



AN EVALUATION OF SERVICES FOR SELF- REPRESENTED LITIGANTS IN THE FEDERAL MAGISTRATES COURT

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Table of Contents

Executive Summary	3-4
Recommendations	5-6
Introduction	
The Federal Magistrates Court	7
Self-represented litigants	7-8
Objectives	8
Research	
Stage 1	9
Stage 2	10
Results and findings	11-24
Conclusion and Recommendations	25-29
Appendix A – Consultants	
Letter to Consultant	30
Case scenarios	31-33
Survey	34-45
Appendix B – Self-Represented Litigants	
Letter to Community Legal Centres	46
Information sheet	47-48
Consent form	49-50
Survey	51-57
Appendix C - Open ended responses	58-64

Executive Summary

A significant number of people represent themselves in the Federal Magistrates Court, rather than engage a legal practitioner.¹ This occurs across all jurisdictions of the court but is most common in the areas of family law, child support, migration and bankruptcy.

The needs of self-represented litigants vary from those who are represented by a lawyer. As one self-represented litigant commented “*it’s very hard to wear two hats: the client and the lawyer*”. In order to identify these specific needs, the court has designed and implemented a unique research project.

The objectives of the project were to:

- Measure the court’s performance standards for self-represented litigants
- Establish benchmarks regarding performance standards for self-represented litigants
- Establish an ongoing mechanism to monitor performance and measurement standards across the court against the benchmarks
- Identify issues encountered by self-represented litigants in the court
- Address deficiencies and improve services for self-represented litigants
- Identify areas working well in relation to self-represented litigants and adopt these practices and procedures on a national basis
- Promote the court’s commitment to addressing the needs of all parties, whether represented or not.

The project involved two phases. During phase one, three independent consultants were employed to pose as self-represented litigants in the court and to provide feedback about their experiences. During the second phase, 70 self-represented litigants were surveyed. The survey covered topics such as contact with the court, primary dispute resolution, preparing documents, the court hearing and their overall experience with the court.

The results have provided the court with an insight into the needs of self-represented litigants. The findings have assisted in identify successful initiatives which have already been adopted by the court as well as areas that require improvement. Subsequently, this has led to the development of 12 recommendations.

¹ For the purposes of this report the term “self-represented litigants” will be used to describe people who represent themselves in court.

The recommendations are based on the feedback and responses of the self-represented litigants and consultants surveyed. In summary, the recommendations focus on the following key areas — public information, data recording, the court’s website, self-help kits, forms, signage, training for judiciary and staff and ongoing monitoring and research. A full list of the recommendations can be found on pages 5-6.

The court’s self-represented litigant committee has endorsed the 12 recommendations² and will be responsible for overseeing the implementation of them. The members of the court’s self represented litigant committee comprise of:

- Chief Federal Magistrate Pascoe
- Federal Magistrate Rimmer (chair)
- Federal Magistrate Connolly
- Federal Magistrate Barnes
- Federal Magistrate Driver
- Federal Magistrate Coakes
- Chief Executive Officer
- Registrar of the Court and
- 3 executive administrative staff.

The committee believes that the recommendations contained in this report when implemented will play an important part in improving services and access to justice for self-represented litigants in the court.

² As per a memorandum signed off on 13 October 2004.

Recommendations

● **Recommendation 1**

Determine the demand for court information products to be translated into languages other than English.

● **Recommendation 2**

Review the court's case management system (Casetrack) to determine the viability of extending data recording to cover self-representation at various court events and in general federal law cases.

▲ **Recommendation 3**

Review induction and ongoing training requirements for telephone staff, particularly surrounding the needs of self-represented litigants at the Federal Magistrates Court, the Federal Court and the Family Court.

■ **Recommendation 4**

Review the court's website and develop a 'self-represented link' at www.fmc.gov.au

▲ **Recommendation 5**

Review public information on primary dispute resolution (PDR) in all areas of the court's jurisdiction and publish more information about the process and increase accessibility to the information.

● **Recommendation 6**

Review all court forms to determine the appropriateness of producing 'self-help kits' to assist self-represented litigants in identifying and completing forms.

▲ **Recommendation 7**

Develop the technology to enable the court's website forms to be in a format capable of being downloaded and saved.

▲ **Recommendation 8**

Review signage at all registry locations and increase signage as required at entry points, registry areas and outside courtrooms.

▲ Recommendation 9

Supply publications to all registries and request staff display them appropriately in the registry.

● Recommendation 10

Investigate the appropriateness of providing training and/or producing a management plan/guide for the judiciary and staff when dealing with self-represented litigants.

● Recommendation 11

Review existing publications and publish new user-friendly information for self-represented litigants. The court will aim to work collaboratively with the Federal Court, the Family Court and Legal Aid Commissions on this project.

■ Recommendation 12

Review the effectiveness of these recommendations and identify areas that require improvement or new areas that need to be addressed in order to meet the needs of self-represented litigants.

Legend

▲ Short term goal → Within 6 months

● Mid term goal → 6-12 months

■ Long term goal → 12 months-3 years

The Federal Magistrates Court

The objective of the Federal Magistrates Court is to provide an alternative to litigation in the Federal Court and the Family Court and to relieve the workload of those courts by dealing with the less complex matters.

The Federal Magistrates Court has quite purposefully adopted procedures that differ from the procedures of the superior courts. As a lower level court it has been established to provide increased accessibility and simplicity of procedures.

The Federal Magistrates Court shares jurisdiction with the Federal Court in bankruptcy, trade practices, copyright, migration, human rights, administrative law and privacy matters (general federal law).

In family law and child support matters, the Federal Magistrates Court shares jurisdiction with the Family Court — with the exception of adoption, property matters where the value in dispute is over \$700,000³ and applications concerning nullity or validity of marriage.

Both the Federal Court and the Family Court provide registry services for the Federal Magistrates Court. The Federal Court accepts filings and provides information to clients in general federal law matters. Similarly, the Family Court provides the same service for family law and child support matters.

Self-represented litigants

A considerable amount of research has been conducted in response to the growing number of people representing themselves in court.⁴ Research has shown that there are various reasons why people represent themselves in court rather than engage a lawyer. The Family Law Council summarises the reasons:

*Some choose to do so, and the reasons for doing so may range from distrust of lawyers to a great faith in the merits of their case. Others do so not from choice, but because they do not qualify for legal aid on means or merits grounds, and cannot afford representation.*⁵

³ The court does however have jurisdiction to hear property disputes over \$700,000 if both parties consent.

⁴ For example - Erosion of Legal Representation in the Australian Justice System (2004) Law Council of Australia; Hunter, R. Giddings J and Chrzanowski, A (2003) Legal Aid and Self-Representation in the Family Court of Australia; Dewar, J. Smith, B and Banks, C (2000) Litigants in Person in the Family Court of Australia; Family Court of Australia Research Report No.20; Family Law Council (2000) Litigants in Person – A Report to the Attorney-General prepared by the Family Law Council, Canberra; Hunter, R. Genovese, A. Chrzanowski, A. and Morris, C (2002) The changing face of litigation: Unrepresented litigants in the Family Court of Australia.

⁵ Family Law Council (2000) Litigants in Person – A Report to the Attorney-General prepared by the Family Law Council, Canberra at 5

During 2003-04 financial year, approximately 21 percent of applications filed in the Federal Magistrates Court for children or property did not have a lawyer. In the same period, applicants alleging the contravention of a child order were far more likely not to have a lawyer. In the sample, 54 percent of applicants did not have a lawyer. Applicants in child support cases were unrepresented in 28 percent of applications. This data reveals that self-represented litigants make up a significant group of the court's clientele.

There is also a high proportion of litigants representing themselves in the Federal Magistrates Court in general federal law cases, particularly in relation to migration and bankruptcy.

Objectives of this report

The court's commitment to provide a fair and accessible service extends equally to legally represented and self-represented litigants. Accordingly, the objectives of the project were to:

- Measure the court's performance standards for self-represented litigants
- Establish benchmarks regarding performance standards for self-represented litigants
- Establish an ongoing mechanism to monitor performance and measurement standards across the court against the benchmarks
- Identify issues encountered by self-represented litigants in the court
- Address deficiencies and improve services for self-represented litigants
- Identify areas working well in relation to self-represented litigants and adopt these practices and procedures on a national basis
- Promote the court's commitment to addressing the needs of all parties, whether represented or not.

Research

The research for the project involved monitoring three independent consultants adopting the role as self-represented litigants (stage one) and surveying 70 self-represented litigants (stage two).

A third stage was proposed - interviewing self-represented litigants at various stages of their case. This stage did not proceed due to lack of willing participants. Despite the removal of this stage from the project, the findings have provided the court with sufficient insight into the needs of self-represented litigants.

