



Clarence River & Coffs Harbour Law Society

A Regional Society of
The Law Society of New South Wales
A.C.N. 000 000 699

Clarence Valley & Coffs Harbour
Regional Law Society
C/- G A Guthrie Solicitors
Cnr River and Hastings Streets
WOOLGOOLGA NSW 2456

6 June 2008

The Honourable Robert McLelland
Attorney-General
Robert Garran Offices
National Circuit
BARTON ACT 2600

Dear Sir,

RE: REVIEW OF FAMILY COURT & FEDERAL MAGISTRATES COURT

I write on behalf of the Family Law solicitors who are members of the Clarence Valley and Coffs Harbour Regional Law Society. I have canvassed the views of several practitioners.

I note that your Department is conducting a review of the Family Court and Federal Magistrates Court. This area is part of a circuit for the Federal Magistrates Court, the Magistrates are usually based in Parramatta and travel to our area. We have been advised that the Family Court will sit, only on special fixtures, for a few outstanding matters.

In 2007 Federal Magistrate Donald instituted a system whereby there was a call-over list designed to reduce the number of matters listed to be dealt with by way of Consent Orders to be filed, adjournments and directions. Sitting Magistrates now follow this practice. This process has been most successful and efficient. On the last Mention and Duty lists for this area there were 84 matters. This is a typical list for this area and does not include the list for divorces which is on a separate date and is dealt with by a Registrar.

There is no doubt that the Federal Magistrates Court deals with matters in a fast and efficient manner. However, practitioners are presently dealing with both the Family Court Rules and the Federal Magistrates Court Rules in relation to Family Law matters. One of the ways in which the efficiency of the Courts may be improved would be by integrating the Rules where they have a general effect and clarifying which of the Rules apply strictly to Family Law in either Court.

There are real substantive difficulties created in the running of complex cases in Coffs Harbour. The loss of a viable Family Court in the area means that the Federal Magistrates Court is dealing with matters that should be dealt with in the Family Court. There are complex children's cases with expert witnesses and also complex property matters that require the judicial exactitude of a Judge rather than a Federal Magistrate.

As a result of the loss of the regular Family Court sittings this area has been deprived of the benefits of the Less Adversarial Cases Program. This is, basically, an unforeseen outcome of the cutback of the circuit to this area. The nearest Family Courts available to our clients are at Newcastle and Brisbane. A high proportion of the clients in this area are the lower end of the socio-economic spectrum and accordingly they are seriously disadvantaged in having to travel, find accommodation and seek alternative carers for their, usually very young children, so that may attend Courts which are at least 5 hours away by motor vehicle.

A comment by one of our local practitioners is that "the two forms of court, namely the Family Court as the higher Court and the Federal Magistrates Court as the lower Court, should not be merged together as one, anymore than the Supreme Court and the District Court should be combined. It is clear from the demeanour of some of our Federal Magistrates that the caseload of simple and complex matters is too much for them. Some of the issues that cause delays of list days are actually complex matters that Federal Magistrates are not equipped to deal with when there are 80 or more matters to be mentioned and where fine points of law are required to be considered".

It would assist people wishing to participate in the LAP cases to have a Federal Magistrate or Judge available to travel to the area. Parties to Family Law matters are seriously disenfranchised by not having Court in the local area. Some two years ago an approach by the local Family Law Practitioners Association was made to the then Attorney-General, through the local member, setting out the demographics and population projections for the area.

In 2005 when the approach was made it was suggested that in the area Port Macquarie in the south to Yamba in the north and west to Armidale the predicted population by 2006 was 538,500. The population in Coffs Harbour area has increased to approximately 69,000 in 2007. Armidale, Grafton and Port Macquarie continue to increase in population. This is one of the fastest growing regions of Australia. The Coffs Harbour area takes into account the second poorest Local Government areas in Australia. There is also a large Aboriginal community in the area many of whom access the Family Law system.

Many people in this area are from extremely disadvantaged backgrounds, unemployment rates are high and the resulting social problems affect the rights and best interests of the children of these families. There is no reason why clients and practitioners from Yamba and MacLean would not access a Court at Coffs Harbour. I would point out that there is a Legal Aid Commission office in Coffs Harbour and many matters which arise in or through this office end up in the Family Law system.

There have been premises designated for the Family Court and Federal Magistrates Court in Coffs Harbour since 1994. The office is not permanently staffed, casual staff members are being used during circuits. Filing for matters in Coffs Harbour area must be done at the Lismore Registry. Family Court subpoenas are returnable at Lismore, Federal Magistrates subpoenas are returnable at either Lismore, or at Coffs Harbour during circuits only. Travelling time from Coffs Harbour to Lismore is 2 ½ hours.

It would greatly assist clients and practitioners to have a Registry available for filing on a permanent basis. The appointment of a permanent Federal Magistrate based in Coffs Harbour and servicing Port Macquarie and Armidale with the Registry available on a full time basis would ensure that regional clients in this area would obtain the same consistency of service enjoyed by Sydney, Brisbane or Newcastle clients.

Information obtained from the Registrar of the Local Court at Coffs Harbour indicates that filing at that Court of urgent matters and Consent Orders were:

2005	164
2006	149
2007	133
2008	around 60 to date

I would submit that the gradual decline in filing relates to the more frequent availability of the Federal Magistrates Court and an inclination of practitioners to file directly to the FMC because many of these matters will be transferred to the FMC after the urgent application is dealt with in the Local Court.

Your consideration of these submissions would be greatly appreciated and I look forward to your positive reply.

Yours faithfully
CLARENCE VALLEY & COFFS
HARBOUR REGIONAL LAW SOCIETY

Anne Beasley BA. LLB
President.