



FEDERAL MAGISTRATES COURT OF AUSTRALIA

12th National Family Law Conference

Chief Federal Magistrate John Pascoe

**OF TEA BAGS, BIKKIES AND CONSTANT
CHANGE – A JOURNEY IN FAMILY LAW**

Introduction

It is hard to believe that two years have passed since the 11th National Family Law Conference. Much has happened in that time.

On the last occasion I acknowledged the support I had received from Federal Magistrate Ryan. Well, Judy is now Justice Ryan, a very well deserved elevation to the Superior Court. She joins Justice Bennett who was also appointed from the Federal Magistrates Court to the Family Court. I miss them both but I was delighted to see such well deserved appointments. Both have continued to be willing to share a tea bag and a biscuit with their old colleagues. So, at least we have a couple of friends in high places.

In 2004, I remarked that "it would have been considered brave four years ago to have suggested that in 2004 the Federal Magistrates Court would have 31 Federal Magistrates. There are now 45 Federal Magistrates and by the end of 2006 it is expected that there will be more than 50. There is indeed an elephant in the room although some appear not to have noticed. This is rapid growth for any Court.

The jurisdiction of the Federal Magistrates Court has also continued to expand both in family law and in general federal law. The Court now has concurrent jurisdiction with the Family Court in all areas with the exception of adoption and applications concerning nullity or validity of marriage.

In the general federal law area the Court received jurisdiction in relation to unlawful termination claims under the Workplace Relations Act 1966 as well as a number of enforcement powers (eg freedom of association breaches, agreement making breaches, industrial action, unfair contracts, breach of terms and conditions, sham independent contracting arrangements and notice provisions and related breaches). The amendments came into effect on 27 March 2006.

On 4 May 2006 the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006* conferred jurisdiction on the FMC in the following areas:

- **Trade Practices:** The Act extended the FMC's existing consumer protection trade practices jurisdiction (Part V Division 1 - unfair practices and Division IA - product safety and product information) to include matters arising under Part IVA (unconscionable conduct), Part IVB (industry codes), Division 1AAA (pyramid selling) and 2A (actions against manufacturers and importers of goods) of Part V and VA. The monetary limit on damages was increased from \$200,000 to \$750,000.
- **Admiralty:** The FMC now shares jurisdiction under the Admiralty Act 1988 with the Federal Court and State Courts in *in personam* actions. These courts can also remit *in rem actions* to the Federal Magistrates Court.

- **Transfer of Jurisdiction:** The Federal Court and Family Court have enhanced transfer powers.

In particular, the Federal Court and the Family Court each has the capacity to remit any matter within its jurisdiction to the Federal Magistrates Court.

The first Perth based Federal Magistrate was appointed this year. He will deal only with general federal law matters as the Court does not have jurisdiction in family law matters in Western Australia.

Whilst these appointments help, the Court continues to strain under the weight of its workload and a lack of administrative resources. Federal Magistrates themselves continue to be overworked in many registries. The Court now deals with more than 60% of all family law matters in some registries. In the Sydney CBD two Federal Magistrates commenced sitting in family law this year and it is fair to say the workload has been overwhelming. A further appointment has been made and a third Federal Magistrate will be present in Goulburn Street from late November. Additional appointments are likely to be needed in Sydney.

Additional appointments in Victoria have enabled the Court to provide a full time service in Dandenong.

The Court now provides circuits as follows:

ACT/NSW

Armidale (commenced 2006)
Bateman's Bay
Bega
Coffs Harbour
Dubbo
Lismore
Orange (commenced 2006)
Port Macquarie (commencing 2007)
Tamworth (commenced 2006)
Wagga Wagga
Wollongong

NT

Alice Springs

QLD

Bundaberg
Cairns
Mackay
Maroochydore
Rockhampton
Southport (commenced 2006)
Toowoomba (commenced 2006)

SA

Berri
Whyalla

TAS

Devonport

VIC

Ballarat
Bendigo
Castlemaine
Dandenong (increased services commenced Sept 2006)
Geelong
Hamilton
Shepparton
Traralgon (Gippsland)
Warrnambool

WA

General federal law circuits to Perth ceased in August 2006 with the full time appointment of Federal Magistrate Lucev.

I am pleased that the Court has achieved its goals in relation to circuits enunciated by me at the last conference, namely to establish additional circuits in NSW and QLD and to put steps in place to enable general federal law matters as well as family law matters to be heard in regional areas. New circuits have been established and previously established circuits increased. I am of course aware of the need for the Court to provide further circuits and for longer periods of time. This is particularly so as the Family Court withdraws from circuits in order to concentrate its resources in other areas.

