal Magistrates Court is an appropriation from the government. The appropriation amount for 2005-06 was \$31.5 million (\$23.8 million in 2004-05). Other revenue, mainly relating to transfer of leave balances from other public sector agencies, amounted to \$0.08 million (\$0.3 million in 2004-05).

During 2005-06, operating expenses were \$26.2 million (\$22.7 million in 2004-05). This resulted in an operating surplus of \$5.3 million (\$1.7 million in 2004-05). The increase in both appropriations and operating expenses is largely a consequence of the Government's decision in the 2005-06 budget context to provide funding for additional federal magistrates and associated support resources as part of the workplace relations reforms and for family law.

The major expenses in 2005-06 were \$16.7 million in respect of employee expenses, \$9.4 million relating to supplier payments, and \$0.25 million in asset depreciation and amortisation.

### Resources received free of charge

The Federal Magistrates Court relies on infrastructure and support provided by the Family Court and the Federal Court. Both courts have supplied estimates of resources provided free of charge to the Federal Magistrates Court, which total \$23.1 million (\$19.2 million in 2004-05) and are reflected in the Court's financial statement as notional revenues and expenses.

### Administered revenue and expenses

The Court received revenue on behalf of the Commonwealth (administered revenue is not available to offset Federal Magistrates Court operating cost), mainly for court fees. The amount received in 2005-06 was \$13.4 million (\$12.2 million in 2004-05). The main reasons for this variation are the increased volume of applications to the court and a biennial increase in fees, based on the movement in the Consumer Price Index, as set by regulation.

The Court administers an appropriation on behalf of Government to source primary dispute resolution services from community-based organisations. In 2005-06, the appropriation was \$0.7 million (\$0.6 million in 2004-05) and expenses were \$0.6 million (\$0.6 million in 2004-05).

## Financial position

The major change in the Court's financial position as at 30 June 2006 related to additional appropriations in the 2005-06 Budget of \$1.4 million for additional workloads arising from the workplace relations reforms and \$1.1 million for additional federal magistrates for family law.

## Property and environmental management

In general, the Federal Magistrate Court occupies accommodation that was previously occupied by the Federal Court and the Family Court. Those courts continue to be directly funded for the property costs associated with the accommodation, and therefore continue to pay the cost on behalf of the Federal Magistrates Court under the memoranda of understanding referred to previously.

During 2005-06 the Court exercised its option with the NSW Attorney-General's Department to lease existing courtrooms and chambers at John Maddison Tower in Sydney for another year from 1 September 2006. The Court also leases court and office buildings in Brisbane and Adelaide.

## Management of human resources

### Certified agreement

The Federal Magistrates Court of Australia Certified Agreement 2003-2006 nominally expired on 30 June 2006. Negotiations regarding a new collective agreement commenced in the latter half of 2005 and continued throughout the balance of the year.

### Australian Workplace Agreements

During 2005-06, the Court engaged suitably qualified and experienced legal professionals to perform the statutory functions of a registrar on a sessional basis to deal primarily with undefended divorce 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 (AWA). Ten sessional registrars were party to AWAs at 30 June 2006 and another seven AWAs were in place with staff who have specialist skills or experience.

## Workplace diversity

The Court values the significant contributions that people from diverse backgrounds make to all divisions of the Court. In 2005-06, 12 per cent of Court staff were born overseas and 20 per cent identified their first language as other than English.

## Disability strategy

The Federal Magistrates Court continues to be committed to meeting the requirements of the *Disability Discrimination Act 1992*. The Court has a range of policies and initiatives to support this commitment. The principle of reasonable adjustment (accommodating the additional needs of a person who can perform the inherent requirements of a job, where reasonable) is applied within the Court. The recruitment and selection process continues to be transparent and fair, ensuring equitable and non-discriminatory consideration is given to all applicants. Recruitment information is available in electronic formats and contact details are provided should special assistance be required.

## Occupational health and safety

The Court has strengthened its commitment to consultation on occupational health and safety (OH&S) matters with staff through the Staff Consultation Committee. Staff from all court locations are able to raise OH&S concerns through the committee. Initiatives undertaken during the year included:

- health and well-being programmes for staff, and
- provision of more equipment to assist with manual handling requirements to combat potential manual handling injuries through activities such as movement of court files, particularly on circuits.

The following measures were undertaken during the year as routine support that the Court provides its employees:

- ergonomic and work station assessments by external occupational therapists
- reimbursement of the costs of having eyesight tests for using screen-based equipment
- training for employees who become first aid officers
- orientation sessions to inform new employees of occupational health and safety legislation, responsibilities and procedures, and
- counselling through the Employees Assistance Programme, which is also available to the families of employees.

There were no accidents or dangerous occurrences during the year and no investigations were conducted. The 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, 47 of that Act were given to the Federal Magistrates Court during 2005-06.

## Training and staff development

The Court continued to focus its learning and development strategy on leadership at all levels and capability development to support organisational performance. Key activities included continued redevelopment of the orientation/induction program and continued integration of entry-level recruitment and development within the broader workforce planning.

New initiatives during the year to support the strategy included:

- a redeveloped performance program for Executive Level 1 and 2 staff, and
- tailored learning and development opportunities for specific groups within the organisation.