

SUBMISSIONS

OF

TOOMEY MANING & CO.

IN RESPECT OF THE

**SMALL REGISTRY REVIEW – CONSULTATION
PAPER**

**TOOMEY MANING & CO
BARRISTERS & SOLICITORS
30 DAVEY STREET
HOBART TAS 7000**

Council 16/5/09

SUMMARY

The *Small Registry Review – Consultation Paper* (hereafter “the 2009 Review”) and its recommendations are flawed for the following reasons:

- (a) it pays lip-service to section 34 of the *Federal Court of Australia Act 1976* (hereafter “the Act”);
- (b) it lacks objectivity, or might be perceived to lack objectivity;
- (c) it fails to address the recommendations contained within the document entitled *Review of the provision of services to the Administrative Appeals Tribunal by the Federal Court of Australia Registry in Hobart, Tasmania* (2005) (hereafter “the 2005 Review”);
- (d) it fails to give reasons why the recommendations contained within the 2005 Review were not addressed;
- (e) it does not consider, or give any weight to, any qualitative assessment of the Tasmanian registry;
- (f) it fails to take into account differences between the Tasmanian culture (including legal culture) and the culture of “parent” registries;
- (g) it fails to take into account increased incidental costs to consumers and the Registry;
- (h) it fails to take into account the transfer of costs from the Tasmanian registry to “parent” registries;
- (i) it does not adequately justify alleged cost savings with evidence;
- (j) it fails to accommodate for any increased caseload at the Tasmanian Registry;
- (k) it fails to take into account the workload of the “parent” registries;
- (l) it goes against current organizational theory; and
- (m) it will leave the Tasmanian Registry without legally qualified personnel.

SUBMISSIONS

A. It pays lip-service to the Act

1. Section 34(1) of the Act states as follows:

The Governor-General shall cause such Registries of the Court to be established as he or she thinks fit, but so that at least one Registry shall be established in each State, in the Australian Capital Territory and in the Northern Territory.

2. Page 1 of the 2009 Review states as follows:

The review team had particular regard to... The need to avoid... the unnecessary duplication of services that can be provided by either larger "parent" registries or Principal Registry.

3. Page 1 of the 2009 Review states as follows:

Registration closure was not considered an option given both Section 34 of the Federal Court of Australia Act and the Court's commitment to having a presence in all states and territories.

4. It is submitted that the implementation of the recommendations contained within the 2009 Review would amount to lip-service to s. 34(1) of the Act, and render the Tasmanian Registry little more than a "letter-box" registry.

B. It lacks objectivity, or may be perceived to lack objectivity¹

5. The authors of the 2009 Review are currently employed as the District Registrars of the "parent" registries of New South Wales, Victoria and South Australia.

¹ See attachment "A"

6. Page five of the 2009 Review states as follows:

It is proposed that the Federal Court and Federal Magistrates Court legal work [of the Tasmanian register] will be undertaken by the Deputy Registrars in Melbourne.

7. The authors of the report, and the “parent” registers which they currently represent, benefit from, or might be perceived to benefit from, adopting the responsibilities of the Tasmanian register for the following reasons:

- (a) it would entrench the importance of the parent registries; and
- (b) it would increase the budget share of the parent registries.

8. It is submitted that this benefit or perceived benefit negatively affects the objectivity or perceived objectivity of the 2009 Review.

9. There also appears to have been very limited consultation undertaken prior to the publication of the 2009 Review comparative to that undertaken by the actions of the 2005 Review (see below).

C. It fails to address the recommendations of the 2005 Review

10. In 2004 the Federal Court of Australia and the Administrative Appeals Tribunal (hereafter “the AAT”) commissioned a review of the Federal Court Registry in Tasmania (the 2005 Review).
11. The 2005 Review was undertaken by Mr John Mathieson (former NSW & ACT District Registrar of the Federal Court), Ms Sian Leathem (Assistant Registrar of the AAT), and Mr Chris Matthies (Assistant Registrar of the AAT) operating under the direction of a Steering Committee comprised of Mr Warwick Soden (Registrar of the Federal Court) and Mr Douglas Humphries (Registrar of the AAT).