Unfortunately, the Federal Magistrates Court cannot add to its circuit coverage with the resources currently available. In this regard, I note that my predecessor as far as back as September 2001 was making the point that circuits are costly and very demanding on the Courts judicial and administrative resources. Nevertheless, expanding the reach and duration of regional circuits remains a priority for the Court.

It is to be hoped the situation will in the future, be further assisted by Federal Magistrates being appointed to major regional centres.

Single Registry

At the time of the last Conference a single family law registry was mooted. It is pleasing that a combined registry in family law is now operating in the Federal Magistrates Court and the Family Court. Both Courts are committed to harmonising rules to the point where matters are allocated to one Court or the other. Beyond this point either the rules of the Federal Magistrates Court or the Family Court will apply. This of course reflects the fact that although a single point of entry is planned, ultimately the two Courts are quite separate entities.

A critical aspect of the Combined Registry is the creation of an effective case management pathway that is clearly defined. The aim is to ensure that applications are listed in the appropriate court at the earliest possible point in time. Ultimately most applications will commence in the Federal Magistrates Court with the more complex matters to be transferred to the Family Court. It is envisaged that there will be a 75/25 split in filings with the greater proportion being dealt with by the Federal Magistrates Court.

A new process has been developed to manage transfers. The process relates to transfers from state courts as well as transfers between the Federal Courts. As of 1 January transfer protocols will ensure that the parties are provided with date and event certainty prior to transfer. In the past litigants and practitioners have had to wait for written advice regarding the next date and event.

The processes will also ensure that matters transferred from state courts will have the information required to initiate an application in either the Federal Magistrates Court or the Family Court.

Also from 1 January 2007 a single numbering regime will be in place at each family law registry. Once a file is created for particular parties and a file number is allocated, that file number will apply to all future correspondence regardless of The Court in which the matter is listed. The introduction of a single file and number will reduce confusion for the parties and the legal profession and will create efficiencies within the registries.

It is anticipated that a pilot for streaming all matters through the Federal Magistrates Court or a single point of entry will be established early next year – most likely in Adelaide. Matters will then come to the Federal Magistrates Court and be allocated to either the Federal Magistrates Court or the Family Court.

Proper transitional arrangements will be critical to the implementation of a single point of entry. In some registries single point of entry would result in a doubling of the number of applications to the Court.

In turn duty lists have the potential to become unmanageable due to their size and we will potentially see a significant increase in the time from filing to first court date. A priority for the Court will be to ensure that undue amounts of Federal Magistrates time is not taken up with duty lists thus reducing final hearing time.

Currently the Court is trialling a number of projects with Registrars assisting Federal Magistrates. There is a total of seven pilots being trialled at 7 locations and they will be evaluated shortly.

Cases which remain with the Federal Magistrates Court will continue to be managed under the Docket system. The Court protocol requires that, where possible, matters are listed for trial within 6 months of filing and that judgment is delivered within 3 months of the hearing.

This is clearly a very significant management issue for the Court and will only work if there are sufficient judicial and other resources.

As most of you are aware the Court has imposed on itself, a 2 day rule whereby longer cases are transferred to the Family Court. I note that the 2 day rule does not apply to general federal law. Over time, I anticipate that the 2 day rule may need to be relaxed somewhat in family law although it will not be lightly discarded. Any change will be made in consultation with the Family Court.

Resourcing

The Federal Magistrates Court was set up with no registry and very few resources. By the end of the year it is likely it will be the largest of the Commonwealth Courts. It still has no registry although there has been progress on sharing the registry in family law. Steps are also in place to enable litigants in general federal law in regional areas to file at family law registries.

Accommodation is a continuing problem for the Court with no home of its own. All of the Federal Courts have worked well together to solve many of the problems but sometimes there is no easy solution. For instance in Sydney the Court operates in 4 locations. Ultimately those Federal Magistrates in general federal law will need to be located in premises leased from the State. There is little room for expansion.

The Court must now build an administration capable of ensuring the efficient delivery of services to Federal Magistrates and to the public more generally. This is no easy task given our relatively small budget, our circuit requirements and the specialist skills needed for Court administration.

The name of the Court continues to be a problem. There is confusion with State Magistrates Courts especially in regional areas and misconceptions as to the work of the Court more generally. Despite support from the Chief Justices of the Federal Superior Courts and widespread support from within the profession no change has yet been able to be effected.

I am grateful for the efforts of the Government to address the issues of disability pension for Federal Magistrates. Legislation has been introduced and amendments are being considered. As yet no legislation has been passed. No disability pension is therefore in place. Federal Magistrates continue to have inadequate pension entitlements. I believe the work of the Court and the efforts of its judicial officers merit a serious review of these issues.