Stage One

It is common practice for companies to employ 'mystery shoppers' to test their products and provide feedback on customer service. This feedback is used to measure standards, both positive and negative and implement changes to meet the needs of customers. Based on this model, the court engaged three independent consultants to 'step into the shoes' of a self-represented litigant in the Melbourne registry. The consultants were randomly selected through an independent consultancy firm.⁶

Each consultant was provided with a brief, which comprised a factual scenario and a list of tasks. The scenarios covered a family law, child support and migration case - see appendix A. Based on the factual scenarios the consultants were required to complete the following tasks:

- Make telephone enquiries and browse the website for information
- Obtain information about primary dispute resolution
- Identify the documents required for filing and complete an application form
- Attend the filing counter at the Commonwealth Law Court at Melbourne and request information from registry staff
- Attend and observe a duty list at the Federal Magistrates Court.

The consultants undertook the tasks between 7-22 July 2003. On completion, consultants were provided with a questionnaire and were asked to record their experiences. The findings and discussion points are detailed on pages 11-30.

⁶ iFocus Pty Ltd – 3 Francis Street South Melbourne VIC 3205

Stage Two

Seventy self-represented litigants completed a survey that covered all aspects of the court process (see appendix B). Of the 70 people surveyed, 30 were involved in family law cases, 30 in child support and 10 in migration.

Self-represented litigants were randomly selected by community legal centres and at the Melbourne registry.

Twenty-two community legal centres were asked to assist the court in identifying self-represented litigants for the project – see appendix B. The community legal centres that agreed to assist the court were Essendon, Brimbank, Eastern and Peninsula (Frankston). The court supplied the four centres with copies of:

- an information sheet,
- a consent form and
- a survey (see appendix B).

During clinic appointments, staff from the centres provided this information to self-represented litigants. Once completed, staff from the centre forwarded the consent forms and surveys to the project officer. Upon receipt, the project officer checked the consent form and if a signature was sighted the survey was accepted. The surveys were then separated from the consent forms to ensure confidentiality of participants.

From September to December 2003, 23 surveys were completed from self-represented litigants at community legal centres.

From March – June 2004, the project officer spent a total of 18 non-consecutive days in the Melbourne registry. The project officer attended family law (including divorce), child support and migration court lists. During this period, 63 people were asked to participate and 47 self-represented litigants agreed to complete a survey.

Participants were identified at court by the fact that they did not have a lawyer representing them. The project officer approached self-represented litigants and asked them to participate in the project. Potential participants were provided with an information sheet, consent form and survey. Thirty-eight participants agreed to complete the survey on the spot. The remaining nine people returned the surveys to the project officer in a self-addressed envelope. If accompanied by a signed consent form the survey was accepted. The consent form was immediately separated from the survey results to ensure confidentiality.

Results and findings

The responses from the independent consultants and self-represented litigants were compiled and are set out in this section. The results are categorised into eight areas:

- Demographics of respondents
- Case details
- Contact with the court
- Primary Dispute Resolution
- Preparing documents
- Court registry
- Court hearing
- Overall experience

Part 1 – Demographics of respondents (not applicable to consultants)

Of the 70 self-represented litigants surveyed, 31 were female and 39 were male. As indicated in figure 1, the age of people surveyed ranged from below 20 years of age to between 50 and 60 years of age. Of the 70 people, 63 were from metropolitan Melbourne and 7 from regional Victoria.

Figure 1: Age of people surveyed

Age	
Under 20	2
20-30	17
30-40	31
40-50	16
50-60	4
Over 60	0

Of the people surveyed, 30 were born outside Australia. Of this group, 14 people spoke a language other than English at home (see figure 2).

Figure 2: Language spoken at home

Language
Arabic
French
Greek
Indian x 2
Kurdish
Mandarin
Pashto
Sinhala
Tamil
Turkish x 3
Vietnamese

The following graph provides a breakdown of the main source of income for the people surveyed (figure 3).

Figure 3: Main source of income

Income	
Paid employment	28
Centrelink payments	22
Paid employment & centrelink payments	7
3 rd party	12
Other	1

Part 2 – Case details (not applicable to consultants)

In total, 30 responses related to family law, 30 were for child support and 10 related to migration. Of these, 80 percent were applicants and 20 percent were respondents. One reason for the high number of applicants related to the fact that all migration cases were applicants and eight out of the 30 family law cases related to applications for divorce. When asked whether the other party was represented, 37 people said yes, 32 people said no and one person did not respond to this question.

Figure 4 shows the stage of court proceedings for the 70 self-represented litigants surveyed.

Figure 4: Stage of court proceedings

3	25	1	0	22	19
Filed application & waiting for 1st hearing	Attended 1st hearing	Waiting to/or just attended mediation	Waiting to/or just attended conciliation conference	Waiting for final hearing	Final hearing has been heard

When asked whether they had a lawyer working on their case, 74 percent people surveyed said no and 26 percent said they had partial legal representation. As indicated in figure 5, the reasons for self-representation varied. Sixty-four percent of the people surveyed had applied for legal aid and thirty percent indicated that they had not applied for legal aid (4 people did not respond to this question).

Figure 5: Reason for self-representation

Reason	
I can't afford one & can't get legal aid	37
I had a lawyer but couldn't afford to continue	13
I had a lawyer but wasn't happy with my lawyer	3
I want to do this myself	10
Other	1
No response	6

Part 3 – Contact with the court

There was a range of responses to the question of how those people surveyed discovered the Federal Magistrates Court (see figure 6).

Figure 6: Finding out about the Federal Magistrates Court

Reason	
I was informed by my previous lawyer	12
I was informed by legal aid or CLC	12
I conducted my own research	9
I am the respondent	10
Transferred to the FMC	5
Other	22
- Child Support Agency	
- Migration Review Tribunal/Refugee Review Tribunal	
- Previous case	
- Passport office	

Of the 70 self-represented litigants and 3 consultants surveyed, 40 people had telephoned the Federal Magistrates Court. When this group was asked whether they received the information requested 70 percent responded yes and 17.5 percent responded no (5 people did not respond to this question). Of the 17.5 percent of people who responded no, the reasons included:

"The person on the telephone was very short with me and didn't really know much about the court process either"

"Difficult to work out what I needed. I had to ring a couple of times"

"Wrong forms"

"They said my case was discontinued but in fact it was not and on today"

"I didn't know which forms to complete and they couldn't help me"

"They really didn't know the procedures of the Federal Magistrates Court – I think I was talking to someone from the Family Court"

"Although very nice person couldn't tell me much about my case"

Sixty-two (62) percent of the people surveyed had used the court's website. Of the yes responses, 42 percent found the information on the website useful and 51 percent did not find the information on the website useful (3 people did not respond).

Some of the reasons why people did not find the information of the website useful included⁷:

"I had trouble with serving the documents and it would have been beneficial to have information on this"

"Not much information for financial matters – all the information seems to be directed for people with family or child support disputes. Lack of information about superannuation issues"

"I was at the end of my case and owed my solicitor \$15,000. I had already borrowed off family and friends and had no money. I therefore had no other choice but to represent myself at the final trial. I looked on the website and couldn't find much information about how to present a final trial"

"I couldn't find much information about what I (respondent) needed to do and how to go about doing it"

⁷ A full list of responses can be found in Appendix C.

"I wanted to find out about the court process, maybe see a diagram and see what the next stage is and how long it takes to get to the next stage and what steps I need to do"

"Not user friendly"

"Too legal"

"Forms not clear and not available. No instructions. Used Family Court forms instead"

"Not a lot of information on child support – when you do a search all that comes up is cases"

"Forms can't save them – make them savable"

"My case wasn't listed. Many information about family law and not for my case for immigration case"

"There needs to be more explanation of terms – plain English. Generally needs to be easy reading. There's no information that actually helps me with what forms I need"

"Who is the target audience? Corporate bodies? Lawyers? There's little guidance for the novice – it appears to be set up for those with knowledge. Someone new to a website is usually saved by the search facility. Unfortunately, the search engine seems fixated with judgements! I would like to enter "child support application" and get some help. A simple "How do I proceed and what's going to happen?" would be great"

When asked what the court could do to improve its website, some of the responses included⁸:

"More information about how to service the documents ... I only found this out after I got it wrong"

"More information about financial matters – especially superannuation and subpoenaing ..."

"More information for respondents. Step by step process. For example, 1st you must do this and 2nd do this and so on"

"Information specifically for people representing themselves"

⁸ A full list of responses can be found in Appendix C.

