

Memorandum of Understanding (MOU) between the Federal Magistrates Service and the Federal Court of Australia (the 'courts') in relation to co-operation and service support arrangements.

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1 Objectives and term

1.1 Background to the memorandum

The Federal Court of Australia (the 'Federal Court') and the Federal Magistrates Service (the 'Magistrates Service') are independent courts of justice established within the Commonwealth of Australia.

The government has established the Federal Magistrates Service to—

- improve access to justice,
- lower the costs of justice for less complex matters,
- effect the transfer of less complex matters from the Federal Court to a jurisdiction that will implement simpler less complex and less costly practices and procedures, and
- free judges of the Federal Court and the Family Court to focus on matters of greater legal complexity that require the consideration and determination of a superior court.

The two courts share jurisdiction in areas of federal law.

The Federal Court wishes to facilitate the establishment of the Federal Magistrates Service

The Federal Magistrates Service seeks to make arrangements with the Federal Court pursuant to sections 90 (arrangements for the performance of functions), 92 (arrangements for the provision of courtrooms and other facilities) and 100 (arrangements to make officers available) of the Federal Magistrates Act 1999.

An arrangement has been made under section 90 ([Attachment A](#)).

A formal arrangement under section 92 is proposed and an arrangement has been made by chief executives for the purposes of section 100.

The purpose of this memorandum is to provide additional information to supplement the formal arrangements made, by heads of jurisdiction, under sections 90 and 92 and, by chief executives, under section 100.

All services to be provided by the Federal Court under this MOU are offered on the clear understanding by each jurisdiction that the provision of those services is not detrimental to, or inconsistent with, the proper conduct and exercise by the Federal Court of the judicial power of the Commonwealth, statutory functions and obligations of the Federal Court under the Federal Court of Australia Act 1976 or other relevant legislation.

1.2 Objects of the memorandum

This memorandum has been made by the courts:

- to identify those services agreed to be provided by the Federal Court for and on behalf of the Federal Magistrates Service,
- to clarify the expectations and extent of the services to be provided,
- to provide a basis for the on-going relationship between the parties,
- to establish an accountable and transparent basis for identifying costs incurred by the Federal Court and the Federal Magistrates Service in relation to facilities and services,
- to ensure that the Federal Court will, as far as is practical, provide services and/or facilities required for work in the concurrent jurisdiction, and

- to provide a sound basis for any subsequent adjustment of budgets having regard to the cost of services and facilities provided by the Federal Court.

Subject to the Financial Management & Accountability Act 1997, where appropriate and quantifiable the equivalent budget appropriation, and if appropriate the associated physical resources, will be transferred to the Federal Magistrates Service for the specified work and services provided by the Federal Court.

In addition, for the purpose of full accountability for costs, where appropriate the Federal Court will account for, and advise any costs to the Federal Magistrates Service so that they can be properly reflected in the annual accounts of the Federal Magistrates Service as 'costs of services provided at no cost by the Federal Court to the Federal Magistrates Service'.

It is agreed, as a principle, that in the event that it is subsequently agreed that budget funds will be transferred from the Federal Court to the Federal Magistrates Service there will be consultation about the transfer of associated resources, including staff. No transfer will occur until there is agreement in relation to the allocation of associated resources and/or any associated staffing issues including the funding of any necessary redundancies.

If a budget funding transfer occurs during the life of this agreement and there is no associated transfer of staff or facilities the Federal Magistrates Service will, while this MOU remains in force, pay the transferred amount to the Federal Court for provision of those services.

Additional costs arising in the Federal Court from different work practices, procedures, standards or additional work arising from the Federal Magistrates Service are excluded from consideration in relation to the identification and transfer of budget appropriation funds from the Federal Court unless otherwise agreed in writing by the Federal Court.

1.3 Term of arrangements and review

This MOU is expressed to commence on 1 July 2000 and operate for the period to 30 June 2002. A further MOU may be entered into by the courts before or on that date. In the absence of any action by either court to formally terminate the arrangements at the end of two years the memorandum shall continue for a period of three months

Recognising that the full extent and impact of some services to be provided by the Federal Court to the Federal Magistrates Service cannot be determined now, the support and services and terms and conditions of this MOU will be jointly reviewed by the courts by 30 June 2001 and may be adjusted for any unintended or untoward consequences (if any).

1.4 Arrangements for workload and resource usage monitoring

It is recognised that the establishment of the Federal Magistrates Service should lead to improved access to justice for the community. The existence of the Federal Magistrates Service may, in areas of concurrent jurisdiction, result in an increase in filings, processing complexity and associated costs and resource requirements that would otherwise not occur.

The Federal Magistrates Service will be responsible for funding costs incurred by the Federal Court in the provision of registry and other services that are caused directly by additional work (including increased filings) arising in areas of concurrent jurisdiction as a result of the existence of the Federal Magistrates Service.

The baseline and benchmark for workload monitoring and measurement of additional work for concurrent jurisdiction is set out below. This is based upon actual data for the Federal Court for the past 3 years.

Actual workload history in the Federal Court in areas of concurrent jurisdiction for the past 3 years is as:

	1997-98			1998-99			1999-2000*		
	1	2	3	1	2	3	1	2	3
ADJR	181	380	228	205	357	155	229	431	277
Bankruptcy	3530	4478	3258	3522	4742	3517	3079	4304	3099
TPA**	336	999	460	348	887	388	404	903	382
Human Rights	--	--	--	--	--	--	93	93	8

1. New matters filed in the period
2. New matters filed in the period plus matters brought forward from the previous period
3. Matters case managed and finalised in that period

* Projection to year-end is based on actual results to 31 May 2000.