The Court has lost a number of excellent candidates because of problems associated with its name and the entitlements of its judicial officers. There is also a continuing effect on morale.

Relationship with the Family Court

There is a misconception in some areas that the relationship between the Federal Magistrates Court and the Family Court is very poor. Certainly, one cannot deny that there have been points of friction.

However, I believe the overall relationship between the Courts is harmonious and indeed reflected in the progress made to date with the combined registry and single point of entry.

There are strong personal friendships and excellent working relationships between Federal Magistrates and Judges of the Family Court in all registries.

One of the most significant arrangements arising from the Combined Registry Project is the establishment of the Family Law Courts Board. Membership of the Board comprises the Chief Justice of the Family Court, the Chief Federal Magistrate and the respective CEO's of each Court. The Board meets regularly to oversee the coordination of the shared arrangements evolving through the Combined Registry Project and other shared services arrangements. Contrary to the impression created by the cartoon I have shown, there are no issues the Board has been unable to resolve. Our deliberations often take place over shared tea and biscuits.

As streaming is progressively introduced I expect the relationship between the Courts will be even closer whilst respecting the fact that there are two separate Courts. I believe each will have an increasingly different role reflecting the Federal Magistrates Court as a lower level trial Court and the Family Court as a more specialist and appellate Court.

The profession can be confident therefore of continuing progress in implementing a more streamlined system. The profession will of course continue to participate through the positive and valued efforts of the Family Law Section.

The future

Of the Family Relationship Centres' announced by the Government there have now been 15 established across Australia. It is too early to see what effect the FRC's will have on the work of the Courts.

I am hopeful that they will assist families to resolve disputes and play an important role in strengthening families overall. They are not a panacea. Difficult matters will continue to come to the Courts which must be properly funded to deal with them efficiently.

The recent changes to the Family Law Act although still in their early days are very significant and should ultimately result in a wider community recognition that both parents have an important role to play in the lives of their children. I look forward to our Court having a positive role in the evolution of the new laws.

I expect the workload of the Federal Magistrates Court to continue to increase both in general federal and family law. This will be especially so as streaming is progressively introduced. The addition of de facto property matters will add to the Court's workload.

There will need to be an adequate number of Federal Magistrates to handle the work and sufficient Courts and Chambers to accommodate them.

The number of self represented litigants is likely to increase. This poses special problems for the Court. Some of these people have mental health problems, often drug and alcohol related. In my view the number of litigants exhibiting classic signs of mental illness is increasing. Our task is to ensure that all those who come to the Court, regardless of circumstances are treated courteously and have the opportunity to fully present their case. This can be a time consuming exercise when family law and mental illness intersect.

Governments around Australia appear to be recognising the growing problems of mental illness. There is a need to do more as many people are not getting the help they deserve from an already over-loaded system. It is almost impossible, whatever orders the Court might make about counselling or other services, to be confident that the necessary help will be provided especially if it is likely to require intensive treatment. Failure to deal with mental health problems, however undermines families and damages the social fabric.

The Federal Magistrates Court will not adopt the protocol known before 1 July as the Children's Cases Program in the Family Court. There are three reasons for this: firstly many elements of the program (and therefore Part 12A) are already in effect in the Federal Magistrates Court; secondly the time requirements are not compatible with the concept of a trial Court set up to deal with matters expeditiously; thirdly, it is important that there is clear delineation between the Family Court and the Federal Magistrates Court. There is however, and will continue to be close consultation between the Federal Magistrates Court and the Family Court in relation to the program.

Streaming between the two Courts will be progressively introduced so that the proportion of family law work overall which is dealt with in the Federal Magistrates Court can be expected to continue to rise.

Conclusion

I have the great privilege to lead the fastest growing Court in the country. In this regard I pay tribute to my colleagues in the Federal Magistrates Courts whose dedication, skill and hard work has laid a firm foundation for future growth and established an ethos of service to the community which underpins the Court. They have my great respect, appreciation and affection and I thank them all. I also thank the profession for their support of the Court.

Family law is important. It is the area, where to a much greater degree the Courts interact with a broad cross-section of the community. The way in which matters are treated can help people to move on or further entrench

conflict and sorrow. All of us share the responsibility to ensure that so far as possible we do not add to the burdens of those who come to the Court at a time of great stress.

The Government's very significant amendments to the Family Law Act, the work of the Courts themselves in streamlining the manner in which litigation is conducted and the willingness of the profession through the Family Law Section to drive and embrace change over the past 2 years, have I believe all been positive.

There is much work yet to do.

Thank you.
Chief Federal Magistrate John Pascoe
23 October 2006