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By: Mr David Fredericks

Attorney General's Department

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## SPEECH

Speech to Federal Magistrates Plenary – Australia's essential trial court: How the Federal Magistrates Court can fulfil its potential

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[CHECK AGAINST DELIVERY]

#### Introduction

It is a pleasure to be able to address you at the 2012 Federal Magistrates Plenary. It is sometimes hard to believe the Federal Magistrates Court heard its first case only 12 years ago, given the central place it now holds in Australia's judicial system.

It may have been created in controversial circumstances, but it stands today as a testament to the ability of a dedicated group of individuals to come together and deliver high-quality judicial services for those who need them most.

I've titled my speech today "Australia's essential trial court: How the Federal Magistrates Court can fulfil its potential".

I want to take this opportunity to talk to you about my goals as Attorney, my thinking for the Court, and my vision for the judicial system more widely. And I want to set out how your and my ambitions align – how we all want to deliver a low-cost, flexible and accessible justice system.

But I also want to talk frankly about what's holding the Court back, and how we can work together to overcome these constraints.

From the large picture – giving you the certainty of jurisdiction and position you need – to the practical, like improving access to judicial training – these are steps we can take together.

#### Goals as Attorney

Unapologetically, as an Attorney-General in a Labor Government, one of my main goals is to ensure our judicial and legal systems work equally well for those with few resources as for those with many. The Federal Magistrates Court has a key role to play in achieving this goal.

I want a justice system in this country that is geared as much to the small one-off litigant, as it is for large corporations who use our courts as part of their standard business practice. And we need a courts system that people can access near to where they live and work – in places like Broken Hill and Bundaberg, Mount Gambier and Burnie – not just Sydney and Melbourne.

Australia's courts system is renowned for its excellence, impartiality and independence.

But I also want to enhance its reputation for accessibility and timely resolution, and to be truly reflective of the community it serves.

### Role and importance of FMC

I see the Federal Magistrate's Court as meeting a clear need in the community, and particularly for people living in regional areas. Your regular circuit work puts you at the front line – and often at the end of a very long docket – of difficult matters exacerbated by remoteness and lack of services. This regional access is of growing importance.

From its inception, the Court was conceived as providing a simple and streamlined process to resolve complaints. It was designed, of course, to reduce the workload on the Federal and Family courts – and perhaps even to spur them on!

I'm quite upfront that the Labor Party – and I as the Shadow Attorney-General – did not support the establishment of the Court. We disagreed with the Government at the time as to its rationale, and I acknowledge this created some challenges for the Court itself.

The somewhat confused creation of the Court has left you for many years with an ambiguity of jurisdiction, and uncertainty as to role.

You'll be pleased to know, however, that I have been convinced of the value of the role you fill, both as a trial and circuit court.

Over the intervening 12 years the Court has gone on to resolve countless matters... Well, I had thought countless, but the Chief Federal Magistrate has kindly counted them for me and advised that to the end of last financial year, nearly 810,000 matters had been finalised by the FMC. These are incredible numbers, particularly given the small number of Magistrates operating over the early years of the court – and it really shows the heavy lifting you're doing to keep the federal judicial system functioning.

In 2010-11 alone, the Court finalised over 74,000 cases inside six months and another 9,200 were finalised within 12 months. These matters have been resolved in an average of 127 days, with parties being heard an average of 2.6 times for each matter, equating to nearly 236,000 hearings.

The Federal Magistrates Court is the only federal court in Australia with a program of regular regional circuits. In the last financial year, the Court circuited to 33 rural and regional locations, and spent the equivalent of approximately 145 weeks (in Federal Magistrate hours) hearing matters in regional areas.

Now, of course, as well as leading the way in adopting user-friendly processes, you also most closely reflect the community you serve.

As Attorney I am committed to ensuring the diversity of experiences and backgrounds that make up the Australian community, also make up the Federal Bench.

By measures of gender, age, background, residential location and previous occupation, the FMC is often leading the way.

You have been appointed to serve from locations as far afield as Devonport, Alice Springs, Darwin and Cairns, far from the major legal enclaves of Sydney and Melbourne – but of course I mean no disrespect to those serving there!

In a recent, very important example, Matthew Myers became the first Indigenous appointee to a federal court. Along with his strong legal background making him a very suitable appointment to the bench, Federal Magistrate Myers' heritage will encourage young Australians from all cultural backgrounds to a career of legal excellence and public service.

You also lead the way in judicial officers appointed under 50 years of age, at over 44% of total appointees. Of course experience is a worthy attribute for any appointee – but so are those immediate memories of your own that help guide your decisions regarding the struggling young families, migrants, and small business owners appearing before you.

And perhaps most importantly, you are streets ahead in terms of diversity of professional background – as well as barristers, many of you started your careers as solicitors, academics, and in legal aid. Since 2004, over 40% of appointees have come from outside the ranks of barristers or judicial officers.

Yours is the court that most truly captures the Australian experience.