12. At pages 6-7 the 2005 Review² outlines the following methodology used by its authors:
- (a) examination of lodgement and caseload statistics;
 - (b) projections/estimates of future workloads;
 - (c) consideration of former reviews or assessments of the Hobart Registry;
 - (d) consultations with staff in the Hobart Registry;
 - (e) discussions with wider Federal Court, Federal Magistrates Court, AAT and National Native Title Tribunal staff;
 - (f) discussions with relevant members of the judiciary and other tribunals; and
 - (g) discussions with key external stakeholders and user groups.
13. The 2009 Review does not outline the methodology used by its authors.
14. The 2005 Review came to the following recommendations:
- (a) at page 36 the 2005 Review states as follows:

Primary management of the Tasmanian Registry should remain in Tasmania.
 - (b) at page 37 the 2005 Review states as follows:

...it is clear that the current staffing structure is meeting the needs of those served by the staff of the Registry and the Review Team can see no reason to recommend any change at present.
15. The recommendations of the 2009 Review are inconsistent with the recommendations of the 2005 Review.
16. It is submitted that the 2009 Review does not take into account, or alternatively does not state that it takes into account, former reviews or assessments of the Hobart Registry, including the 2005 Review.

² See attachment "B"

D. It fails to give reasons why it does not acknowledge the 2005 Review

17. It is submitted that if the 2009 Review does take into account former reviews or assessments of the Hobart Registry, including the 2005 Review, it does condescend to explain why the recommendations of the 2009 Review differ from the recommendations of the 2005 Review.

E. It does not make any qualitative assessment of the Tasmanian Registry

18. The 2009 Review does not outline the methodology used by its authors.
19. The 2009 Review does not make any reference to qualitative assessment of the operation of the Tasmanian Registry.
20. It is submitted that the 2009 Review does not take into account any qualitative assessment of the operation of the Tasmanian Registry, or alternatively does not state that it takes into account qualitative assessments of the Tasmanian Registry and does not give explanations as to how those assessments informed the recommendations contained therein.

F. It does not take into account the differences between Tasmanian culture (including legal culture) and the culture of “parent” registries

21. It is submitted that the 2009 Review does not take into account the differences between the professional legal markets of Tasmania and the “parent” registries. Because of Tasmania’s smaller legal demographics there has always been an expectation, and it is one that facilitates efficiency and effectiveness, to be able to have ready access to registry staff and its District Registrar. This expectation, and its effect, has engendered strong communication lines between the participants in the Federal Court system and the Tasmanian Federal Registry.

G. It does not take into account increased incidental costs

22. It is submitted that the 2009 Review does not take into account increased incidental costs to participants and the Registry, including;
- (a) travel;
 - (b) video-conferencing; and
 - (c) increased turn-around time.

H. It does not take into account the transfer of costs

23. The 2009 Review does not contain budgetary projections for the “parent” registries.
24. It is submitted that it is impossible to discern from the 2009 Review whether the costs saved at the Tasmanian Registry outlined in “Option 3 Impacts” will be borne by the “parent” registries, and therefore that it is impossible to discern what the net budgetary impact of the recommendations of the 2009 Review will be upon the Australian Federal Court.

I. It does not justify alleged savings with evidence

25. The 2009 Review does not outline the methodology used by its authors in particular it does not state whether the authors drew their recommendations with regard to existing budgets or budget projections.
26. It is submitted that the 2009 Review does not provide budget breakdowns or projections to justify the recommendations contained therein, or to place the salary impacts outlined in “Option 3 Impacts” within a wider budgetary context.

J. It does not accommodate for increased workload at the Tasmanian Registry

27. The 2009 Review does not outline the methodology used by its authors, in particular it does not state whether the authors drew their recommendations with regard to lodgement and caseload statistics or projections/estimates of future workloads.
28. The Federal Court will, or is likely to, inherit jurisdiction over Family Court and Fair Work matters. It is likely that this will increase the caseload handled by the Tasmanian Registry.
29. The 2009 Review does not take this increased caseload into account, or does not state that it takes this caseload into account.
30. Additionally, the 2009 Review does not take into account an increase of caseload for any reason, or does not state that it takes it into account.