** TPA figures constitute ALL filings in the Federal Court and not just filings within the jurisdiction of the FMS.

For the administration and handling of the following filings the baseline and benchmark will be:

ADJR = 205 filings per annum (3 year average)

Bankruptcy = 3377 filings per annum (3 year average)

Human Rights = Nil. New jurisdiction for both courts.

For resources costs of case management and completion the baseline and benchmark will be:

ADJR = 220 matters per annum (3 year average)

Bankruptcy = 3291 matters per annum (3 year average)

Human Rights = Nil. New jurisdiction for both courts.

Where the workload of the Federal Court, when added to the workload of the Federal Magistrates Service, exceeds the baseline and benchmarks set out above, that work will be understood to be 'additional work' unless otherwise agreed in writing and the additional costs for that work are to be met by the Federal Magistrates Service.

For TPA matters, the baseline and benchmark will be determined having regard to both the historical data for the whole of the jurisdiction, as is set out above, and TPA matters commenced in or transferred to the Federal Magistrates Service between 1.7.2000 and 31.6.2002.

Additional costs will not apply for deviations in workload of <5 percent in ADJR and TPA and <1 percent in Bankruptcy.

A workload cost model will be developed jointly by the courts by 30 June 2001 and workload reviews will subsequently be undertaken jointly in July and January each year by the Federal Court and the Federal Magistrates Service.

The courts will work together to establish a basis for recording and monitoring all work done for Federal Magistrates Service by 31 October 2000.

Adjustments to costs (if any) arising from the reviews will be made not later than the end of August and March each year.

The Federal Magistrates Service may from time to time in its own right be given new (non-family law) jurisdiction that is not presently within the jurisdiction of the Federal Court. Where new jurisdiction accrues to the Federal Magistrates Service and the Federal Court is requested to provide services or facilities related to that work the costs of any services and work performed by the Federal Court in relation to that new jurisdiction will be the subject of a variation of this memorandum. As a general principle, it is intended that the costs of such work for new jurisdiction will be met by the Federal Magistrates Service.

The baseline level of funding for the purposes of assessing resource usage by each court in discrimination matters under the HREOC Act will be the aggregate number of applications filed in both courts during the 2000-01 financial year. It is acknowledged that no additional funding was provided to the Federal Court for the discrimination jurisdiction. The courts will work together to ensure that the full costs of the discrimination jurisdiction are measured in order that any appropriate submissions for additional funding can be made to government.

2 Arrangements under section 90 for the performance of non-judicial functions

2.1 Existing Federal Court Service Standards are to apply

Services provided by the Federal Court under this memorandum, including services pursuant to a section 90 arrangement will be to like standard, quality, process and procedure as apply day to day in the Federal Court.

Performance standards for registry services (in working days) will be as follows:

Type of Process	Issues/Processed
Creditors Petitions	Within 2 days
Applications	Within 2 days
Subpoenas	Within 2 days
Orders	Within 2 days
Examinations	Within 2 days
Special Tasks	As agreed
Short Replies	Within 2 days
Long Replies	As agreed

2.2 Services to be provided under section 90 arrangement

Documents to be lodged with or filed with the Federal Magistrates Service may be received by staff of the Federal Court appointed for that purpose. Federal Court staff will respond to enquiries relating to the jurisdiction of the Federal Magistrates Service and its procedures.

Complex enquiries may be referred to the Registrar of the Federal Magistrates Service.

Federal Court staff will -

- Provide advice of a routine and procedural nature, accept documents lodged at the counter, by mail, electronically or by facsimile; check for compliance and completeness and endorse the document with a 'Filed' stamp provided by the Federal Magistrates Service for that purpose.
- Issue Federal Magistrates Service applications, and other court process, in accordance with Federal Magistrates Court Rules.
- Receive fees, provide receipts, and bank all money received. The Federal Court will also issue 'first notices' of debt recovery but subsequent debt recovery action will be taken by the Federal Magistrates Service.
- Accept and approve applications for fee deferment, waiver and exemption in accordance with the Federal Magistrates Regulations.
- Enter details of filings in the Federal Magistrates Service case management system and schedule listings.
- Settle and authenticate orders in accordance with Federal Magistrates Court Rules.
- Maintain files held in the registry, with all filed documents indexed.
- Provide photocopy services to litigants in accordance with established Federal Court procedures. The cost of photocopying services will be invoiced quarterly to the Federal Magistrates Service on a cost recovery only basis.
- Archive files in accordance with Federal Magistrates Service disposal schedules that have been approved by Australian National Archives.

2.3 Arrangements for appointment of registrars and exercise of delegated judicial functions

An arrangement has been made under section 100 of the Federal Magistrates Act for Federal Court registrars to be made available to be appointed as registrars of the Federal Magistrates Service. Federal Court registrars will accept appointments under section 99 of the Federal Magistrates Act as registrars of the Federal Magistrates Service and, as required, be approved by the Chief Federal Magistrate to exercise powers under sections 102 and 103 of that act.

The availability of the registrars and the scheduling of any commitments to perform as Federal Magistrates Service registrars is to be the subject of close and ongoing consultation between the Federal Court and the Federal Magistrates Service.

Subject to the requirement for consultation, the availability, allocation and scheduling of registrars will at all times be the responsibility of the relevant Federal Court District Registrar.

Appointments and approval to exercise and the withdrawal of appointment and approval referred to in this section are a matter for determination of the Federal Magistrates Service from time to time.