Areas of improvement / constraints on action

But there is always room for improvement, just as there is always time to correct those issues which have stopped the court from reaching its full potential: most notably, the lack of clarity around the Court's role, and the uncertainty surrounding its future.

As many of you would be aware, the Skehill Review into portfolio agencies, including the courts, has recommended a range of practical measures to improve the operation and reduce duplication between federal courts.

Government consideration of Mr Skehill's report is close to being finalised.

But I am pleased to announce today that Government will be accepting one of Mr Skehill's recommendations, which is to not proceed with the proposed formal merger of the Federal Magistrates and Family Courts.

I know you will welcome this decision.

Mr Skehill's recommendation reflects my belief, as the new Attorney-General, that the Australian community is best served by a separate and distinct Family Court and Federal Magistracy.

This new direction will go a long way to providing each Court's judicial officers with the certainty they need to engage in constructive long-term court planning.

Planning that should go in the first instance, in my opinion, to developing a clearer and better-understood apportionment of work and jurisdiction between the Courts.

While this is currently guided by the Protocol between courts, this largely rests on the good working relationship currently in evidence between the Chief Justice and Chief Federal Magistrate – circumstances that cannot always be guaranteed. In the alternative, more clearly defined and articulated roles, developed through extensive consultations with the courts, will ensure such arrangements are better understood by Court users today, and applied into the future.

We also proposed to formalise the shared administrative arrangements between the Federal Magistrates Court and the Family Court by recognising a single CEO position and agency under the *Financial Management and Accountability Act* — but with both Courts of course retaining their separate statutory status.

Another initiative arising from the Skehill Review is the Heads of Jurisdiction Consultative Committee.

The Chief Federal Magistrate and Chief Justices of the Family and Federal Courts have established this Committee as a forum to discuss ways of increasing effectiveness and efficiency in the management of the Courts.

I also personally consider that the current title of the Federal Magistrates Court does not adequately capture the vital work undertaken by the Court.

You are clearly not 'Magistrates' in the traditional sense of the word. Despite your brief to engage less formal and legalistic processes to resolve disputes, you are nonetheless dealing with increasingly complex and difficult family law, migration and bankruptcy matters. You are Chapter III judicial officers – nomenclature is important, and personally, I accept yours should reflect that fact.

To that end, I will seek to bring forward legislative amendments, again following extensive consultation with the FMC, to give the Court a name worthy of its role and responsibilities. My preference is for you to be clearly identified as a 'circuit' or 'trial' court, but I welcome your input.

And lastly, I see continuing judicial education and training as essential to keeping all Federal judicial officers at the peak of their game, and ensuring the widest possible pool of expertise from which to draw candidates for the next generation for the duties of higher office.

As such, I have written to the National Judicial College of Australia to seek improved access for Federal Magistrates to its judicial training programs.

While the College is not run at the direction of Government, I will be asking its administrators to open its doors to a wider set of courses so that you too can take advantage of the full range of training opportunities it offers.

## Altobelli litigation

From court structure, to title, to training – these are the points I see as essential to keeping the FMC relevant and responsive to the Australian community.

However, I said that the beginning of my address I would speak frankly.

And speaking frankly, the uncertainty that currently surrounds the Court has not been solely due to political processes and indecision – it is also affected by the circumstances of the litigation on foot. While everyone has a right to be a litigant, this litigation is casting a long shadow.

This uncertainty is illustrated by the attempts of some bankruptcy respondents to use the Altobelli pleading to argue that the Court is invalidly constituted.

Of course, this litigation commenced well before my time – I was not privy to the circumstances that have led to this point, and make no comment regarding the strength of various arguments.

My sole aim today has been to expressly outline my view of the important role of the FMC, and the Government's determination to consolidate this within our legal system. My desire is to cement the FMC as Australia's genuine and recognised federal circuit and trial court.

To achieve that aim, there must be a genuinely constructive relationship between Government and the Court.

But I also recognise that parties have gone a significant way down the road of litigation, with all incurring costs – and to some extent digging themselves into legal trenches.

I have sought to this point to ensure that possible costs orders not be a barrier to resolving the litigation. It is in everyone's interests for the litigation to be resolved if at all possible.

If it must, the litigation will take its course – but I couldn't address you today without acknowledging its prominence in the relationship between the Court and the Government.

## Conclusion

In its 12 years of existence, the Federal Magistrates Court has gradually built a reputation for ably serving the people who most need its help.

Where do I see the FMC in a further 12-years' time?

I see a Court that is attractive to those who want to bring disputes to a just resolution, quickly and cheaply.

I see a bustling and busy court recognised for its circuit and trial work; reaching into our regional centres and beyond, to locations that have never before seen a federal court sit.

I see a court building on its strengths of impartiality, accessibility and flexibility, confident in its identity, jurisdiction and role.

And I see a court in which its officers have access to the necessary training and education to enable them to reach their full potential as judicial officers, and be routinely considered for other judicial appointments.

This is the Court I want, as I know you do too. I want to work with you to make it a reality.

Thank you.

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