



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: MM:MAP

Direct Line: 9926 0212

15 June 2010

The Hon Robert McClelland MP
Attorney-General for Australia
Parliament House
Canberra ACT 2600

Dear Attorney-General

Re: Federal Magistrates

I refer to your recent announcement with respect to the restructure of the Courts exercising family law jurisdiction by the integration of the Family Court and the Federal Magistrates Court. The Law Society warmly welcomes those announcements and the significant adoption of the recommendations of the Semple Report that the new structure will entail.

Notwithstanding the integration of those two Courts, two primary issues remain in respect of the position of the (present) Federal Magistrates. It would appear that it is now a very appropriate time to re-raise those issues.

The first issue is consideration of the title which will apply to those Federal Magistrates who will become part of the Family Court. Partly to avoid any suggestion that the Family Court has been lowered in status by becoming a "Magistrates Court with a few Judges", but much more importantly to give due recognition to the value and complexity of the work being done by those Federal Magistrates, the Law Society urges you to consider that the title to be applied should be that of "Judge".

It is perhaps instructive to recall that in 2000, when the Federal Magistrates Court was established, there were 55 Judges in the Family Court and approximately 8 Judicial Registrars conducting Court hearings. Since the establishment of the Federal Magistrates Court, a great deal of the work of the Family Court has devolved to the Federal Magistrates Court, to the extent that the Family Court now has approximately 25 Judges and 2 Judicial Registrars only. That work has clearly been taken over by the Federal Magistrates, and the work is almost entirely of a nature previously conducted by Judges.

Recognition of the work done by the Federal Magistrates by the adoption of the appellation "Judge", the Law Society considers, is well overdue.

The second issue that remains is the question of pay and entitlements for Federal Magistrates exercising family law jurisdiction.

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The Law Society submits that the conditions of employment for Federal Magistrates in the new model, in particular the rates of pay and pension entitlements, should be at least equal to those of the State District/County Court Judges, if not of the Family Court Judges themselves.

The financial independence of the Courts and their Judicial officers is the cornerstone of judicial independence. The Law Society has previously made representations as to salary and superannuation of Federal Magistrates and we now reiterate our submission that it is necessary for the Federal Magistrates to be provided with an appropriate level of remuneration. In part this is to see those Judicial officers properly rewarded for the responsibility and complexity of the work they do, and their value to society. In part it is also to ensure that appropriately qualified legal practitioners will be attracted to Judicial positions, to ensure the continued level of service that is expected by the litigants, the stakeholders and the Government is provided by the best people.

I am also conscious that the leave entitlements of Federal Magistrates are not generous and indeed compare very poorly with, not only the Family Court Judges, but also across the spectrum of federal Justices. This is also an area that the Law Society submits requires positive consideration.

I attach a copy of our letter dated 5 February 2009 in response to the Semple Report which dealt with those issues at that time, and I draw your attention in particular to the comments in point 4.

The Law Society adheres to those earlier submissions which are strongly considered to be of utmost importance.


According to the 08/09 Annual Reports, 92% of the Federal Magistrates Court's overall workload was family law and the Court handled almost 80,000 family law filings as opposed to the Family Court's 19,000 filings that year. Noting the high workload, the Court needs to attract the very best candidates to serve as Federal Magistrates.

I am aware that current arrangements for Federal Magistrates are manifestly inadequate. This is highlighted by the anomaly of the Government's contribution to the Federal Magistrates' superannuation fund which I am advised is markedly lower than the contribution to its staff.

The Law Society supports any review of the current arrangements.

I trust that you will consider these comments and I look forward to your reply. I am of course willing to pursue discussions with you, or officers of your Department, if desired.

Yours sincerely


Mary Macken
President
encl

cc The Hon. Lindsay Tanner MP Minister for Finance and Deregulation



Our Ref: JC: MAP 2009

Direct Line: 9926 0212

5 February 2009

Federal Court Branch
Australian Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

via fax: 08 6250 5904

Dear Sir/Madam

Re: Future Governance Options for Federal Family Law Courts in Australia

The Law Society of NSW commends the Government for commissioning the examination of the services provided by federal courts in the delivery of family law services. It also commends the work done in that examination and welcomes the release of the Report prepared by Des Semple and Associates entitled Review of Future Governance Options for Federal Family Courts in Australia ("the Report").

In response to the Government's invitation for submissions, the following comments have been prepared by the Law Society's Family Issues Committee ("the Committee"):

1 The proposed new structure of Federal Family Courts

The Law Society strongly agrees the best option for the future structure for the delivery of the optimal family law services is to have a single Court, with a centralised management/administration, with two levels of Judicial Divisions (Superior/Appellate and General) as proposed in the Report.

The Committee agrees the proposed structure will provide the maximum efficiency in the delivery of services and the administration of the Court and will solve many of the logistical difficulties that have existed since the inception of the Federal Magistrates Court ("FMC") in 2000.