2.4 Arrangements for listing services

The Federal Court of Australia will list cases of concurrent jurisdiction and schedule courtrooms for hearings of those cases in the Federal Magistrates Service in a manner that ensures the most expeditious and effective listing of the relevant matters for both the Federal Court and the Federal Magistrates Service.

Where federal magistrates sit regularly in courts leased by the Federal Court the Federal Court will use its best endeavours to ensure that the federal magistrates sit consistently in the same court in order to

assist litigants and the legal profession to identify clearly the areas in which the Federal Magistrates Service operates.

Should the national co-ordination requirements of the Federal Magistrates Service require the establishment of different listing services then the change management provisions of this MOU apply.

2.5 Arrangements for interpreter services

In the Federal Court interpreter costs in areas of concurrent jurisdiction arise mainly in Bankruptcy. The actual average benchmark expenditure per annum over two years for this service has been approximately \$10,000 in the Bankruptcy jurisdiction of the Court.

The Federal Court proposes to make arrangements for transfer from its budget to the budget of the Federal Magistrates Service an amount of \$15,000. The Federal Magistrates Service will be responsible for meeting the costs of interpreter services within its jurisdiction.

2.6 Arrangements for library and legal research facilities

The Federal Court of Australia provides, within the limits of efficiency and court-approved budgets, library services and materials relating to Federal Court jurisdiction.

Subject to priority being given to the immediate needs of the judges of the Federal Court the Federal Court's library services will be accessible by federal magistrates and the staff of the Federal Magistrates Service.

Borrowing of materials from the Library is under the control of local librarians and all borrowed materials must at all times be available for immediate recall by the librarian when required for the purposes of a judge of the Federal Court.

The Federal Magistrates Service will ensure that in its use of library materials it will not breach copyright laws.

Losses of library materials on loan to the Federal Magistrates Service will be replaced by the Federal Magistrates Service.

The Federal Court will monitor usage of library services by the Federal Magistrates Service in terms of a workload schedule provided to the Federal Magistrates Service by letter dated 21 June 2000 (Attachment B). The services to be provided are also as set out in that schedule.

Where access to library holdings and services (eg copying etc), by both the Federal Court and the Federal Magistrates Service, can be met efficiently from the existing staff resources and level of subscriptions and other library materials, access to services will be at no cost to the Federal Magistrates Service for the life of this MOU except as specified below.

Where demand increases as a result of the establishment of the Federal Magistrates Service and to maintain existing service levels it is necessary for the Court to acquire resources or additional materials or earlier replace materials due to faster wear and tear the Federal Magistrates Service will meet the costs of the additional resources and purchases and /or meet a share of any replacement cost. The Federal Magistrates Service will not be required to meet the cost of additional resources employed in the Federal Court if there has been no prior agreement that the increase is essential. The Federal Magistrates Service will not unreasonably withhold its agreement where additional resources are needed.

Where 'free of charge' reciprocal arrangements do not exist for inter-library loans the Federal Magistrates Service will pay the actual charges.

The Federal Court of Australia has provided to the Federal Magistrates Service a computer terminal and printer on level 18 Sydney Law Courts Building and similarly on level 12 Melbourne Law Courts Building and on-line access to CD ROMS and other online services available through the Federal Court network, for which additional publisher licences are not required.

The Federal Magistrates Service is to meet from its existing appropriation the cost of these computers, printers and their configuration, estimated at a one-off cost of \$9000, and the cost of 10 concurrent Citrix Metaframe licenses estimated as a one off cost of \$2,300. Access to electronic information services by the Federal Magistrates Service, which require the purchase of publisher licences, will be provided where the Federal Magistrates Service meets the licence costs required by the publishers.

The Federal Magistrates Service will directly meet any costs of other library and related information services required for chambers or offices of the Federal Magistrates Service.

The Law Courts Library in Sydney is a joint Commonwealth and State Government facility and services to the Federal Magistrates Service are as per the terms of the Commonwealth and State Government arrangements.

2.7 Arrangements for hours of services

Services provided under this MOU will be performed during the ordinary hours that the services are available within the Federal Court on a registry by registry basis.

3 Arrangements under section 92

3.1 Arrangements for provision of courtrooms and other facilities

3.1.1 Principles

- (a) The Federal Court will share courtroom resources and provide access to courtrooms in its tenancy areas for the hearing of matters that are in the concurrent jurisdiction.
- (b) It is intended that matters in the Federal Magistrates Service's family law jurisdiction matters will generally be heard in courtrooms and other facilities provided by the Family Court of Australia
- (c) In places where it may not be possible for the Family Court of Australia to provide suitable courtrooms, the Federal Court will make best endeavours to make courtrooms available on condition that Federal Magistrates Service will implement appropriate security arrangements.
- (d) Tenant obligations applying to the Federal Court as an occupier of court space will apply to the Federal Magistrates Service. The Federal Court will advise the Federal Magistrates Service of the nature of those obligations.
- (e) The Federal Court will make its best endeavours to make available the same courtroom for hearings by federal magistrates where magistrates sit regularly in courtrooms of the Federal Court.
- (f) The Federal Magistrates Service will be responsible for the costs of any additional security associated with Federal Magistrates Service use of courtrooms.
- (g) All chambers and other accommodation provided are on an 'as is basis' in terms of fittings, fixtures and furniture. In relation to any proposed modification to any courtroom or other accommodation that is transferred and/or for which access or occupation is provided to the Federal Magistrates Service by the Federal Court, the written approval of the Federal Court is

required before such modification can take place. In addition the Federal Magistrates Service undertakes, if required in writing by the Federal Court, to 'make good' any modification of the courtroom or other accommodation and effect restoration to the condition and standard that applied at the date of access or occupation by the Federal Magistrates Service.