"Online lawyers"

"Savable forms"

"How to represent yourself at a final trial. What you need to do before hand and when at court"

"More examples of wording of orders"

"Step by step link – what you need to do first and so on - all in non-legal language"

"The forms to use in child support – they all say family law but does that also mean child support. Also, once I completed the forms I couldn't save them – very annoying"

"What to do and expect when you get to court"

"Where you can get more help"

"Not to use legal words that have the same meaning as simple words – big words can confuse"

"More for immigration and different languages"

"Some sort of graphical representation (tree diagram) of the application process for each type of application allowing drill down to the actual forms required plus some sample completed forms would be of great assistance"

Part 4 – Primary Dispute Resolution (not applicable for migration responses)

Of the 60 self-represented litigants with family law and child support cases:

- 16 indicated that they were ordered to attend PDR
- 39 responded they were not ordered to attend PDR and
- 5 people did not respond to this question.

Of the 16 respondents who attended PDR, 25 percent found the service helpful, 62.5 percent did not find the service helpful and 2 people did not respond.

An analysis of the reasons why people found the process of primary dispute resolution unhelpful were predominately concerned with negative feelings towards the other party. Some of the responses included:

"The other party wouldn't meet me half way"

"My ex wouldn't agree"

"Other party wouldn't negotiate"

"Didn't read file prior to mediation. Didn't have all forms on file. Assumptions based on incomplete file"

"The respondent would not meet me half way"

"Both parties wanted a judge to decide. Other party refused to cooperate"

When asked whether the court provided the respondents with enough information about PDR process, 69 percent indicated yes and 31 percent indicated no.

Part 5 – Preparing documents

Of the 73 people surveyed, 75 percent prepared their own court documents while 3 percent indicated they had legal assistance in preparing their own court documents. The remaining 24 percent had their documents prepared by lawyers.

Fifty-nine people responded to the question — did you have any difficulty completing the court documents? Fifty-six (56) percent indicated they had difficulty while 39 percent indicated they did not have difficulty. Of the affirmative responses, reasons given were as follows⁹:

"Some parts of the divorce form are confusing ..."

"Service documents – bit confusing"

"I have a disability and the forms do not provide enough space to fill them in"

"I didn't know what to write – I had to take the forms into legal aid so they could help me"

"Affidavit difficult to complete and didn't know who could witness it"

"It's not really clear on the affidavit that it can be longer than one page. I only found this out when I received my ex' affidavit"

"Wording of orders"

⁹ A full list of responses can be found in Appendix C.

"The first time I waited 2 hours in Melbourne to lodge subpoenas however they only had PO Box and would not except them. Was not stated on the form full address details required"

"Not clear which forms to use and how to do them right"

"English is not my first language and hard to fill in"

"I didn't really understand what orders, interim, procedural or respondent meant or which parts of the form I was or wasn't meant to fill out"

"There appears to be no single point of information which staff can refer to and no guide than can be supplied on the process nor sample of relevant forms. All of which would make the process easier for the staff and the end user"

Forty-nine people responded to the question – can the court improve court documents to make them easier to complete? Sixty-three (63) percent believed the court could improve court documents while 36 percent indicated no. Possible improvements included¹⁰:

"More user friendly for people with disabilities"

After I inserted all the information I tried to save it – very frustrating to find out that you can't save. This would be a very beneficial function"

"Make them easier for people to fill in, maybe include some examples"

Forms need to be clearer. The court should prepare an information sheet about forms and how to complete an affidavit"

"Simple terms"

"Page breaks and change font sizes"

"Checklists"

"A clear description of what is required and what orders you are seeking. And the correct form to use"

"Document manual"

"Court lawyers to help you"

¹⁰ A full list of responses can be found in Appendix C.

"Other languages"

"It could come with a pamphlet saying what all the terms mean. Sort of like how the tax pack explains each question on the tax return form in detail"

"A 'go to whoa' set of procedures, including all documents, costs, supplements etc"

Part 6 – Court registry

As indicated in figure 7, 47 people attended the court registry and 26 responded they did not attend the court registry. The majority of people surveyed did not have any difficulty locating the court registry (see figure 8).

Figure 7: Did you attend the court registry?

Response	
Yes	47
No	26

Figure 8: Was the registry easy to find?

Response	
Yes	38
No	7
No response	1

Some of the reasons given for finding the registry difficult to locate included:

"More signs to indicate you are at the Federal Magistrates Court. I was confused whether I was at the right place but registry staff were very helpful"

"I had to ask whether I was in the right place – all I could see was Family Court signs and brochures"

"Perhaps an usher or volunteer for people who feel afraid"

"Signs in different languages"

"More signs, perhaps have a Federal Magistrates Court information desk"

Of the 47 people who indicated they attended the court registry, 21 percent found publications relating to the Federal Magistrates Court (FMC) in the court registry and 70 percent did not find any FMC publications (4 people did not respond to this question). Eighty-nine (89) percent indicated it would be helpful to have FMC publications available at the court registry.

Part 7 – Court hearing

Fifty-nine (59) of the respondents had no difficulty locating the courtroom. Of the remainder, 5 people indicated they had difficulty, 3 had an upcoming court hearing and 6 people did not respond to this question.

When asked whether the federal magistrate/registrar adequately explained how he/she would hear the case, 66 percent responded yes as opposed to 25 percent responding no (7 people did not provide a response).

Of the 70 self-represented litigants surveyed, 63 percent believed being self-represented was disadvantageous. Thirty-one percent (31) percent did not believe self-representation was a disadvantage for them and 5 people did not respond to this question.

Of the affirmative responses, some of the reasons included¹¹:

"I found the entire process very frightening. I had no other choice but to represent myself and felt disadvantaged because of it"

"The federal magistrate didn't really let me explain my case"

"When I was represented I didn't take much notice when I was at court because my solicitor did all that. Then I ran out of money and couldn't afford to get a barrister for the final trial. So I did it myself. It was one of the most terrifying experiences of my life. Although the judge was quite nice it was still hard and I think I would have got a better result had I been represented"

"Especially give my ex-husband is represented. I think it would have been more fair if we were both unrepresented"

"Got walked over – didn't know I had choices"

"It is terrifying walking into a courtroom for the 1st time with room full of lawyers. There were 50 cases listed on the same day as mine. I thought my case would be heard and finalised on the same day. Boy was I wrong"

"Didn't know what to do at the start ... I thought someone would just call my case"

¹¹ A full list of responses can be found in Appendix C.

"Due to the fact my ex-wife was represented, I felt the judge listened to my ex-wife's lawyer more than me. The lawyer kept getting facts wrong and when I tried to correct the mistakes I was told I would have my turn, which was in fact about half the time. I think judges need to listen more to people that represent themselves and not just listen to lawyers, which often get things wrong and stretch the truth"

"Its very hard to wear two hats: the client and the lawyer"

"I was very nervous and I didn't get my case across the way I had hoped. My ex-husband's lawyer kept interrupting me however the federal magistrate did come to my rescue on a few occasions which was very helpful.

"I felt very intimidated, nervous and inadequate"

"Absolutely, there were solicitors sitting at the table and when my case was called I had to stand to the side with nowhere to put my paperwork. Also the magistrate had just dealt with another person representing themselves and had been rude to them and seemed upset even before hearing me..."

"I got nervous magistrate told me to see the duty lawyer and I did and she helped me a lot"

The judge told me I need to prepare a document called contentions but I don't know what exactly this is or how to get this document and what to write. I need to do it in 3 weeks"

Some of the explanations provided as to why people did not feel disadvantaged included:

"My experience with lawyers in the past has not been positive and therefore it is actually easier and less stressful doing it myself"

"If it was a defended application I think I would have been disadvantaged"

"My previous lawyer didn't listen to me and cost a packet. It is easier doing it myself"

In the Melbourne registry, Victoria Legal Aid provides a duty lawyer service for family law matters and the migration call over list. Participants were asked whether the federal magistrate/registrar explained that these services were available. In response to this question, 31 percent responded yes and 52 percent responded no (12 people did not provide an answer).

Part 8 – Overall experience

Participants were asked what further information would aid them in self-representation. Only 4 people indicated they did not require any further information from the court.

Of the affirmative group, most people provided multiple responses (see figure 9).

Figure 9 - Further information

What is the law	42
How the court system works	45
What forms to fill in	39
What to put in the forms	39
How to act in court	48
What to say in court	56
No response	4
Other	
- Letter from the court explaining court procedure – what to do when you first arrive at court, how you address the federal magistrate, what you can and can't say in court	
- How to serve documents	
- What assistance there is for people with disabilities	
- More property information, superannuation and how to subpoena documents	
- How to get a passport for a child	
- Specific topics of law	
- More on child support	
- How to make a stay application	
- Diagram of court process	
- Correct enforcement procedures	
- Where and who to can ask for help	
- More information about migration	

Participants were asked to rate the court on its level of service provided to self-represented litigants (see figure 10 for results).