K. It does not take into account the workload of the “parent” registries

31. The 2009 Review does not outline the methodology used by its authors, in particular it does not state whether or not the authors drew their recommendations with regard to lodgement and caseload statistics or projections/estimates of future workloads.
32. The 2009 Review does not mention the workload of the “parent” registries.
33. It is submitted that an increased workload at the “parent” registries brought about by absorbing a portion of the responsibilities of the Tasmanian Registry may negate savings made at the Tasmanian Registry.

L. It goes against current organizational theory

34. In "Downsizing – good or bad it's here to stay" The Centre for Professional Development writes:

...the Melbourne Institute team ran a telephone survey of Australian corporate representatives, asking those they spoke to their opinion as to the success of downsizing their organization. Their result concluded bad downsizers are those companies that use the tactic frequently for short-term cost reductions derived from culling the head count...

This form of downsizing tends to be a knee-jerk reaction to a sudden drop in demand for services, without any serious thought to the outcome or objective. The report says bad downsizers are often public sector service organizations.³

35. It is submitted that the 2009 Review represents "bad" downsizing, and a kneejerk reaction that does not reflect the long-term goals of the Federal Court and the interests of the Tasmanian Registry and constituents of the jurisdiction.

36. In "Downsizing, Rightsizing or Dumbsizing?: Quality and Human Resources, in the management of Sustainability", Adrian Wilkinson writes, of the effects of downsizing on costs, efficiency and personnel:

There have also been increasing concerns about the organizational effectiveness of the post-downsized "anorexic organisation". The benefits, which organizations claim to be seeking from downsizing centre on savings in labour costs, speedier decision making, better communication, reduced product development time, enhanced involvement of employees and greater responsiveness to customers (De Meuse et al, 1997, p 168). However, reports suggest that the results of downsizing are illusory.

Downsizing has a negative effect on “corporate memory” (Burke, 1997), employee morale (Brockner et al, 1987), distracts social networks (Priti, 2000), causes a loss of knowledge (Cole, 1993), and disrupts learning networks (Fisher and White, 2000). As a result, downsizing could “seriously handicap and damage the learning capacity of organisations” (Fisher and White, 2000: 249). Further, given that downsizing is often associated with cutting costs, downsizing firms may provide less training for their employees, recruit less externally, and reduce the research and development (R&D) budget. Consequently, downsizing could “hollow out” the firm’s skills capacity (Litter and Inns, 2003: 93)...

The potential negative impact of downsizing is not restricted to those who leave but it has a major effect on the remaining employees. Such employees are by their very nature now much more important to the employer but are often overlooked in downsizing situations. The impact of downsizing on the remaining employees is such that commentators now talk of “the survivor syndrome” (Brockner, 1992). This is the term given to the collection of behaviours such as “decreased motivation, morale and loyalty to the organization, and increased stress levels and skepticism” that are exhibited by those who are still in employment following re-structuring.⁴

M. It will leave the Tasmanian Registry without qualified legal personnel

37. The abolishment of the only legally qualified entity within the Tasmanian Registry will act to disenfranchise the legal profession of the jurisdiction, and is an affront to the members of that profession.

³ See attachment “C”

⁴ See attachment “D”

38. Moreover, if the District Registrar's position is abolished, Tasmania will lose the environmental knowledge gleamed by its District Registrar over a number of years and his expertise:

- (a) dealing with lay litigators;
- (b) practice and procedure;
- (c) mediations;
- (d) assessment of bills of costs;
- (e) reviews pursuant to current order of the Federal Court;
- (f) in exercising Judge delegated functions under the Corporations Act 2001; and
- (g) conferring,

That is detrimental to access and efficiency.

