Senate Legal & Constitutional Affairs Committee
Additional Estimates 2008-2009
23-24 February 2009

Tabled Document No 1

By: FEDERAL MAGISTRATES COURT OF AUSTRALIA

Date: 23 FEBRUARY 2009.

FEDERAL MAGISTRATES C

Office of the Chief Executive Officer
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15 August 2008

Mr Ian Govey
Deputy Secretary
Attorney-General's Department
Robert Garran Offices
BARTON ACT 2600

Dear Ian,

I am writing to update you on the Court's operating environment and forecast financial position pending the outcome of the review of delivery of family law services and related court administration. I need also to highlight several concerns as to the Court's capacity to maintain services under the current arrangements.

I note that prior to the commencement of Mr Semple's review in March 2008, the Federal Court, Family Court and Federal Magistrates Court were working towards a separation of funding more closely aligned to the actual workload of each Court. Those discussions ceased in March, pending completion of the Review (then estimated to be late May 2008). The resultant, and still ongoing, lacuna has resulted in the Federal Magistrates Court having to manage additional workload without a transfer of corresponding resources. In the short term the FMC has been able to meet its commitments, but I am very concerned about the Court's capacity to sustain current work requirements under the present funding and resourcing arrangements, particularly with the possibility of further increases in workload over the coming months.

On 25 June 2008 I wrote to the Attorney-General advising that the Court will be reporting an operating loss in 2007-08. Based on the current funding arrangements and projected workload of the Court for 2008-09, without a realignment of funding to provide more appropriate and adequate resourcing it is anticipated that a further loss will be reported in 2008-09. This projected loss will be exacerbated with the appointment of additional federal magistrates.

Since inception the Federal Magistrates Court has received funding for the appointment of federal magistrates from several sources. Where the appointment is a new

appointment by Government, the Court is fully funded for the federal magistrate. However, when a federal magistrate has been appointed to replace a Family Court Judge or a Family Court Judicial Registrar, the Court has not received full funding for the federal magistrate. The gap between funding required and funding received is largely due to costs in relation to superannuation, property, capital equipment and staffing arrangements. By necessity the FMC has incurred a range of expenditure to support federal magistrates from within its base funding, however as a consequence of this shortfall and the additional 2% efficiency dividend applying from 2007-08, the impact upon the Court's resources has compounded with the FMC now facing an extremely precarious financial position. I have advised previously, in light of the FMC's current and forecast financial position, the Court is unable to absorb the funding gap for any future replacement appointments.

Of great concern is the proposed appointment of an additional five federal magistrates to replace Family Court Judges and one additional federal magistrate to replace a Family Court Judicial Registrar. Also of concern is that of the eight new appointments proposed immediately, four will involve the appointee relocating. The resultant relocation costs which the Court will need to meet will be a further significant impost to the Court for which it is not funded. I wish to avoid any embarrassment to the Government as a consequence of what I consider to be a very concerning situation. I note from my discussions with officers of your Division today the view was put that there was sufficient funding currently "within the family law system" and that there is appropriate funding available to meet the costs of replacement appointments. I therefore seek your urgent advice on the arrangements made for the Court to receive full funding for the appointments made in replacement of Family Court Judges and Judicial Registrars now proposed and into the future.

Further I would like to, once again, draw your attention to the fact that the Court is currently relying upon infrastructure and systems established in 2000 to support 16 federal magistrates, with minimal support staff. When I last wrote to you on 20 March 2008, it was intended that the Review would be completed by May 2008. With the passage of time my concerns deepen in relation to the Court's capacity to continue to meet its obligations with an inadequate infrastructure and constantly increasing workload.

With growth to more than 60 federal magistrates within the coming months, an additional 45 personnel will critically impact upon the ability of the Court and its personnel to meet its and their statutory obligations and, in time, the Court's ability to maintain its high level of quality service to litigants. The Court's infrastructure is now stretched to capacity, with opportunities for assistance from other jurisdictions severely limited due to budgetary pressure upon those Courts. There is currently a very high level of risk, in relation to fraud and sustainability in regard to the Court's corporate systems. This risk is compounding daily. Solutions have been identified to mitigate these risks, but implementation has been delayed as a consequence of the Review.

A further pressure upon the Court to which I feel also needs to be highlighted, is the impact of the feasibility study for a Commonwealth Law Courts Building in Newcastle.

In 2008-09 the Family Court and Federal Magistrates Court sought funding through a new policy proposal for construction of a Commonwealth Law Courts building in Newcastle. In response to the new policy proposal both courts were directed to undertake a scoping study and prepare a detailed business case for consideration in the 2009-10 budget. Further, the courts were directed to fully offset and absorb the cost of the scoping study from existing funding.

A preliminary tender has been undertaken by the Department of Finance & Deregulation on behalf of the Family Court of Australia, Federal Magistrates Court and your Department. A requirement for preliminary funds totalling $1.550m has been identified from the tender process. This funding is to be provided in equal shares by the Family Court and Federal Magistrates Court. Given the FMC's minimal property funding, shortfalls in funding for federal magistrates and current workload pressures, a contribution of over $0.775m to this project will further increase the Court's projected operating loss for 2008-09.

In summary, the Court is currently operating in a high risk environment. Whilst, as always, the Court and its personnel will continue to strive to maintain the high level of service delivered to date, I feel I have an obligation to draw to your attention the severity of the issues currently facing this Court and the compounding effects of the issues on the Court.

Yours sincerely,

John Mathieson
Chief Executive Officer