Figure 10 – Evaluation of service provided to self-represented litigants by the court¹²

0	8	20	28	12	3
Very Poor	Poor	Adequate	Good	Very Good	Excellent

¹² Two people did not provide a response.

In response to the question of whether the court could improve its services to self-represented litigants, 62 percent indicated yes. Twenty-six (26) percent responded no and 9 people did not provide a response to this question.

Participants were generous with their feedback and outlined several areas of possible improvement including¹³:

"Although the court staff are very helpful it would be great if there was a lawyer at the registry to help people representing themselves fill out the forms and tell you what the next stage is"

"More information about how to act and what to say in court. Better to get this information before coming to court because on the day I was so nervous it would have been hard to digest large amounts of information"

"... Explain things in plain English ..."

"Same judicial officer; party bare their own costs; information about appealing"

"Better website"

"Explain how the court will deal with cases. I waited an entire day and my case was not heard and adjourned"

"I was told by the Child Support Agency to get a stay application. I thought all I needed to do was to come to court. I soon found out it is a bit more complicated than that. Child Support Agency and Court need to work together a bit more"

"Provide an information pack for people representing themselves"

"Self help kits – including examples of how to complete forms, an explanation of the court process, how to present your case – including how to get witnesses to court when they won't agree to come"

"More sympathetic to why people represent themselves. I am a single mother, work part time and do not satisfy requirements of legal aid – I therefore have no other choice but to represent myself"

"They allowed vexatious applications to be heard. I have had 11 orders in 11 months and that doesn't include hearings that were adjourned. They tolerate bad behaviour too readily"

¹³ A full list of responses can be found in Appendix C.

"Provide advocates to oversee barristers treatment of people representing themselves"

"Understand for me coming to court is terrifying experience. No fair justice in my birth country and difficult to understand and trust full the court in Australia"

"Where to get help – legal aid, pro bono and other places"

"I found it extremely hard to find out a simple 'how do I proceed and what's going to happen?' This applied to the website, phone and in person'.

Conclusion and Recommendations

The recommendations of this report are based on the feedback and responses of those surveyed throughout the two phases of the project. The major objectives of this project were to determine the performance standards of the court in relation to self-represented litigants and to determine the needs of self-represented litigants in this context.

Of the 73 respondents surveyed, 82 percent indicated that they received a satisfactory level of service by the court. In spite of the positive feedback received in relation to performance standards, the findings highlighted a number of areas for possible improvement.

After collating the data from respondents, a set of recommendations have been developed in an attempt to address the needs of self-represented litigants based on the responses received. In total, 12 recommendations have been made as indicated below.

• **DEMOGRAPHICS OF RESPONDENTS**

The results show that the court's client base comprises a wide cross-section of the community. This applies to age, demographics and cultural backgrounds.

Interestingly, 43 percent of the self-represented litigants who undertook the survey were born outside Australia. Of this group, 14 people spoke a language other than English at home. A number of these people explained that the complexity of representing themselves was intensified because of language barriers. This was even more prevalent in the 14 percent of people involved in migration cases. These findings indicate that the court must consider the needs of clients from culturally and linguistically diverse backgrounds.

Recommendation 1

Determine the demand for court information products to be translated into languages other than English.

• **CASE DETAILS**

The findings indicate that self-representation occurs across all stages of court proceedings. The results also showed that self-represented litigants often make use of lawyers at different stages of their case. This partial representation accounted for 26 percent of those surveyed.

Currently, the court's case management system (Casetrack) can only monitor the number of unrepresented applications at the initial application

stage and only in family law and child support cases.¹⁴ It does not record self-representation at other court events or in general federal law cases.

In order to improve data recording in this area, the court will need to improve its case management system to capture self-representation at various court events and in general federal law cases.

Recommendation 2

Review the court's case management system (Casetrack) to determine the viability of extending data recording to cover self-representation at various court events and in general federal law cases.

• CONTACT WITH THE COURT

Fifty-five (55) percent of the people involved in both stages of the project had telephoned the Federal Magistrates Court. Overall, telephone staff were praised for their ability to deal with self-represented litigants and provide the information requested. Areas that could be improved include: procedures of the Federal Magistrates Court and identification of forms.

Recommendation 3

Review induction and ongoing training requirements for telephone staff, particularly surrounding the needs of self-represented litigants at the Federal Magistrates Court, the Federal Court and the Family Court.

A total of 62 percent of all participants used the court's website. However, half did not find the information on the website useful. The reasons provided ranged from; a lack of information about the court process and areas of the law; problems locating forms and saving functions; overuse of legal terminology and lack of general and referral information for self-represented litigants.

Clearly, the court needs to address the deficiencies identified by the respondents in relation to the court's website.

Recommendation 4

Review the court's website and develop a 'self-represented link' at www.fmc.gov.au

¹⁴ Certain applications in the court require a number of questions to be answered before an application can be processed. One of these questions is "Is this application represented?" A no response represents a person who is not represented.

- **PRIMARY DISPUTE RESOLUTION**

Twenty-seven (27) percent of the self-represented litigants surveyed involved in family law and child support cases were ordered to attend some form of primary dispute resolution (PDR). An analysis of data revealed problems concerning negative feelings towards the other party rather than the process itself. Improvements in this area should be directed towards increasing information and enhancing the accessibility of information about PDR.

Recommendation 5

Review public information on primary dispute resolution in all areas of the court's jurisdiction and publish more information about the process and increase accessibility to the information.

- **PREPARING DOCUMENTS**

Three-quarters (75 percent) of the people surveyed involved in both stages of the project prepared their own court documents. Of this group, 56 percent had difficulty in completing the forms. Some of the difficulties included:

- Identification of correct forms
- Wording of orders
- Unsure how to prepare an affidavit
- Unable to download website forms.

Recommendation 6

Review all court forms to determine the appropriateness of producing 'self-help kits' to assist self-represented litigants in identifying and completing forms.

Recommendation 7

Develop the technology to enable the court's website forms to be in a format capable of being downloaded and saved.

- **COURT REGISTRY**

Of the people who attended the court registry, 81 percent had no difficulty locating it. However, a number of people commented that increase signage would be beneficial, especially to show the Federal Magistrates Court presence in the registry area and signs in different languages.

Recommendation 8

Review signage at all registry locations and increase signage as required at entry points, registry areas and outside courtrooms.

Seventy (70) percent of those who attended the registry had difficulty locating publications produced by the Federal Magistrates Court. The court accepts that at the time this research was conducted it had limited publications available. However, the court has recently released a number of new publications to address this issue.

Recommendation 9

Supply publications to all registries and request staff display them appropriately in the registry.

- **COURT HEARING**

Twenty-five (25) percent of all people surveyed believed the federal magistrate or registrar conducting their case did not adequately explain the manner in which the list or hearing was to proceed. Accordingly, there is a need for all judicial staff to explain procedures and for all court staff to ensure self-represented litigants are provided with this information.

Recommendation 10

Investigate the appropriateness of providing training and/or producing a management plan/guide for the judiciary and staff when dealing with self represented litigants.

In the Melbourne registry, Victoria Legal Aid provides a duty lawyer service for family law matters and for the migration call over list. Not all self-represented litigants were informed that this service was available. Of the people who were informed, 60 percent sought the assistance of the duty lawyer.

In 2004-5 federal budget, the government allocated an additional \$52.7 million to legal aid. The new funding includes a component to provide a new duty lawyer services in family law matters. The court supports the expansion of duty lawyer services in all family court registries across the country.

- **OVERALL EXPERIENCE**

A total of 95 percent of people surveyed in both stages highlighted the need for further information on particular topics, such as the court process, specific areas of law, where to get help and how to act in court. The court will continue to work towards addressing these deficiencies in both print and electronic media.

Recommendation 11

Review existing publications and publish new user-friendly information for self-represented litigants. The court will aim to work collaboratively with the Federal Court, the Family Court and Legal Aid Commissions on this project.

Sixty-two (62) percent of all respondents surveyed indicated that the court could improve its services to further assist self-represented litigants. Whether a litigant is represented or not, the court is unable to provide legal advice. Accordingly, when providing assistance to self-represented litigants the court must remain independent while at the same time provide a fair and accessible system to all clients.

Furthermore, the court is not attempting in any way to undermine the importance of the legal profession. At all stages of litigation, the court recommends parties engage the services of a lawyer or at the very least seek independent legal advice before commencing proceedings. Only when this is not possible, due financial restraints and/or ineligibility of legal aid funding, will the court look at ways to provide assistance for self-represented litigants.

• FURTHER RESEARCH

This project was undertaken to obtain important data and information in relation to self-represented litigants. An area not previously researched in the Federal Magistrates Court. The results have provided the court with an insight into the needs of self-represented litigants. The findings have also assisted in identifying the challenges faced by self-represented litigants and the court.