CONCLUSION

The proposals contained within the 2009 Review should be rejected, or at least reconsidered, in light of the 2005 Review and a broader cost benefit analysis of the proposed downsizing should be undertaken.

At the very least, the numerous assumptions, and inadequate explanations contained within the 2009 Review call for a further consideration of that paper's subject matter prior to any rash action being taken in respect of the Tasmanian Registry.

Leonard Fernandez

12 May 2009

SMALL REGISTRY REVIEW – CONSULTATION PAPER

[20 April 2009]

Background

The review was organised with the aim of identifying the most efficient and effective organisation structures for the Court's smaller registries in Tasmania, the Northern Territory and the Australian Capital Territory. The review does not address the provision of library services in those registries as this is the subject of a separate review.

The review was undertaken by Michael Wall (NSW DR), Sia Lagos (VIC DR) and Patricia Christie (SA DR). The review team had particular regard to the following issues:

- The need to reduce costs across the Court, including smaller registries (that is; to find the most efficient way of managing and allocating whole of Court resources through sustainable costs savings).
- The need to provide the best possible level of service to Court users in small registries at the lowest cost while maintaining employee satisfaction (that is; to maintain the registries service focus by creating efficiencies through streamlined processes).
- The need to avoid unnecessary management structures and the unnecessary duplication of services that can be provided by either larger 'parent' registries or Principal Registry (that is; to simplify the management structure and reporting lines).

Registry closure was not considered an option given both Section 34 of the Federal Court of Australia Act and the Court's commitment to having a presence in all states and territories.

Current Structure/s

Current organisation charts for TAS, ACT and NT Registries are at attachment 1.

Issues with current structures

Organisation structures and management arrangements in TAS, ACT and NT Registries have evolved locally, rather than with reference to a preferred national model, and this has led to inconsistencies in areas such as management structures and reporting lines.

For example, TAS Registry operates as a fully-independent stand-alone Registry with its own District Registrar and FCS 6 Director Court Services (DCS) with most legal work being undertaken locally by the DR.

NT on the other hand lost the position of DR in July 2008 and has since worked via a FCS 6 DCS, to the SA District Registrar. Legal work in NT is now handled through SA Registry.

ACT Registry reports to the NSW DR via a FCM 1 DCS, with the legal work being shared between Registrars in Sydney (who undertake the higher level legal work such as the Registrar's insolvency lists, mediations and other case conferencing work) and locally by a dedicated part time FCL 1 Registrar.

Aside from management structures and reporting arrangements, support and client service positions in small registries vary in level between FCS 5 and 3. All Registries employ FCS 2 Casual Court Officers as required.

The Review Team therefore identified the following main areas of difference between small registries:

- Management structures – in particular whether or not there is a resident DR.
- Legal work – whether undertaken primarily locally, or by a 'parent' registry such as the arrangement between SA and NT and the arrangements between NSW and the ACT for all Registrar Court lists and ADRs .
- Classification levels of support and client service staff.

The review team has therefore chosen to focus on these areas in addressing the options for change below, with the aim of proposing a preferred 'best practice' model. The 'best practice model' proposed by the review team seeks to:

- harmonize the structure of the small registries;
- rationalize the management and reporting lines; and
- standardize the classification of support and client service staff

having regard to work volumes; staffing numbers and the level of judicial support required in each registry.

Options for change

The main variable in considering options for change is the extent to which registry management and legal work is either regionalized or integrated. The options for change are therefore:

Option 1 – Maintain the status quo: that is no change other than to implement any reductions in budget locally on an *ad hoc* basis.

Option 2 – Fully regionalized model: all small registries to have a local DR, DCS and legal staff (probably the DR).

Option 3 – Fully integrated model: all small registries to report to the DR in a larger 'parent' registry, with all legal work being undertaken by legal staff in the parent registry. Under this model, higher level management and legal functions are centralized to the parent registry. Client service and support staff will report locally to the Registry Manager who will report to the DR in the parent registry.

