

Federal Courts Branch
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I am writing to make some comments on the discussion paper about the framework for federal courts.

I support the concerns of federal magistrates that the absorption of the Federal Magistrates Court into the superior courts would carry with it a strong risk that the unique culture of the Federal Magistrates Court will be lost. I note the assertion in the discussion paper that suggests that this is not so. No evidence is offered to support the assertion. My own experience suggests to me that there is considerable strength and merit in the concerns expressed by federal magistrates. The importance of maintaining that culture cannot be understated. It is central to the Law Council's proposals and central to the survival of an efficient lower court culture.

When I consider the Law Council's response I can only conclude that any change is unwarranted and would deliver no improvement. Taking each point raised by the Law Council I note that:

A bi-level court

- this bi-level structure of lower and superior courts exists

A single point of entry

- This is achievable with the current structure.

A single set of simplified rules

- this is already available in the Federal Magistrates Court Rules
- distinct rules to manage the cases transferred to the higher level court would be appropriate

A single set of forms

- Already exists in the forms for the Federal Magistrates Court
- any more complex requirements can be managed on a case by case basis for transferred matters

Differential case management

- Agree with the LCA position, as this is the current situation

A single administration

- Only desirable if the change achieves a net benefit. The small, and immaterial, financial saving that might be obtained through a separate administration is more likely to be offset by loss of the unique culture of the Federal Magistrates Court.
- It must be doubted whether significant financial savings can be achieved.

Chief Justice to be responsible for managing the caseload of both courts

- the Chief Justice could not perform this role effectively
- LCA says that registrars should determine complexity and transfer appropriate matters. This proposition is contrary to earlier assertions that complexity is too hard to determine.
- The proposed transfer arrangements are no advance on the current situation.

Name of the judges

- There is no real need for change. However, there is equally no reason why federal magistrates could not be entitled, by legislation, to use the title of Judge.

Court annexed services

- The Government should give serious consideration to reintroducing court-annexed mediation and arbitration services.

I note that the Law Council submission does not address the general federal law jurisdictions of the Federal Magistrates Court or the staff allocated to undertake that work. This is one of the more difficult aspects of an attempt to remake eggs from the omelette.

Unless a number of federal magistrates can be incorporated into the structure of the Federal Court none of the alleged efficiency gains of incorporation of the family law elements of the Federal Magistrates Court into the Family Court will be achieved. But, can the Federal Court absorb the number of federal magistrates (15-20) and does it make sense to ask the court to do so? Will the efficiencies of the Federal Magistrates Court be lost if a part of it is absorbed into the Federal Court? History suggests that they will be. Does the Federal Court want to, or can it, absorb that number of additional judicial officers? My own view is that the current arrangements for the management of general federal law work in two independent courts should be retained.

My suggestions are that:

- The Federal Magistrates Court should be retained.
- Federal Magistrates shall be referred to as Judges and the Chief Federal Magistrate as the Chief Judge
- The court have two divisions: a family law division and a general federal law division
- Appointments are to be made to each division by the government with regard to statutory criteria.
- A judge may be assigned to both divisions.
- Judges of either division may make interim (non-final) orders in the jurisdiction of either division, but can only make a final order in a division to which they are assigned.
- There should be an administrative head of each division and the court should be managed by the Chief Judge and the two division heads, assisted by the CEO.
- All new applications in family law jurisdictions shall be instituted in the family division of the Federal Magistrates Court. An application may only be made in the Family Court if there are pending proceedings in that court. Similar restrictions might be appropriate in some general federal law jurisdictions, eg migration.
- Matters may be transferred to the superior court by a registrar or a judge. A judge's decision not to transfer a matter may be reviewed by a judge of the superior court in chambers.
- The superior court may remit a matter to the Federal Magistrates Court.

Yours sincerely

Peter May