In order to measure the effectiveness of the recommendations, a supplementary research project should be undertaken in 2-3 years. The focus of this research should be to review the impact of these findings and recommendations as well as highlighting existing or new areas for improvement.

Recommendation 12

Review the effectiveness of these recommendations and identify areas that require improvement or new areas that need to be addressed in order to meet the needs of self-represented litigants and the court.

Appendix A: Letter to Consultant



FEDERAL MAGISTRATES COURT OF AUSTRALIA

Address

Date

Dear Consultant

A "Day in the Life" Project

Thank you for agreeing to participate in a "day in the life" of a self-represented litigant(SRL) project.

Enclosed is a copy of your project brief. Prior to commencing the project, I ask that you read the brief in its entirety. If you have any questions or wish to clarify a task, please feel free to contact me.

This project has been designed to identify whether the Federal Magistrates Service (FMS) is achieving its objective in providing a relatively simple and accessible court service to people representing themselves. To this end, the responses and feedback obtained from you will help identify the needs of people representing themselves and if required, implement improved court services.

Once you have completed the project, I ask that you contact me. I shall then forward you a survey (either by mail, fax or email) which I will ask you to complete and send back to me, together with your "mock" application and any other documents that assisted you complete the tasks.

Once again, thank you for your participation and good luck.

Yours faithfully

Melanie Dye

SRL Project Officer
Federal Magistrates Service
(t) 8600 4012
(e) melanie.dye@fms.gov.au

Appendix A – Case Scenarios (pages 31-33)

Migration Scenario

You arrived in Australia from Turkey on 10 October 1999. On the same day, you lodged an application for a protection visa. In your application, you claimed that you fear persecution returning to Turkey as a result of your association with a non-government political group.

A delegate of the Minister for Immigration & Multicultural & Indigenous Affairs refused your application for a protection visa on 19 April 2000.

On 25 April 2000, you made an application to the Refugee Review Tribunal (“the RRT”) to have the above decision reviewed. You believed that the delegate did not consider all the facts of your case and accordingly did not make the right decision. On 15 June 2003, the RRT handed down its decision affirming the original decision not to grant the protection visa. See handout of Refugee Review Tribunal for further information on the RRT.

A friend informs you that you can make an application to review the decision of the RRT with the FMS or Federal Court. You’re not really sure what an application for review means and whether the court will re-hear your case. You’re also unsure about which court to issue your application or if any time limits apply. You are now required to commence the tasks.

Family Law Scenario

You and your former partner were married on 20 April 1995.

There are two children of the marriage, WW born 14 December 1998 and XX born 22 April 2000.

You and your former partner separated on 15 May 2003.

You want an order from the Court that outlines that the children live with you and that you are responsible for them. You are happy for the children to see the other parent on a regular basis. You are free to specify the length and frequency of time that the children will spend with the other parent (what you believe is reasonable). You also want to include special occasions, such as Christmas, Easter, birthdays and school holidays. Attention also needs to be given to how the children will be collected and delivered at the commencement and conclusion of visits. You are also free to include additional orders if you find them on the website or are informed of them on the telephone or registry.

You're not really sure what application you need to prepare and whether you need any supporting documents. You're also unsure about which court to issue your application (either the Federal Magistrates Court or Family Court) or if any time limits apply. You are now required to commence the tasks.

Child Support

You and your partner met in 1992 and shortly thereafter commenced a relationship. In 1993, you moved into together (never married).

There are two children of the relationship, YY born 29 July 1994 and ZZ born 15 September 1996.

You and your partner separated in December 2002.

Since the time of separation, the children have lived with your former partner and have had contact with you each second weekend and half of all school holidays.

Your former partner applied to the Child Support Agency (CSA) for a child support assessment (see CSA brochure "What is child support?") Based on your salary, you have been assessed to pay \$220 per week per child. The date of this assessment was 27 March 2003. You object to the assessment and lodge an objection with the CSA on 9 April 2003. The CSA review your case and send you a notification on 19 June 2003 reaffirming the original assessment of \$220 per week per child.

You still disagree with the original assessment and outcome of the objection process with the CSA. A friend informs you that the next stage is lodging an application with the Court (see CSA brochure "Objections"). You do not oppose paying child support for your children but claim that you can not afford \$220 per week per child and agree to pay \$190 per week per child.

You're not really sure what application you need to prepare. You are also unsure about which court to issue your application or if any time limits apply. You are now required to commence the tasks (outlined above).

Appendix A – Consultant Survey (pages 34-45)



Survey

Please complete the following questions and return the completed survey to the project manager.

Part One: Telephone and website

1. How did you find the telephone number(s) for the Federal Magistrates Service (FMS) and the Family Court?

2. At approximately what time did you telephone the FMS?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8.30am	12.30 pm	5.30pm

3. How did you find the telephone manner of FMS staff?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

Additional comments:

4. When making your FMS telephone inquiry, did you find out the following -

a. The differences between the FMS and Family Court

Yes **No**

If yes, answer received

b. Whether it would be more appropriate to file the application in the FMS or Family Court

Yes No

If yes, answer received

c. Documents required for filing an application

Yes No

If yes, answer received

d. How and where to file an application

Yes No

If yes, answer received

e. Services available to parties representing themselves in the FMS

Yes No

If yes, answer received

f. Additional information provided over the telephone from FMS staff

5. What other information would have been useful to obtain from your telephone inquiries?

6. Can you suggest any ways in which the FMS could improve the way they deliver information on the telephone?

7. How did you find the internet address for the FMS website?

8. Approximately how long did you spend on the website?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
>10mins	25mins	45mins	1hr	1.25hrs	1.45hrs>

9. How would you rate the general layout of the website?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

10. Did you find using the FMS website easy?

Yes No

Comment

11. Did you have any difficulty using the FMS website?

Yes No

Comment

12. Do you think the information on the website is accessible and understandable?

Yes **No**

Comment

13. What additional information could be added to further assist you?

Comment

14. Did you find the following information on the website?

a. The differences between the FMS and Family Court

Yes **No**

b. Whether it would be more appropriate to file the application in the FMS or Family Court

Yes **No**

c. Documents required for filing an application

Yes **No**

d. How and where to file an application

Yes **No**

e. Fees & exemptions of filing an application

Yes **No**

f. Services available to parties representing themselves

Yes **No**

15. Can you suggest any ways in which the FMS could improve the way they deliver information on the website?

16. Overall, how would you rate the FMS website?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

Part Two: Primary Dispute Resolution (PDR)

17. When making your FMS telephone inquiry, did you find out the following -

a. What primary dispute resolution is?

Yes No

If yes, answer received

b. When PDR is used in family law cases?

Yes No

If yes, answer received

c. The referral process to a PDR agency?

Yes No

If yes, answer received

d. The costs associated with using a PDR agency?

Yes **No**

If yes, answer received

18. Can you suggest any ways in which the FMS could improve the way they deliver information on PDR services on the telephone?

19 a. Did you find information about PDR on the FMS website?

Yes **No**

19 b. If yes, did you find the information about PDR understandable?

Yes **No**

Comment

20. What additional information about PDR could be added to further you?

Comment

Part Three: Filing an Application

21 a. Did you complete an application form?

Yes **No**

21 b. If yes, where did you find out which application form to complete?

- Telephone inquiry
- FMS website
- Attending the registry
- FMS publication
- Other _____

22. Please indicate how you completed the application form?

- Handwritten
- Typed

Reason

23 a. Did you fill out the "orders sought" section on the application form?

- Yes** **No**

23 b. If yes, where did you find out which "orders" to include on the application form?

- Telephone inquiry
- FMS website
- Attending the registry
- FMS publication
- Other _____

24. Approximately how long did you spend completing the application form?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
>20mins	40mins	1hr	1.20hr	1.40hr	2hrs>

25. Did you have any difficulty completing the application form?

- Yes** **No**

Comment

26 a. Do you think the application form is a simple document to complete?

- Yes** **No**

26 b. If no, in what ways can the FMS improve the application form to make it easier to complete?

Comment

27. In addition to the application form, did you find out what further documents are required for filing?

Yes **No**

List documents

- 1.
- 2.
- 3.
- 4.
- 5.

28. What additional information could the FMS provide to assist in identifying and completing documents for filing?

Comment

Part Four: Registry

29. What time did you attend the registry?am/pm

30. Did you find the registry easy to find?

Yes **No**

If no, how could the Court make the registry easier to find?

31 a. From your observations, do you think it was made clear that the FMS share registries with the Family Court?

Yes **No**

31 b. If no, in what ways could the FMS better promote that the registry is for both the FMS and Family Court?