Option 4 – Fully or partly 'outsourced' model: under this model the Family Court would either carry out all local Federal Court functions or a small number of Federal Court staff would work based in Family Court premises in the ACT, Hobart and Darwin.

Comment on options for change

The review team does not favor option 1, primarily because it would allow existing inconsistencies to continue without regard to whether these are in the best interests of the Court, its judges or Court users. It also offers only limited scope for savings around the margins, possibly at the expense of services to Court users.

Option 2 (full regionalization) is flawed in that it effectively duplicates management arrangements for larger registries where staffing levels do not warrant two management positions (a DR and a DCS). Similarly, the Court's experience in NT (and also the ACT) has demonstrated that specialist legal work, and the higher level management work typically undertaken by a DR, can be undertaken effectively from a parent registry. Problems associated with only having one legal specialist position in any registry include the lack of 'critical mass', limited contact/information sharing with other legal staff, difficulties in providing the person with other meaningful work when there is insufficient legal work, etc.

Option 4 (full or partial outsourcing to the Family Court) was not considered a realistic option because of the need for the Federal Court to continue undertaking AAT work in TAS. Similarly the Federal Court's need to access court rooms in the NT Supreme Court building would mean it would not be practicable operate through the Family Court in Darwin, which is a considerable distance away.

Option 3 is therefore the review team's preferred model. This option would see all small registries managed by a local Registry Manager (formerly the DCS) and all legal work undertaken by staff in the relevant parent registry. Savings aside, advantages of this arrangement for legal work include the capacity to draw on a greater number of staff and a wider range of skills and expertise. Similarly problems associated with staff absences on planned and unplanned leave are minimised. The arrangement is also consistent with more contemporary approaches to management structure given that it eliminates a layer of management and achieves a flatter organisational structure. In the longer term it will facilitate a more team-based approach to the management of smaller registries (acknowledging that this already occurs to some extent already). One cost associated with

the model would be increased travel costs, resulting from the need for legal staff and the DR from the parent registry to visit as required.

Preferred Model

As outlined in Option 3 above, the preferred standard model for small registries is characterised by:

- The local District Registrar role being undertaken by a non-resident DR from the relevant parent registry.
- A Registry Manager position which would answer instead to the DR in the parent registry (TAS to VIC, ACT to NSW and NT to SA). This arrangement is already in place in ACT and NT and works effectively. The positions may also be assigned national roles or responsibilities, consistent with the FCS 6 classification - one aim of this would be to provide development opportunities to the staff in question.
- No locally-based legal staff. Again, legal staff would normally be drawn from the parent registry as required or on a rotational basis.
- Greater consistency in classifications of support and client services staff.

Option 3, the preferred model, addresses the three key issues and attains the best practice objectives identified above.

The 'standard' preferred organisational model is therefore:

- 1 FCS 6 Registry Manager.
- FCS 4 Client Service Officers and support staff – as required by registry.
- FCS 2 Casual Court Officers – as required by registry.

Comment on local issue and scope for flexibility under the preferred model

Northern Territory

It is proposed that the NT registry Manager role would remain at the FCS 6 level. The FCS 5 Native Title role will continue given the large, actively-managed Native Title caseload, whether or not there is a judge located in the Registry.

Current chambers staff in NT have not been included in the Review Team's considerations.

Tasmania

The Review Team understands that, should option 3 be adopted, the AAT's Registrar/CEO has indicated that the AAT legal /case conferencing work would most likely be undertaken by the AAT in Melbourne. This will mean that only Federal Court legal work will need to be undertaken by VIC Registry – not AAT legal work. Otherwise registry staff would continue to support AAT activities as well as performing Federal Court work. It is proposed that the Federal Court and Federal Magistrates Court legal work will be undertaken by the Deputy Registrars in Melbourne.

The Review Team believes that the Registry Manager role should remain at the FCS 6 level.

Given that the role of FCL 2 District Registrar would be abolished there would no longer be a need for a FCS 3 (EA) position.

The two existing FCS 3 Client Service Officer positions will be reclassified to the FCS 4 level, consistent with the classification levels of these roles in most other registries.