3.1.2 Availability of courts for matters in the concurrent jurisdiction

The Federal Court will, subject to listing schedules and availability, arrange for the hearing of matters that are covered by the concurrent jurisdiction of the Federal Court and the Federal Magistrates Service by providing courtrooms in:

- Sydney (up to 2 courtrooms, as required, where practicable on level 18 Law Courts Building),
- Adelaide (1 courtroom, not specifically nominated),
- Brisbane (1 courtroom, not specifically nominated),
- Canberra (1 courtroom, not specifically nominated),
- a courtroom in Hobart and a courtroom in Perth for circuit courts (neither specifically nominated).

3.1.3 Availability of courts for matters in the non-concurrent jurisdiction

If the Federal Magistrates Service is, from time to time, unable to obtain a court from another court for its work in the non-concurrent jurisdiction a courtroom may be provided, subject to availability, provision of appropriate security and agreement with the relevant District Registrar. In the event that a particular family law matter poses high risks to the tenancy requiring advice of the Federal Magistrate Service Marshal, the resident Federal Magistrate and resident Federal Court Judge will discuss whether or not a proposal to use a courtroom within the Federal Court tenancy should proceed.

3.1.4 Availability of courts in Melbourne

In the Melbourne Commonwealth Law Courts building the Federal Court will provide access to courtrooms 6F, 6G, 6H and 6J. Family law matters may be heard on level 6.

When a secure detainee court is required a court on level 2 should be arranged. Protocols for the use of secure detainee courts are to be developed at a local level.

The Federal Court will consider transferring courtrooms 6F, 6G and 6H to the Federal Magistrates Service.

The availability of courtroom 6J is to be reviewed by 30 June 2001.

3.1.5 Impact of the commercialisation of Commonwealth court buildings

Pursuant to a policy of government Commonwealth-owned court buildings, including all tenancy and common areas, are being moved to a commercial leasing structure. From the point when leases are entered into, the existing appropriation provisions in respect of Property Operating Expenses (POE) will be changed by the terms of the lease funding, management and associated arrangements, and all tenants and occupiers will be subject to the obligations that arise under that lease arrangement. It is expected that these arrangements will be finalised in the second half of calendar year 2000.

Dependant upon the final terms and requirements of the relevant lease, the Federal Magistrates Service agrees that any provisions of this MOU relating to tenancy and occupation issues may be changed at that time by the Federal Court to the extent necessary to reflect and be consistent with the terms of that lease.

Those necessary changes shall from the date they are advised to the Federal Magistrates Service be taken to be agreed by the Federal Magistrates Service as terms of this MOU.

3.1.6 Reversion

Whether or not this MOU has expired and whether or not any subsequent MOU is in force at the time, the Federal Magistrates Service agrees that, should it cease to occupy or have no further practical need to occupy courtrooms and other accommodation provided by the Federal Court, that it will meet any and all costs of 'make good' of any courtroom or other accommodation.

In similar circumstances the Federal Magistrates Service will propose and actively recommend that any Property Operating Expenses (POE) appropriated in its budget in respect of those courtrooms and other accommodation, including maintenance and other related funds, be transferred to the budget appropriation of the Federal Court.

3.1.7 Energy efficiency

The Federal Magistrates Service agrees to implement and comply fully with any energy management plan requirements for tenancy areas and Law Court Buildings, consumption targets and reduction targets in green house emission levels as set by the Australian Green House Office.

3.1.8 Expenses associated with new requirements for accommodation

Requirements of the Federal Magistrates Service for special accommodation or tenancy items such as furniture, signage, additional notice boards or specific arrangements at registry counters, are the responsibility of the Federal Magistrates Service.

3.1.9 Building management participation

To the extent that the Federal Magistrates Service occupies accommodation in a Federal Court tenancy area on a daily basis, the Federal Court supports inclusion of a representative of the Federal Magistrates Service on the local building committee. As an occupier or user of most court buildings in Australia the Federal Court supports inclusion of a representative of the Federal Magistrates Service on the National Law Courts Building Management Committee.

3.1.10 Definition

Whenever the term is used throughout this MOU, 'courtroom' includes both a court or a hearing room.

3.2 Arrangements under section 92 for the provision of accommodation for federal magistrates

The Federal Court will:

- provide two chambers on level 18 in the Law Courts Building, Sydney, subject to the condition that those chambers may from time to time be required for the purpose of accommodating visiting judges of the Federal Court — in which case the Federal Court will provide the federal magistrates with not less than 14 days notice and will assist in their relocation, including assistance with telephone diversion.
- the courts have agreed that the Federal Magistrates Service will occupy the space on Level 22 of the Queens Square building currently being used as visiting Judges' chambers, when that level is refurbished. At that time, subject to lease variation being agreed, the Federal Magistrates Service will become a tenant of Law Courts Limited in relation to that space.
- provide for use by the Federal Magistrates Service in the Grenfell Centre Adelaide a chamber on level 8, and
- provide access to suitable accommodation for chambers in Hobart and Perth on a visiting basis.

Note: The Federal Court has agreed to transfer responsibility for seven principal chambers and other accommodation on level 12 in the Commonwealth Law Courts in Melbourne. This area is not subject to this memorandum, save that paragraph 3.1.6 (Reversion) applies to the accommodation.