32. How long did you have to wait in line at the registry?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
>10mins	25mins	45mins	1hr	1.25hrs	1.45hrs>

33. When making your inquiries with registry staff, did you find out the following? -

a. The differences between the FMS and Family Court

Yes **No**

b. Whether it would be more appropriate to file the application in the FMS or Family Court

Yes **No**

c. Documents required for filing an application

Yes **No**

d. Fees & exemptions of filing an application

Yes **No**

e. What happens once an application is filed

Yes **No**

f. How long from the time of filing until the matter will be listed in court

Yes **No**

g. Services available to parties representing themselves in the FMS

Yes **No**

h. Additional information provided from registry staff

34. Overall, how did you find the manner of registry staff?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

Additional comments:

35. What further information about the FMS and your application would have been useful to obtain from registry staff?

36. Can you suggest any ways in which registry staff could improve the way they deliver information about the FMS?

37. Did you find any publications on the FMS in the registry?

Yes **No**

38. Do you think it would be beneficial to have a range of FMS publications available in the registry?

Yes **No**

Part Five: Attending Court

39 a. Did you find the courtroom easy to find?

Yes **No**

39 b. If no, can you suggest any ways in which the FMS could make finding their courtrooms easier?

40. Approximately, how many cases were listed on the day you attended court?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<10	15	20	25	30	35>

41 a. When the court started, did the court officer/associate/federal magistrate explain how he/she would deal with cases on the day?

Yes **No**

41 b. If no, do you think this information would have assisted a person representing themselves in court?

Yes **No**

Comment

42 a. When the court started, did the court officer/associate/federal magistrate explain that there was a duty lawyer to assist people representing themselves in court?

Yes **No**

42 b. If no, do you think this information would have assisted a person representing themselves in court?

Yes **No**

43. From your observations, how many people were representing themselves in court?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<10	15	20	25	30	35>

44. How did you find the manner of court staff towards people representing themselves?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

Additional comments:

45. Can you suggest any ways in which the FMS could improve the way they deal with self-represented litigants ?

46. Did you find any publications on the FMS in or near the courtroom?

Yes **No**

47. Do you think it would be beneficial to have a range of FMS publications available in or near the court?

Yes **No**

Part Six: General

48. Overall, how would you rate the level of service the FMS provides to self-represented litigants ?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

49. What could the FMS do to improve the way they work with self-represented litigants ?

50. What could FMS do to improve the way they deal with self-represented litigants ?

51. Are there any other issues you wish to raise about your experience with the FMS?

Appendix B: Letter to Community Legal Centres



FEDERAL MAGISTRATES COURT OF AUSTRALIA

Address

Date

Dear Sir/Madam

Self-represented litigantProject

The Federal Magistrates Court is currently looking at ways in which to identify and address the needs of self-represented litigants .

To this end, the Court is undertaking a research project which will involve interviewing and surveying people who represent themselves.

The project extends to all jurisdictions covered by the Court, including family law, child support and general federal law.

The Court seeks the assistance of your Centre in helping identify 2-3 people to interview about their experiences with the Court and approximately 20-30 people to complete a written survey.

Further details about the project can be found in the information sheets (provided). Also enclosed is a copy of the consent forms for self-represented litigants who agree to participate in the project.

If your Centre is able to assist the Court with this project, please contact the SRL Project Officer on (03) 8600 0412 or melanie.dye@fms.gov.au

We look forward to hearing from a representative from your Centre soon.

Yours faithfully

MELANIE DYE
SRL Project Officer

Enc

Appendix B: Community legal centre information sheet



Information for Community Legal Centres

A high number of people represent themselves in the Federal Magistrates Court (also known as the Federal Magistrates Service).

The Court is committed to adopting a "hands on approach" in identify the needs of self-represented litigants .

The Court has designed a project aimed at measuring and, if required, developing services that are simple, accessible and understandable to self-represented litigants .

A Day in the Life Project

There are two parts of the project:

(1) Stage one will involve interviewing 6-9 self-represented litigants (in family law, child support and general federal law).

A representative from the Court ("the project officer") will conduct approximately 3 interviews with self-represented litigants at various stages of their case. Self-represented litigants will also be asked to provide their comments about the Court in a notebook provided.

(2) Stage two will require 60-80 self-represented litigants (in family law, child support and general federal law) to complete a written survey. The survey will cover all aspects of their case. If required, the questionnaire can also occur by telephone.

Assistance from Community Legal Centres

The Court is seeking the assistance of community legal centres to help in selecting self-represented litigants for both the interviews and surveys.

The project officer will continue to work with community legal centres throughout the duration of the project.

It is anticipated that the results from the interviews and surveys will assist the Court improve access to justice for our joint clients.

If your community legal centre is interested in taking part in this project and/or requires further information, please contact:

Melanie Dye
Project Officer
Federal Magistrates Court
(t) (03) 8600 4012 or (e) melanie.dye@fms.gov.au

Appendix B: Self-represented litigant information sheet



FEDERAL
MAGISTRATES
COURT OF
AUSTRALIA

Are you representing yourself in the Federal Magistrates Court?

If so, would you like to participate in a project aimed at improving Court services for you and other people also representing themselves in Court?

A high number of people represent themselves in the Federal Magistrates Court (also known as the Federal Magistrates Service).

The Court is committed to adopting a "hands on approach" in identify the needs of people representing themselves.

The Court has designed a project aimed at measuring and, if required, developing services that are simple, accessible and understandable to people representing themselves in Court.

A Day in the Life Project

There are two parts of the project:

(1) Stage one will involve interviewing a selected number of people representing themselves in Court. A representative from the Court ("the project officer") will conduct approximately 3 interviews at various stages of your case (either in person or via the telephone). Participants will also be asked to provide their comments about the Court in a notebook provided.

(2) Stage two will require participants to complete a written survey. The questionnaire will cover all aspects of your experiences with the Court. If required, the questionnaire can also occur by telephone.

The results of the project will help the Court identify and address the needs of people representing themselves.

Important: Participation in the project is voluntary and your participation will be kept confidential at all times.

If you are interested in taking part in this project or require further information, please contact:

Melanie Dye
Self-represented litigantProject Officer
Federal Magistrates Court
(t) (03) 8600 4012
(e) melanie.dye@fms.gov.au

Appendix B – Consent Form



FEDERAL
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AUSTRALIA

Survey - Consent Form

A high number of people represent themselves in the Federal Magistrates Court (also known as the Federal Magistrates Service). The needs of people representing themselves vary from those represented by a lawyer. In order to find out the particular needs of unrepresented people, the Federal Magistrates Court is undertaking a research project (details outlined below).

Approximately 60-80 people representing themselves will be asked to complete a survey.

Survey

The survey will take approximately 20 minutes to complete. You may provide your responses in writing or by telephone.

The questions relate to all aspects of your contact with the Court (telephone inquiries, searching the website, preparing court documents, filing and serving court documents, attending family counselling or mediation and presenting your case in Court).

All responses to the questions should only relate to your experiences with the Court process and not your personal feelings about the other party or about the judgement.

The results from the surveys will provide the Court will valuable feedback, which will be used to obtain a greater understanding of the specific needs and experiences of people representing themselves.

Participation is voluntary & confidential

Participation in this project is voluntary.

Your personal details will be kept confidential at all times. No names or addresses will be used in any reports. The results obtained from the surveys will only be used for this project and will not be used for any other purpose.

Your participation in this project will not affect your case in any way. The only person who will have your personal details will be the project manager. No other court staff will have access to this information or know you are participating in the project.

If you have any problems completing the survey, you can contact the project manager. The project manager will not however be able to answer any questions in relation to your case.

Appendix B – Survey



FEDERAL
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AUSTRALIA

Survey

Please complete the following questions and mark the boxes with a tick or cross.
Once you have completed the survey, please return it to the project officer.

Part One: Personal details

1. Gender

Female Male

2. Age

>20 20-30 30-40 40-50 50-60 60>

3. Where do you live? _____

4. Were you born in Australia?

Yes No

If no, where were you born? _____

5. Do you speak English at home?

Yes No

If not, what language do you speak? _____

6. What is your main source of income?

- Paid employment
- Centrelink payments
- Support from 3rd party (spouse/parent etc)
- Other (please explain) _____

Part Two: Your case

7. What area of law does your case relate to –

- Family Law Child Support Migration
 Bankruptcy Discrimination Other _____

8 a. Please indicate whether you are -

- Applicant Respondent 3rd party

b. Is the other party represented by a lawyer?