The AAT funded positions should also be reviewed, pending any decision made by the Federal Court, although this is obviously a decision for the AAT.

ACT

Existing reporting arrangements to the NSW DR would remain. The position of FCM 1 DCS (part-time) would be re-classified to the FCS 6 level and become a full-time role.

The position of FCL 1 DDR would be abolished and the residual legal work would be managed by visiting NSW Registrars on circuit, by video conference or other means.

The two casual FCS 3 Client Service/Support roles would be replaced by a single full-time FCS 4 Client Service Officer.

Existing numbers of FCS 2 Casual Court Officers remain unchanged.

Positions most affected by recommendations

Where positions are being upgraded the Review Team has every expectation that existing incumbents are likely to win promotion to the higher level. To assist this, we would recommend that affected staff act in the reclassified roles for at least 3 months prior to advertising.

The following positions are those most affected by the Review Team's recommendations:

- FCL 2 District Registrar Tasmania – position will be abolished.
- FCS 3 (EA to TAS DR) – position will be abolished.

- FCL 1 Deputy District Registrar (part-time) ACT – position will be abolished.
- FCM 1 (part-time) Director Court Services ACT – position would become a full-time FCS 6 position.
- There are also a number of casual support and court officer roles in ACT registry where numbers and hours may be reduced. The circumstances of each person and their length of service vary significantly, as does the potential impact of the review. We would negotiate individually with affected staff members to try to ensure a fair and equitable outcome.

Implementation and communication

The Review Team would envisage the consultation and communication with affected parties proceeding as follows:

- In principle sign off by Registrar (by 14 April)
- Registrar or relevant DR to consult with judges as appropriate.
- Staff who are potentially adversely affected to be advised by Warwick or, where more appropriate the DR in relevant 'parent' registry (by 17 April)
- Discussion arranged with NCC/CPSU (week commencing 20 April)
- Presentations to all affected staff (immediately after advice to NCC/CPSU – week of 20 April)
- CPSU/NCC and affected staff to be given at least two weeks to provide comments on proposals.(by 4 May)
- Consultation with external stakeholders by NSW, VIC and SA DRs as required (to occur before 4 May)
- Management/Review Team discusses/responds to CPSU/staff/NCC/external stakeholders (by 8 May)
- Final report drafted taking feedback into account (by 15 May)
- Final decision by Registrar (by 22 May)
- Implementation to commence, as appropriate (25 May)

SMALL REGSITRIES REVIEW
OPTION 3 IMPACTS [Excluding Library staff]

ACT REGISTRY

CURRENT :		OPTION 3 COMPARISON	
Director Court Services, FCM 1		Registry Manager, FCS 6	
Deputy District Registrar, FCL 1			
Casual Support Officer, FCS 3 (p/t)		Client Service Officer, FCS 4	
Casual Support Officer, FCS 3 (p/t)			
Court Officer, FCS 2		Court Officer, FCS 2	
Budget 2008-09	\$286,601	Comparable Budget :	\$204,801

TAS REGISTRY

CURRENT :		OPTION 3 COMPARISON	
District Registrar			
Director Court Services, FCS 6		Registry Manager, FCS 6	
Executive Assistant, FCS 3			
Client Service Officer, FCS 3		Client Service Officer, FCS 4	
Client Service Officer, FCS 3		Client Service Officer, FCS 4	
Court Officer, FCS 2 (Casual)		Court Officer, FCS 2 (Casual)	
Budget 2008-09	\$431,684	Comparable Budget :	\$221,339