The Committee also agrees that the proposed transitional provisions in respect of the FMC and the Federal Magistrates already appointed should be adopted, thereby making the adoption of the Report's main proposals achievable. The offer of dual commissions is also supported for those Federal Magistrates where it is appropriate.

Whilst the Committee's comments relate primarily to the family law jurisdiction, it similarly supports the recommendations of the Report in respect of the devolution of that part of the FMC that focuses on general Federal law work. The Committee believes the "transfer" of the general law work to the Federal Court allows a degree of specialisation that is required in the practice of law at the federal level and will facilitate better expertise in both Courts.



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In summary therefore, the adoption of the proposed future structure, referred to in Annexure G to the Report is supported.

The members of the Family Issues Committee also support the (implied) proposed adoption of the title of the new court to be The Family Court of Australia.

2 The role of a single administrative and corporate structure

The recommendation there be a single support and administrative structure is endorsed. Legal practitioners have regularly commented on the problems encountered with the dual system that has applied to date and the rejection of such a dual system as a model is welcomed.

3 The role of the Appellate/Superior Division of the Court

The proposed structure is welcomed however it is difficult to see the rationale that the appropriate number of Judges in this Division should be "around 25" (page 9). It is noted there are presently 46 Judges of the Family Court (Para 74, and footnote 33) and these Judges are already performing the roles that would be required of them in the new Superior Division. It is already the practice that those Judges are doing the appellate and more complex cases (acknowledging the difficulty the Courts have had defining the meaning of "complex", referred to in Part 5). Noting the introduction of de facto cases, the growth of Magellan and increasing number of international child abduction matters, the workload will not decrease even with the merger of the Courts and indeed could increase as it is recognised that much of the work undertaken presently in the FMC should properly be done within the Superior Division.

Therefore, while the exact number of Judges to be appointed in the Superior Division is not a specific recommendation in the Report, the Committee urges the Government to ensure that both Divisions are properly resourced and that the focus on the General Division is not allowed to detract from the performance of the Superior Division, which will be the one primarily responsible for the interpretation and development of the Court's jurisprudence.

4 The role of the General Division of the Court

The members of the Law Society practising in this jurisdiction, including the members of the Family Issues Committee of the Law Society, also support the assertion the FMC has its own "can-do" service culture that should be preserved as much as possible; it is very pleasing that the Report recognises this and is at pains to ensure that this continues.

That the FMC has its culture embedded in its Rules and Case Management procedures is also acknowledged. The Committee supports the continuation of that Court's Rules as the model for the operation of the General Division.

The Committee would also support a review of the Family Court Rules for use in the Superior Division, with consideration being given to the adoption of the more effective FMC Rules as a model wherever possible.

The title of persons offered commissions in the General Division is a matter for discussion, but the Committee urges the Government to acknowledge the importance of this Division with the word "Judge" in some fashion e.g. District

Family Law Judge or the like. Such a title would reflect the acknowledgement of government of the importance of that role. This submission is in accordance with others made during the enquiry (para 115).

It is noted the author of the Report (page 6) records at present the two Courts are "handling largely the same work"; this is also the experience of legal practitioners working in this area.

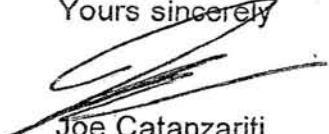
As the role of the judicial officer of the General Division will be critical to the success of the new Court (and the delivery of services to the public), it is imperative that the right persons be attracted to that position. The remuneration and conditions of the judicial officers of the two Divisions should be brought closer together (better still, the differences eliminated) to ensure that proper candidates can be attracted; and to ensure that those persons are commensurately rewarded for the functions performed. It is submitted that the difference between the salary and conditions (including superannuation and leave entitlements) presently existing between Family Court Judges and Federal Magistrates cannot be justified.

5 Other matters

- The Report also adverts to the role of the FMC at the moment in performing most of the circuit work. In terms of the principles of access to justice, the Committee considers this to be a very important issue and it is submitted that circuits should be recognised specifically within the rules of Court and that circuits should be properly funded (perhaps, separately funded) to ensure the delivery of cost effective services to regional and rural areas.
- Two Judicial Registrars remain in the Family Court; this position (as well possibly as the single remaining SES Band 2 Registrar) might be considered anomalous in the new structure and consideration to their positions should be given. Presumably the position-descriptions of those roles will be subsumed into the work done in the General Division.
- The importance of the role of the Registrars (properly) has not been a focus of the Report, but in re-examining the roles of the various judicial officers, consideration to the roles that Registrars can and do play in the areas of dispute resolution and case management should not be overlooked. Considerable saving can be made to the Court if many of the functions now done by Judges or Federal Magistrates can be properly done by Registrars, thereby releasing significant Judge-time to the Court.

I trust these comments are of assistance. For anything further please contact Maryanne Plastiras, Responsible Legal Officer for the Family Issues Committee on 9926 0212 or map@lawsocnsw.asn.au

Yours sincerely



Joe Catanzariti
President