- Yes No

9. What stage of proceedings have you reached?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Filed application & waiting for 1st hearing	Attended 1st hearing	Waiting to/or just attended mediation	Waiting to/or just attended conciliation conference	Waiting for final hearing	Final hearing has been heard

10. Do you have a lawyer working on your case?

- Yes No Part of your case

11. If you do not have a lawyer, why is this?

- I can't afford one, and I can't get legal aid
 I had a lawyer, but couldn't afford to continue
 I had a lawyer, but wasn't happy with my lawyer
 I want to do this myself
 Other (please explain) _____

12. Have you applied for legal aid for your case?

- Yes No

Part Three: Your contact with the court

13. How did you find out about the Federal Magistrates Court?

- I was informed by my previous lawyer
 - I was informed by a lawyer from Legal Aid or Community Legal Centre
 - I conducted my own research and found out about the court
 - I am the respondent and was served with an application
 - My case was transferred from the Family Court/Federal Court to the Federal Magistrates Court
 - Other (please explain) _____
-

14. Have you ever telephoned the Federal Magistrates Court?

- Yes
- No (go to question 15)

If yes, did you find out the information you were inquiring about?

- Yes
- No

If no, please explain why not - _____

15. Have you used the court’s website? **www.fmc.gov.au**

- Yes
- No (go to question 17)

If yes, did you find the information on the website useful?

- Yes
- No

If no, please explain why not - _____

16. Is there any contents that the court could add to its website that would help you?

- Yes
- No

If yes, please tell us _____

Part Four: Primary dispute resolution

17. Did the court refer you and the other party to attend counselling or conciliation?

- Yes No (go to question 20)

If so, where was the referral made? _____

18. Did you find the service provided by the counselling or conciliation agency helpful to your case?

- Yes No

If no, please comment _____

19. Did the court provide you with enough information about the referral to counselling or conciliation?

- Yes No

If no, what further information would assist you? _____

Part Five: Preparing documents

20. Did you complete your own court documents?

- Yes No (go to question 23)

21. Did you have any difficulty completing the documents?

- Yes No

If yes, please explain _____

22. Can the court improve the documents to make them easier to complete?

- Yes No

If yes, please explain _____

Part Six: Attending the court registry

23. Have you attended the court registry?

- Yes No

If yes, did you find the court registry easy to find?

- Yes No

If no, how could the court make finding the registry easier? _____

24. When you attended the court registry, did you find publications about the Federal Magistrates Court?

- Yes No

25. If no, do you think it would be beneficial to have a range of Federal Magistrates Court publications available in the registry?

- Yes No

Part Seven: Attending the Court

26. Did you find the courtroom easy to find?

- Yes No

27. Did the Federal Magistrate explain to you how she/he would hear your case?

- Yes No

28. Do you think representing yourself in court disadvantaged your case?

- Yes No

If yes, explain why _____

29. Did the Federal Magistrate explain that there was a duty solicitor available to help people representing themselves?

- Yes No

If yes, did you speak to the duty solicitor?

- Yes No

Part Eight: General

30. What further information do you need from the court?

- What the law says
 - How the court system works
 - What forms to fill in
 - What to say in the forms
 - How to act in court
 - What to say in court
 - Other (please tell us) _____
- _____
- _____

31. Overall, how would you rate the level of service you received from the court?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Very Poor	Poor	Adequate	Good	Very Good	Excellent

32. Could the court do anything to improve its services to you and other people representing themselves?

- Yes No

If yes, please expand _____

33. Are there any other issues you wish to raise about your experience with the court?

Thank you for taking the time to complete this survey. Your feedback will help the court improve its services to you and other people representing themselves.

Appendix D: Open ended responses

Please explain why you did not find the court's website useful

- I had trouble with serving the documents and it would have been beneficial to have information on this.
- Not much information for financial matters – all the information seems to be directed for people with family or child support disputes. Lack of information about superannuation issues.
- Little information about contravention applications – for example, what situations give rise to a breach?
- I was at the end of my case and owed my solicitor \$15,000. I had already borrowed off family and friends and had no money. I therefore had no other choice but to represent myself at the final trial. I looked on the website and couldn't find much information about how to present a final trial.
- I couldn't find much information about what I (respondent) needed to do and how to go about doing it.
- I wanted to find out about the court process, maybe see a diagram and see what the next stage is and how long it takes to get to the next stage and what steps I need to do.
- Couldn't find information I needed and had to ring the court, however they gave me the wrong forms.
- I didn't find the information I needed and sent an email to the court. I got the information I needed but if it was on the website in the first place then I wouldn't have had to send an email.
- Not user friendly.
- Too legal.
- Forms not clear and not available. No instructions. Used Family Court forms instead.
- Didn't tell me which forms I needed to complete.
- When you click on forms a whole list of forms come up – how do you know which ones to use.
- No information on making a stay application.
- Not a lot of information on child support – when you do a search all that comes up is cases.
- Forms can't save them – make them savable.
- Website layout is very confusing.
- Very unfriendly – need simple step by step information.
- Limited information about my case.
- No information about how to be successful. Also, how long is my case going in the court and what I need to do.
- My case wasn't listed. Many information about family law and not for my case for immigration case.

Are there any contents that the court could add to its website

- More information about how to service the documents. What documents can be served by post and those that need to be served personally. I only found this out after I got it wrong.
- More information about financial matters – especially superannuation and subpoenaing financial records from family businesses.

- More information for respondents. Step by step process. For example, 1st you must do this and 2nd do this and so on.
- Information specifically for people representing themselves.
- Online lawyers.
- Savable forms.
- How to represent yourself at a final trial. What you need to do before hand and when at court.
- More examples of wording of orders.
- Specific information and forms for responding to an application and where to get free help.
- Separate link for people representing themselves.
- Step by step link – what you need to do first and so on (all in non-legal language).
- More information about how to fill in forms and what to do and say in court.
- Heaps more information of how to do things and the best way to run your case.
- Correct forms or clear. Instructions to use forms. Use of pro-forma affidavit.
- Straightforward information – explaining forms to use, where to file, serve & how to present a case in court.
- Forms you can save.
- The forms to use in child support – they all say family law but does that also mean child support. Also, once I completed the forms I couldn't save them – very annoying.
- What to do and expect when you get to court.
- A separate link for child support – so you don't have to go looking for the information.
- More information on child support.
- What forms to fill in and a summary of child support law.
- Where you can get more help.
- More information for people representing themselves.
- Separate link for people representing themselves.
- Simple steps of what to do.
- Not to use legal words that have the same meaning as simple words – big words can confuse.
- Steps of a case and a list of legal terms eg. what is a court book?
- All the forms I need.
- More for immigration and different languages.

Please explain why you had difficulty completing court documents

- Some parts of the divorce form are confusing – for example, question 27 could be more clearer.
- Service documents – bit confusing.
- I have a disability and the forms do not provide enough space to fill them in.
- I didn't know what to write – I had to take the forms into legal aid so they could help me.
- Affidavit difficult to complete and didn't know who could witness it.
- Didn't know the exact words to use in the application or what to put not put in the affidavit.
- Bit difficult in the language and format and I was unsure what I had to write in the affidavit.
- Some questions were a bit complicated.
- It's not really clear on the affidavit that it can be longer than one page. I only found this out when I received my ex' affidavit.

- Didn't know what documents and how to respond.
- Trying to get it witnessed was difficult. I didn't know who could witness an affidavit.
- Registry staff assisted me and explained what I had to do.
- Affidavit limited to one page when typing it on computer.
- Needed help of Community Legal Centre – I didn't know which orders to ask for and what information to put in the affidavit.
- Order of process to follow.
- They are very difficult to complete.
- I didn't really know how to set out an affidavit – and at first didn't know what an affidavit was.
- Wording of orders.
- I didn't know which forms to complete – had to ring the court – this information should be on the website.
- Had to get legal community centres to help, was unsure how to state document.
- The first time I waited 2 hours in Melbourne to lodge subpoenas however they only had PO Box and would not except them. Was not stated on the form full address details required.
- I didn't know which forms and what to put in the forms.
- I have not much knowledge of what to do in my case. Without help of legal aid I could not finish documents.
- Not clear which forms to use and how to do them right.
- Needed help from Asylum Seekers Resource Centre.
- English is not my first language and hard to fill in.
- I got help from legal aid.

Please explain how the court can improve court documents to make them easier to complete

- More user friendly for people with disabilities.
- After I inserted all the information I tried to save it – very frustrating to find out that you can't save. This would be a very beneficial function.
- Make them easier for people to fill in, maybe include some examples.
- Examples or someone at the court to help you fill in the forms correctly.
- Forms need to be clearer. The court should prepare an information sheet about forms and how to complete an affidavit.
- More examples.
- Simple terms.
- More instructions/examples.
- Make them savable from the internet.
- Page breaks and change font sizes.
- More examples – like an example kit and where people can get help to fill out the forms eg. Community Legal Centre.
- Checklists.
- Example affidavit.
- Helpful document explaining how to fill in the forms.
- A clear description of what is required and what orders you are seeking. And the correct form to use.
- How to detail your request and what should be listened in an affidavit and what order and detail is required.
- Explain exactly what I need to do.
- Document manual.
- Court lawyers to help you.