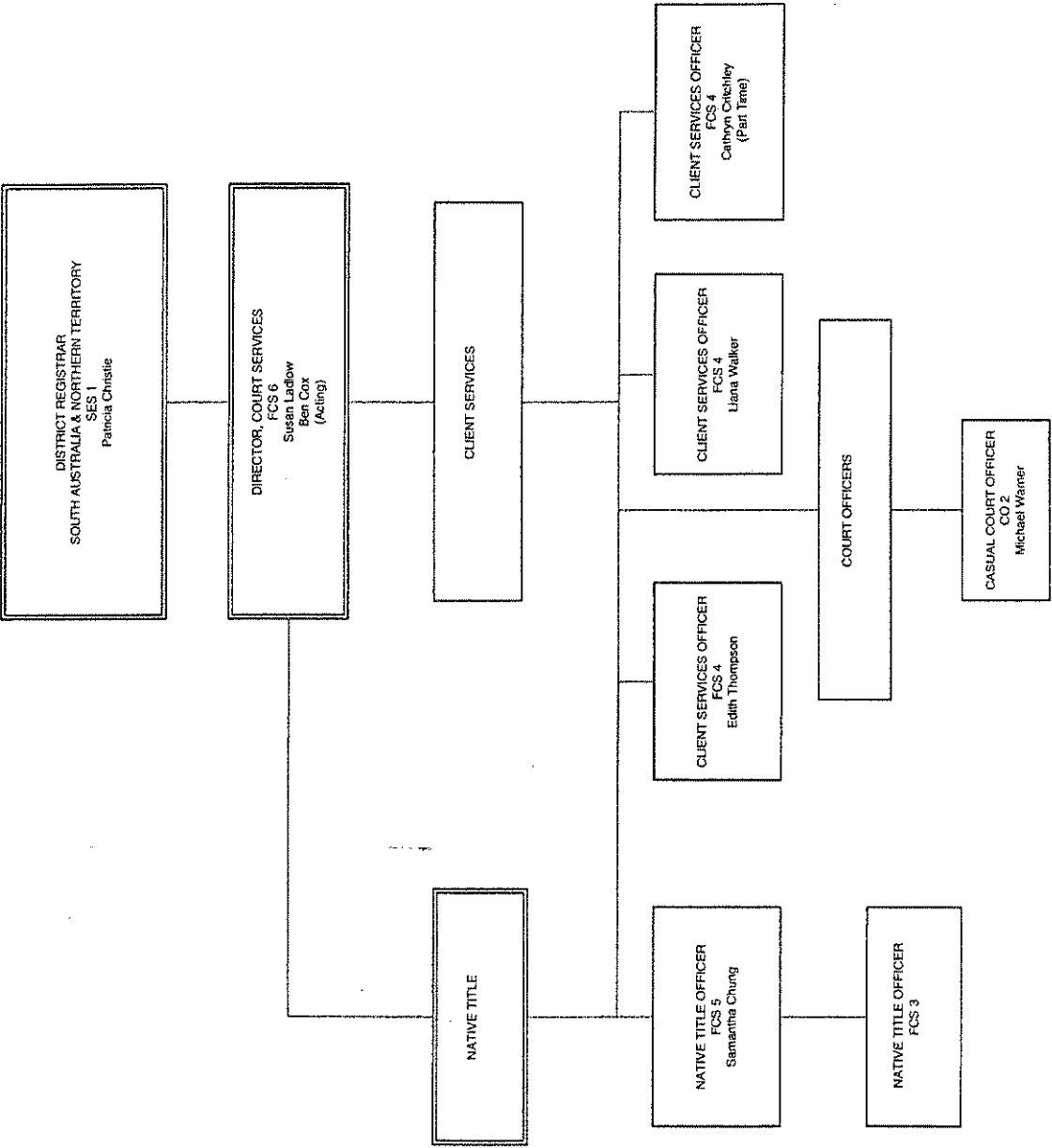
[excludes AAT funded positions]