3.2.1 Office Support Services

In the places where chambers and other accommodation are provided by the Federal Court the Federal Court will, in relation to matters of concurrent jurisdiction, and as agreed in writing between the courts provide;

- local administrative support, such as allocation of courtrooms and assignment of court officers,
- office security (excluding personal security and courtroom security personnel), including after hours access, to standards applied within the Federal Court,
- cleaning as per existing contracts terms,
- telephone services and other office services agreed in writing with the local District Registrar, on a cost recovery basis,
- access to various other facilities within the tenancy control of the Federal Court such as conference and amenities areas.
- three car parking spaces in the Melbourne Law Courts Building.

The Federal Magistrates Service agrees to comply with usual local arrangements at District Registries to obtain approval or effect bookings of these facilities or services and to meet usual local requirements pertaining to care and usage. The effect and impact of usage is subject to review by January 2001.

3.2.2 Ancillary Services

The provision of ancillary services, such as light and power, etc in Federal Court tenancy areas will be provided by the Federal Court under the provisions of Property Operating Expenses (POE) and building management policies. The costs of telephone rental and call charges are the responsibility of the Federal Magistrates Service.

The component of POE attributable to the Federal Magistrates Service will be calculated where possible by reference to any meters in place for that purpose or by attribution based on apportionment of tenancy area, numbers of persons in occupation, available facilities (eg telephone handsets) or other appropriate method. This attribution will also take into account any known factors about the level of usage based on the practices, procedures and working arrangements of the Federal Magistrates Service.

Where working practices, procedures and working arrangements are substantially different to the basis on which POE appropriations have been calculated and thereby result in increased building/ancillary service costs the Federal Magistrates Service is to fund those additional costs.

The Federal Court will, if requested and where agreed to in writing with the relevant District Registrar make available stores and general stationery items and access to office photocopy and facsimile services (as opposed to applicant counter services) on a 'user pays' basis, based on the principle of 'fair usage'. Where capital items such as facsimile and photocopy equipment are due for replacement, the Federal Magistrates Service agrees to make a financial contribution to the capital acquisition (or lease) cost based on a fair estimate of proportional use.

3.3 Arrangements for video conferencing

The Federal Court has limited videoconferencing facilities principally for use with urgent applications, judgment delivery and the hearing of witnesses where a face to face hearing is not possible. Ready availability for urgent matters is a prime consideration and the facility is not available for the day to day conduct of routine business.

The Federal Court will allow the Federal Magistrates Service use of its videoconferencing network for matters of concurrent jurisdiction between the two courts. Access is subject to the approved policies of the Court dated August 1999 (Attachment C) as may be amended from time to time.

Access to videoconferencing facilities is by booking through the local District Registry (where registry to registry connectivity is needed the other relevant registry commitments need to be established) and is subject to the availability of equipment and trained court operators. Use of videoconferencing by the Federal Court has precedence over all other users and hours of use are at the convenience of the Federal Court. However, a videoconferencing booking made by the Federal Magistrates Service and accepted by the Federal Court will not be set aside without consultation between the Federal Court and the Federal Magistrates Service.

The charges as laid down in the videoconferencing policy of the Federal Court will apply to the Federal Magistrates Service, except that a waiver or reduction of charges may apply where:

- a party requesting the video link is in impecunious circumstances (and the Presiding Magistrate is satisfied to that effect);
- the total cost for a single video link would be likely to exceed the cost of alternative arrangements (eg air travel and accommodation).

In either case the costs of the videoconference is then a direct cost to the Federal Magistrates Service.

The use of videoconferencing attracts real operating, transmission and line costs by third party providers. Court charges are levied to recover some of the actual costs incurred in service.

No reduction of fees or charges applies to the use of videoconferencing facilities by or with external organisations or overseas video links requested by parties.

Use of videoconferencing facilities for administrative or any other purposes by the Federal Magistrates Service is subject to payment of a fee in accordance with the Schedule of Charges attached to the Federal Courts policy, unless otherwise exempted by the Registrar of the Federal Court on a case by case basis.

4 Other Arrangements

4.1 Arrangements for court officers

The Federal Court of Australia will, if requested and subject to availability, arrange for a court officer to be present when a federal magistrate is sitting in areas of concurrent jurisdiction.

The Federal Magistrates Service will pay the costs of provision of court officers including remuneration, employer liabilities and actual incidental costs if applicable such as travel, together with an administration fee of 20% of the total remuneration cost of the court officer.

The relevant registry of the Federal Court will directly invoice the Federal Magistrates Service for the full costs of this service every three months, or as otherwise might be agreed in writing.

4.2 Arrangements for transcript services

The Federal Magistrates Service will make its own commercial arrangements for obtaining transcript services.

The Federal Magistrates Service will not use a transcript provider, other than the contractor to the Federal Court in a courtroom, within a tenancy area of the Federal Court, unless approved in writing by the Federal Court.

The Federal Court Registry will, if required, when scheduling matters for the Federal Magistrates Service arrange for the attendance of the transcript service provider to record proceedings only.

4.3 Arrangements for information technology services

4.3.1 Desk Top Services

The Federal Magistrates Service requires no wide area, local area or desktop services or support from the Federal Court and has separately entered into an MOU with the Family Court of Australia for provision, delivery, help desk and technical support of those services.

The Federal Magistrates Service does, however, wish to establish connecting lines between the Family Court and Federal Court premises. Federal Magistrates Service proposes to install ISDN and other links between the two courts and the running of cables and patches within the tenancies of those courts in various centres in Australia.

The Federal Court will permit the installations proposed, subject to Federal Court approval of each installation proposal, selection of termination points and consultation and oversight of installations in its tenancies. The Federal Magistrates Service will ensure colour coded cabling different to that used in the Federal Court for all connections and not use grey, blue or black patch leads in communication cabinets.