- Other languages.
- Examples.

Please explain how the court can make the registry easier to find

- Signs to distinguish between the Federal Magistrates Court and the Family Court.
- Need more information about the courts. When to file in the Federal Magistrates Court and when to file in the Family Court.
- More signs to indicate you are at the Federal Magistrates Court. I was confused whether I was at the right place but registry staff were very helpful.
- I was confused at first – I didn't know it was also the Federal Magistrates Court registry (until I asked) – need more signs.
- I had to ask whether I was in the right place – all I could see was Family Court signs and brochures.
- Perhaps an usher or volunteer for people who feel afraid.
- More signs.
- Signs in different languages.

Do you think representing yourself in court disadvantaged your case

Yes

- I found the entire process very frightening. I had no other choice but to represent myself and felt disadvantaged because of it.
- I have only had a short hearing and am waiting for my final hearing. I already feel out of my depth and have no money for a lawyer. I am trying to do my own research which is very time consuming and hard to learn the law and court procedure and prepare my own case. My ex's solicitors are not helping either.
- The federal magistrate didn't really let me explain my case.
- When I was represented I didn't take much notice when I was at court because my solicitor did all that. Then I ran out of money and couldn't afford to get a barrister for the final trial. So I did it myself. It was one of the most terrifying experiences of my life. Although the judge was quite nice it was still hard and I think I would have got a better result had I been represented.
- Completely and utterly bewildered with the entire process. Didn't understand the purpose of a court hearing that you can't even present your case, as there is another 40 cases in the list. Waste of time and money.
- Especially give my ex-husband is represented. I think it would have been more fair if we were both unrepresented.
- I am not a qualified lawyer.
- Terrified – unsure of procedure.
- Attitude of the judge was quite unhelpful. Need an understanding judge and someone who is willing to give you a fair go.
- Got walked over – didn't know I had choices.
- Barrister on the other side caused lots of delays. When barrister against a self represented person barrister wins hands down and more costs for self represented person.
- It is terrifying walking into a courtroom for the 1st time with room full of lawyers. There were 50 cases listed on the same day as mine. I thought my case would be heard and finalised on the same day. Boy was I wrong.
- Didn't know what to do at the start. I didn't know I had to stand my case down. Very confused about adjournment/standing a case down. I thought someone would just call my case.

- Didn't know what was going on.
- Not getting contravention application right.
- I was encouraged to attend court by court officers even though I had not completed documents as per orders. Incurred judges anger.
- Due to the fact my ex-wife was represented, I felt the judge listened to my ex-wife's lawyer more than me. The lawyer kept getting facts wrong and when I tried to correct the mistakes I was told I would have my turn, which was in fact about half the time. I think judges need to listen more to people that represent themselves and not just listen to lawyers, which often get things wrong and stretch the truth.
- The judge was very rude and looked like he had better things to do. Although this may have seemed small to him it is my life and these issues are very important to me and my kids.
- Its very hard to wear two hats: the client and the lawyer.
- I was very nervous and I didn't get my case across the way I had hoped. My ex-husband's lawyer kept interrupting me however the federal magistrate did come to my rescue on a few occasions which was very helpful.
- I really didn't know what I was doing. I think if I had a lawyer they would have been better equipped to present my case in the form required by the court.
- Other party had a barrister and even though I was the applicant the federal magistrate tended to direct all questions to his solicitor and I found it hard to be heard.
- Lack of knowledge concerning the law which disadvantaged my case.
- I felt very intimidated, nervous and inadequate.
- I didn't know it was only a directions hearing – I thought the court would deal with my case on the day – now I have to wait another 4 months.
- Its hard representing yourself.
- Ex-partner's barrister basically controlled the case and I didn't know when I could say something or when I could object to what they were saying.
- The matter has been drawn on over 12months. Once a magistrate was very rude to me and simply ignored my request.
- Absolutely, there were solicitors sitting at the table and when my case was called I had to stand to the side with nowhere to put my paperwork. Also the magistrate had just dealt with another person representing themselves and had been rude to them and seemed upset even before hearing me. Have some respect for those representing ourselves, we are human beings and deserve some rights to represent ourselves. The court treats us like interfering children, instead of the citizens we are and the taxes we pay that pay them their wages.
- Once told by a magistrate – it is not a soup kitchen.
- Communicate so people representing themselves understand. I was confused by the magistrates question to me "how long is this going to take?" I didn't realise until after I sat down and went to the bottom of the list that he wanted to know how much court time today will be taken by my case.
- I did not get the chance to peruse any of the other parties documentation, I did not know how to question the other party in court nor how to defend myself during the barristers questioning. I did not feel I knew any procedures.
- I got nervous magistrate told me to see the duty lawyer and I did and she helped me a lot.
- The judge told me I need to prepare a document called contentions but I don't know what exactly this is or how to get this document and what to write. I need to do it in 3 weeks.

- Yes, very disadvantaged. The government is trying to finish my case and give to me a document - notice of motion. What is this? My case is listed next month and if no lawyer my case will be finished.
- I am unsure as to court procedure. Very scared and can not afford a lawyer to help me.
- Yes, don't know laws and courts.
- I am not a lawyer and didn't know how to argue my case good.

No

- My experience with lawyers in the past has not been positive and therefore it is actually easier and less stressful doing it myself.
- If it was a defended application I think I would have been disadvantaged.
- My previous lawyer didn't listen to me and cost a packet. It is easier doing it myself.

How can the court improve services to self-represented litigants

- Give people representing themselves an opportunity to speak and not get interpreted by the barrister on the other side.
- Court lawyers – to help people at court.
- Although the court staff are very helpful it would be great if there was a lawyer at the registry to help people representing themselves fill out the forms and tell you what the next stage is.
- More information and time spent on people representing themselves to really understand what people need so not to confuse or complicate matters for them.
- More information about how to act and what to say in court. Better to get this information before coming to court because on the day I was so nervous it would have been hard to digest large amounts of information.
- A bit more understanding. Explain things in plain English. Acknowledge and understand background of why someone is self-represented.
- A lot more consideration to people who have no other choice but to represent themselves.
- Same judicial officer; party bare their own costs; information about appealing.
- Better website.
- At the start the federal magistrate should explain how he/she will deal with all the cases and a free lawyer is available to help people representing themselves. It is daunting to walk into a courtroom with approximately 50 lawyers.
- Regulate service of documents. Was only served at the last minute. Legal aid couldn't help due to a conflict. I feel very lost in an unknown system.
- Explain how the court will deal with cases. I waited an entire day and my case was not heard and adjourned.
- Explain court procedures more clear.
- Show a mock trial in progress or 'mocktrial' showing stages and structure of trial.
- Give people who represent themselves a fair go.
- I was told by the Child Support Agency to get a stay application. I thought all I needed to do was to come to court. I soon found out it is a bit more complicated than that. Child Support Agency and Court need to work together a bit more.
- Provide an information pack for people representing themselves.
- Self help kits – including examples of how to complete forms, an explanation of the court process, how to present your case – including how to get witnesses to court when they won't agree to come.

- More sympathetic to why people represent themselves. I am a single mother, work part time and do not satisfy requirements of legal aid – I therefore have no other choice but to represent myself.
- They allowed vexatious applications to be heard. I have had 11 orders in 11 months and that doesn't include hearings that were adjourned. They tolerate bad behaviour too readily.
- Make the law easier to understand. The system is set up for lawyers. Without a degree in law it can be very difficult.
- The staff are very helpful but the wait for hearings needs to be looked at. It took four years for my property cases to get to final hearing and after 12 months I'm awaiting judgment for child support case.
- Send information about the court when they know people are representing themselves eg. court procedure, what to do in court etc.
- Clearly the courts need to assess why you are representing yourself.
- Provide advocates to oversee barristers treatment of people representing themselves.
- I felt because I represented myself, I went to the back of the queue on every occasion.
- I am confused as to the courts acceptance of sworn financial statements which were not only exaggerated but didn't tally. I did not know the correct place to challenge these untruths nor the method. I was demeaned, humiliated by the other parties solicitor and questioned by him outside the courtroom where he rifled my documentation and planned the letter part of his response on the basis on that humiliation. The whole process was degrading and the outcome pathetic. I put it all down to my lack of representation in court – up against a qualified expensive solicitor/barrister.
- Legal help for all people who have no money to pay a lawyer.
- Lawyers to represent you and more information and help for people with no lawyer.
- More help.
- Understand for me coming to court is terrifying experience. No fair justice in my birth country and difficult to understand and trust full the court in Australia.
- I have no more money for lawyer and now myself representing in court. I have to do all for my case and don't know how. I don't understand all I have to do.
- Court lawyer to help you from start to finish.
- Where to get help – legal aid, pro bono and other places.