The cost of installation, 'make good' to premises, breach of any accommodation warranty costs (if any) and ongoing operation, maintenance and communication costs of such links are to be paid by the Federal Magistrates Service.

4.3.2 Arrangements for case management services

The Federal Court has arranged for its case management data base (FEDCAMS) to be replicated and for the changing of screens to use the term 'Magistrate' where the term 'Judge' appears; along with other minor changes as have been agreed with the Federal Magistrates Service. The Federal Court has also provided a copy of the FEDCAMS user manual to the Service.

The Federal Magistrates Service will meet the costs of this work by payment from its budget appropriation to the Federal Court of an amount estimated at \$10,000 for systems replication and initial screen changes. Any development or further amendment to screens, reports or programming for the Federal Magistrates Service will only be undertaken by the Federal Court if resources are available and on the basis of fee for service.

The Federal Magistrates Service will directly contract with CSC Proprietary Limited under the terms of the government's Cluster 3 contract for the provision of data base administration and on line access to the case management system. Access to the system by the Federal Magistrates Service, other than by staff of the Federal Court acting for and on behalf of the Federal Magistrates Service, will be by direct wide area connection through the Family Court of Australia.

All data base, line and access usage costs, contract management and service performance issues in relation to this contract will be the direct responsibility of the Federal Magistrates Service and a cost to its existing appropriation.

Federal Court registry staff acting for and on behalf of the Federal Magistrates Service will, via dual log in scripts across the Federal Court's wide area communications links to CSC, have direct access to the Magistrates case management system.

All session costs for use of this system will be billed by CSC and met directly by the Federal Magistrates Service from its existing appropriations.

The Federal Court intends to move from FEDCAMs in the 2000-2001 year and to introduce a new case management system. The Federal Magistrates Service may where it wishes participate in officer level meetings, conferences discussion groups etc for the purpose of familiarising itself with the intentions of the Federal Court for a new case management system.

The Federal Court believes that, except for licensing issues for software, the Court can make available to the Federal Magistrates Service access to that system. Before doing so however, the Federal Magistrates Service will need to establish that position with the various suppliers and satisfy itself as to any risks associated with system access and usage.

4.4 Arrangements for training services

The Federal Magistrates Service will provide all training including face to face tuition, ongoing help desk support, manuals and training materials necessary to ensure that the staff of the Federal Court are properly trained, skilled and competent in the procedures and requirements of the Federal Magistrates Service, including from time to time in any revision or enhancement of those procedures and requirements.

All training requirements of the Federal Magistrates Service including dates, times, location, duration and participants shall be determined in conjunction with the relevant District Registrar.

To the maximum extent possible all training shall be held locally and on-site and will avoid any adverse impact on the delivery of day to day registry services to the community.

All costs of training in Federal Magistrates Service practices, procedures and requirements including but not limited to trainers, venue hire, materials preparation, travel and accommodation of court staff is a direct cost to the Federal Magistrates Service.

5 Arrangements for consultation

The Federal Magistrates Service and the Federal Court will meet quarterly to review the operation of this memorandum. The first review meeting will be held no later than 30 September 2000.

6 Arrangements for dispute resolution

Any disagreement about the implementation of this memorandum shall be referred in the first instance to the chief executives of the Federal Magistrates Service and the Federal Court respectively. If they are unable to reach an agreement the matter shall be referred to the heads of jurisdiction for discussion.

7 Variation

This memorandum may be varied in writing between the Chief Executive Officer of the Federal Magistrates Service and the Registrar of the Federal Court.

8 Change management procedures

If the Federal Magistrates Service proposes a change of its services or a change to its practices or procedures that is assessed by the Federal Court as likely to have a resource impact that will increase the cost of provision of the services provided under this MOU, that change shall not be implemented unless and until agreement has been reached in writing as to the manner in which the change will be implemented and the allocation of the identified financial costs associated with the proposed change.

8.1 General Principles For the Costs Of Change

Generally where approved practices or procedures provide for services and/or service processes or standards greater than those normally applied day to day in the Federal Court the Federal Magistrates Service will pay any additional cost.

9 Goods and Services Tax (GST)

The Federal Court and the Federal Magistrates Service will deal with each other on a GST inclusive basis at all times.

Peter May
Chief Executive Officer
Federal Magistrates Service

Warwick Soden
Registrar
Federal Court of Australia

LEGISLATIVE PROVISIONS

1 Section 90 of the Federal Magistrates Act 1999 provides:-

- (1) The Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, arrange with the chief Judicial officer (however described) of another Australian court for an officer or officers of that court to perform on behalf of the Federal Magistrates Court any or all of the following functions:
- (a) the receipt of documents to be lodged with or filed in the Federal Magistrates Court;
 - (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Federal Magistrates Court;
 - (c) the authentication of orders of the Federal Magistrates Court;
 - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Federal Magistrates Court;
 - (e) such other non-judicial functions as are permitted by the Rules of Court to be performed under such an arrangement;
 - (f) such other non-judicial functions as the Federal Magistrates Court considers appropriate.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an officer of an Australian court of a function on behalf of the Federal Magistrates Court, the officer may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Magistrates Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Federal Magistrates Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.
- (5) For the purposes of this section, a member of the staff of an Australian court is taken to be an officer of that court.

2 Section 92 of the Federal Magistrates Act 1999 provides:

- The Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, make arrangements with the chief Judicial officer (however described) of another Australian court for:
- (a) the Federal Magistrates Court to sit in rooms of the other court; and
 - (b) the Federal Magistrates Court to share registry facilities and other facilities with the other court.

3 Section 99 of the Federal Magistrates Act 1999 provides:

Officers of the Federal Court may be appointed as officers of the Federal Magistrates Court.

4 Section 100 of the Federal Magistrates Act 1999 provides—

The Chief Executive Officer may, on behalf of the Federal Magistrates Court, arrange with:

- (a) the Secretary of a Department of the Australian Public Service; or
- (b) an authority of the Commonwealth;

for the services of officers or employees of the Department or authority to be made available for the purposes of the Federal Magistrates Court.



Telephone: (02) 9230 8111
 Facsimile: (02) 9223 7706
 DX 613 SYDNEY

**FEDERAL COURT OF AUSTRALIA
 PRINCIPAL REGISTRY**

Your Ref:
 Our Ref: rkt107-6-00

LEVEL 17
 LAW COURTS BUILDING
 QUEENS SQUARE
 SYDNEY NSW 2000

21 June 2000

Mr Peter May
 Chief Executive Officer
 Federal Magistrates Service
 305 William Street
 MELBOURNE VIC 3000

Dear Peter

Library Services

As part of the Memorandum of Understanding being negotiated between the Federal Court and the Federal Magistrates Service, provision is being made for library services for the FMS.

Essentially the MOU will provide for these services on the following principles:

1. services and access for and by judges of the Federal Court takes precedence;
2. any materials borrowed are to remain readily available if recalled because they are required by a judge of this Court;
3. other general services to be provided are as set out on the attached workload sheet which I ask all librarians maintain in respect of services sought by the FMS;
4. to the extent that there is no detriment to the current levels of service to the Federal Court judges and to the extent that additional copies of materials are not required to meet the demands of the magistrates; then these services to the FMS would be initially at no charge.

If:

- additional new material is required by the FMS relating to Federal Court jurisdictions and is not held by the Federal Court,
- materials are required to be purchased by the FMS that relate to the Federal Court's civil style jurisdictions, but is not material required by the Federal Court

- additional subscriptions are required to meet the service needs of Magistrates,
- additional resources, staff or otherwise, are required to meet the needs of Magistrates
- inter-library loans are requested for which this Court is charged a fee due to non-reciprocal arrangements,
- usage of photocopy facilities on behalf of the FMS is excessive

then it is proposed that the FMS will meet these costs.

In summary, if the Court can service the FMS without an increase in its costs and resource allocation, then there will be no charge to the FMS. If, however, as a result of the establishment of the FMS and its use of library services there is the need for net additional costs by the Federal Court, then these are to be met by the FMS.

It is proposed that the effect of the FMS on libraries be reviewed in both September and December 2000 and if there has been an impact on the Federal Court then a 'fee for service' arrangement be put in place with the FMS.

To assist these processes it is proposed that the various libraries will maintain statistical information relating to library usage in terms of the form attached to this letter. This information will be used as part of the reviews outlined above.

Yours sincerely



R K Tout
Manager Court Resources

FEDERAL MAGISTRATES SERVICE - STATISTICS RELATING TO USE OF FEDERAL COURT LIBRARIES

Registry Name:	Week 1		Week 2		Week 3		Week 4	
	Magistrate	Staff	Magistrate	Staff	Magistrate	Staff	Magistrate	Staff
Month:								
Type of Service	Magistrate	Staff	Magistrate	Staff	Magistrate	Staff	Magistrate	Staff
Loans								
Inter-library loans								
Quick reference (<5 min)*								
Long reference (max 30min)								
On-line search								
CD-ROM training								
Internet training								
Catalogue training*								
Library tour								
Current awareness								
Cataloguing								
Ordering								
NB Indicate time in parenthesis								
* Services provided to the profession or litigants are marked with an asterisk								
Return completed forms to Director, Library & Information Services, Principal Registry at the end of each month								

FEDERAL COURT OF AUSTRALIA

P R O T O C O L

**for the use of Videoconferencing
in Court Proceedings**

Revised August 1999

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FEDERAL COURT OF AUSTRALIA

PROTOCOL

for the use of videoconferencing in Court proceedings

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FEDERAL COURT OF AUSTRALIA

P R O T O C O L

for the use of videoconferencing

in Court proceedings

1. Videoconferencing generally

This protocol has been prepared as a guide to all persons who are involved in the use of videoconferencing (VCF) in the Federal Court of Australia.

There are a number of significant differences which must be understood by all persons using the system, to gain the maximum benefit from VCF. Matters which are taken for granted when examining a witness; for example, the administration of an oath or affirmation to a witness; objecting during evidence being adduced from a witness; the witness understanding who the other people are in the courtroom and their respective roles; all three examples take on quite a different dimension when the witness is at a remote locality. It is best to work on the basis that the witness knows nothing of courtroom practice.

2. Co-ordination of picture with sound

There are millisecond delays between receipt of picture and receipt of the accompanying sound. This is the case even with the most advanced Integrated Services Digital Network (ISDN) communication. It is not usually present in commercial analogue TV transmission.

Persons, whether judges, counsel or witnesses, need to appreciate this time gap. If due allowance is not made for it, there is a tendency to "speak over" the witness or other person whose voice continues to be heard for a millisecond or so after he/she has, from the video image, finished speaking.

Experience has shown that where allowance is made for this, the speakers can quickly reach an understanding where neither is aware that a gap exists. Counsel have commented that it tends to encourage them to refrain from cutting off a witness before the witness has finished an answer.

3. Picture quality

Picture quality is very good. What has to be understood is that a computer is composing on a screen electronic digital images seen by a camera at the source of the transmission. The computer is geared to recompose those parts of the image which move. The lesson from this is that persons appearing on VCF monitors should endeavour to keep their on-camera movement to a minimum so as to enhance the quality of the picture being received by the viewers.

4. Informing witnesses what is to take place

The potential witness in the location remote from the courtroom should be informed of the significant differences mentioned in 2 and 3 above. The witness should also be advised **before** the transmission commences of the name of the presiding judge and the names of the counsel who will be conducting the examination and the cross-examination. It is useful for the judge, at the commencement of the transmission, to have the camera focus on the judge, then for the judge to have counsel identify themselves to the witness. This takes but a few minutes. It is less likely for the witness to be confused if practices are explained beforehand; e.g. taking an oath or affirmation; not responding until directed to do so by a judge when an objection is taken. Where possible some indication could be given of the manner in which the witness can be given a copy of the evidence adduced.

5. Monitoring at the site where the witness is located

There are a number of matters to be attended to at the location of the witness, whether this is a courtroom, or a conference room or a commercial studio.

Where appropriate, there should be an appropriate official or legal representative at the site where the witness is located.

The function of this person is to assist in administering any oath or affirmation necessary, then to remain in the room until the transmission is complete. The person should introduce himself/herself to the presiding judge by name and role.

This person also has a secondary role. That is to ensure that the witness does not take direction or guidance from any other person in the room, or consult documents without the leave of the presiding judge. In the event that either instance takes place, that person should bring whatever has occurred to the notice of the presiding judge by moving to the camera location where he/she will be visible to the judge and by explaining what has occurred.

The judge may, of course, have given leave in unusual circumstances for the witness to consult with a legal representative during the VCF transmission. If this is the case, this consultation may take place without the person intervening. The legal representative should remember to cover the microphone in front of the witness if the conversation is not to be relayed to the receiving courtroom.

Finally, it is a matter in the absolute discretion of the trial judge whether any assistance is to be provided at the location of the witness.

6. Administration of the Oath or Affirmation

Where a witness is examined by video-link, it may be necessary for a Judge to administer the affirmation or oath.

Particular countries may have a requirement that any oath or affirmation to be taken by a witness accords with local custom, and not the usual form of oath or affirmation taken in Australia. It is necessary for this requirement to be addressed in the event that some unforeseen consequences flow from the evidence being adduced from the foreign national (or even an Australian national residing temporarily in another country). For the role of a court official in the distant location in administering the oath, see section 7 below.

The administration of the oath or affirmation in a non-Federal Court site in Australia or in a foreign country is ordinarily undertaken by the Federal Court judge or a court official at the Federal Court site. An official or a legal representative in the foreign country can assist in administering any oath or affirmation necessary, and, if present, should remain in the room until the transmission is complete. In some foreign jurisdictions the administration of an oath does not require the production or the holding of a bible. If a judge wants the witness to hold a bible while making an oath, those requesting the video link should be forewarned of such a requirement.

7. Court reporting transcript/video

It is possible for a video to be made of the entire transmission. Although sound at both ends will be recorded, only the picture from one end may be recorded. There is an exception to this. Some videoconference equipment has provision for a "window" in the monitor. For example, in a transmission between Sydney (judge and counsel) and New York (witness location), the Sydney monitor would usually show the New York witness while the New York monitor would show the judge or counsel. The Sydney monitor might also have a window (about one quarter to one eighth of the monitor screen) which would show the image being beamed to New York. It is possible to capture the New York image on the video together with the Sydney window. All sound is recorded.

Should a party wish to have a video made of the proceedings, they should seek the permission of the presiding judge before the transmission so that appropriate arrangements can be made for a recording to be made.

Should ordinary transcript only be required, the court authorising the transmission should make whatever arrangements are necessary with its transcript provider. The provider should test their equipment **before** the VCF transmission to ensure there is no interference during the transmission. It is helpful to give the transcript taker the names and addresses of any witnesses beforehand, together with the name of any person assisting in the remote location.

8. Familiarisation with equipment

It is recommended that the practitioners and witness should arrive at their respective VCF venues about 20 minutes prior to transmission commencing. This is particularly important for those unfamiliar with the use of VCF equipment.

There will be a need for the judge to communicate the manner in which the proceeding is to be conducted to the remote locality via the judge's associate, court official or studio equipment operator. There is a need for counsel to indicate whether or not case authorities or a document camera will be needed during the transmission. It is too late after a transmission starts to ask for a document camera to be used; early consideration by counsel, with notification to the judge and to the equipment operator of the intention to use the equipment is necessary. The equipment operator will need to know the number and size of documents or objects if their images are to be sent by document or auxiliary camera.

The judge will need to tell the far end operator to pan to the witness during the admission of the oath or affirmation and to have the camera remain on the witness during the currency of the examination.

9. Cost of transmission

Payment of the cost of the video link should be determined before transmission. Every endeavour should be made to keep the transmission to a minimum because of the cost involved. Counsel can assist here by doing whatever planning is necessary for the proposed examination.

10. Order of proceedings

The intention is that the examination of the witness at the remote locality will follow as closely as possible the practice if the witness were in the courtroom. During examination, cross-examination and re-examination, the witness would see the legal representative asking the question and the legal representative, the judge and everybody else would see the witness. If objections are taken, the witness would variously see opposing practitioners or the judge.

11. Witness viewing documents

Most facilities have a document camera. The witness can be shown the image of documents transmitted from the courtroom and asked to identify them. It is useful for practitioners to agree beforehand on documents to be shown the witness, if this is possible. The documents can be despatched by fax to the remote location before the transmission commences, should this be the wish of the parties. The judge should be so informed, prior to commencement of transmission.