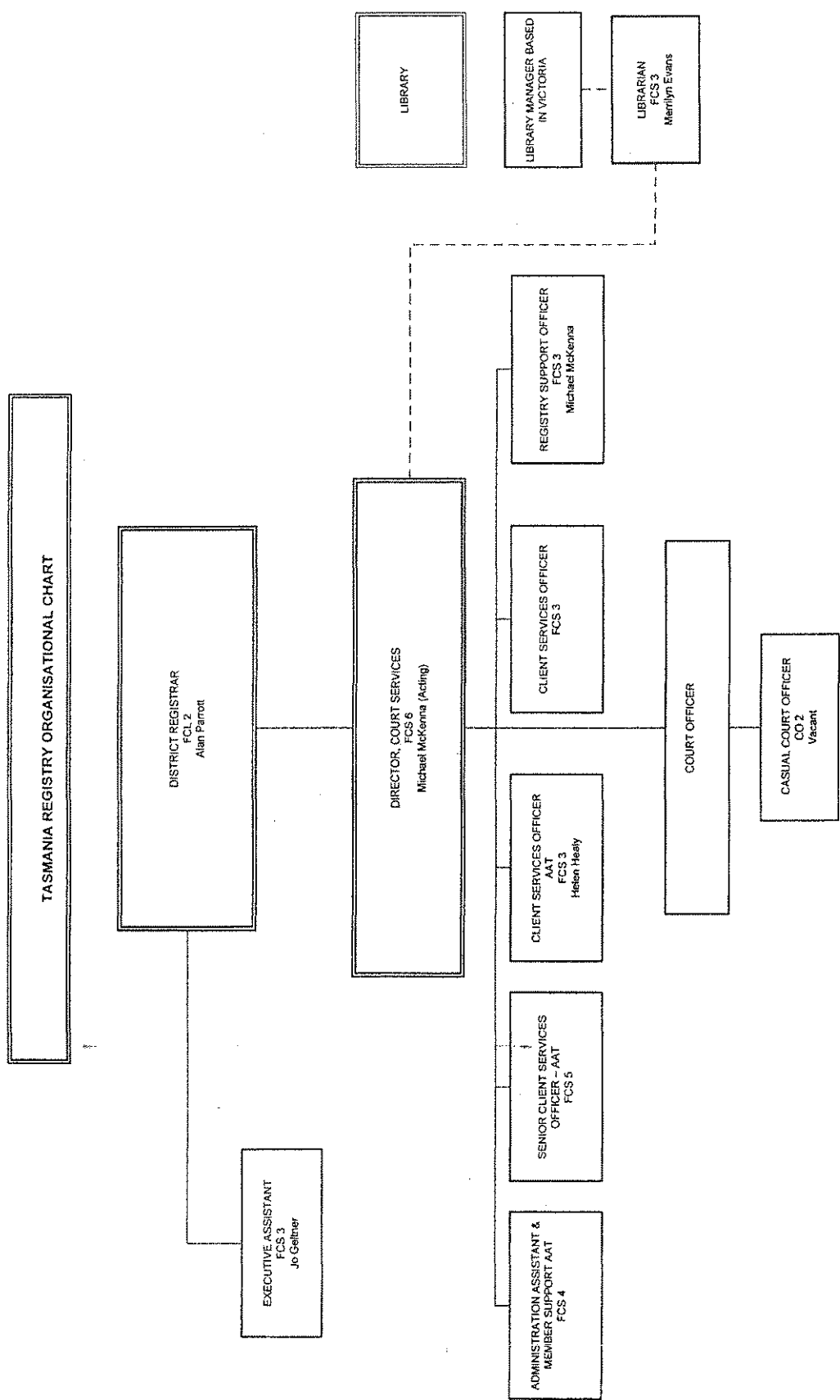
NT REGISTRY

CURRENT :		OPTION 3 COMPARISON	
District Registrar (deleted July 08)			
Director Court Services, FCS 6		Registry Manager, FCS 6	
Native Title Officer, FCS 5		Native Title Officer, FCS 5	
Client Service Officer, FCS 4		Client Service Officer, FCS 4	
Client Service Officer, FCS 4		Client Service Officer, FCS 4	
Client Service Officer, FCS 4 (p/t)		Client Service Officer, FCS 4 (p/t)	
Native Title Officer, FCS 3 (vacant)			
Court Officer, FCS 2 (Casual)		Court Officer, FCS 2 (Casual)	
Budget 2008-09	\$352,390	Comparable Budget :	\$294,715

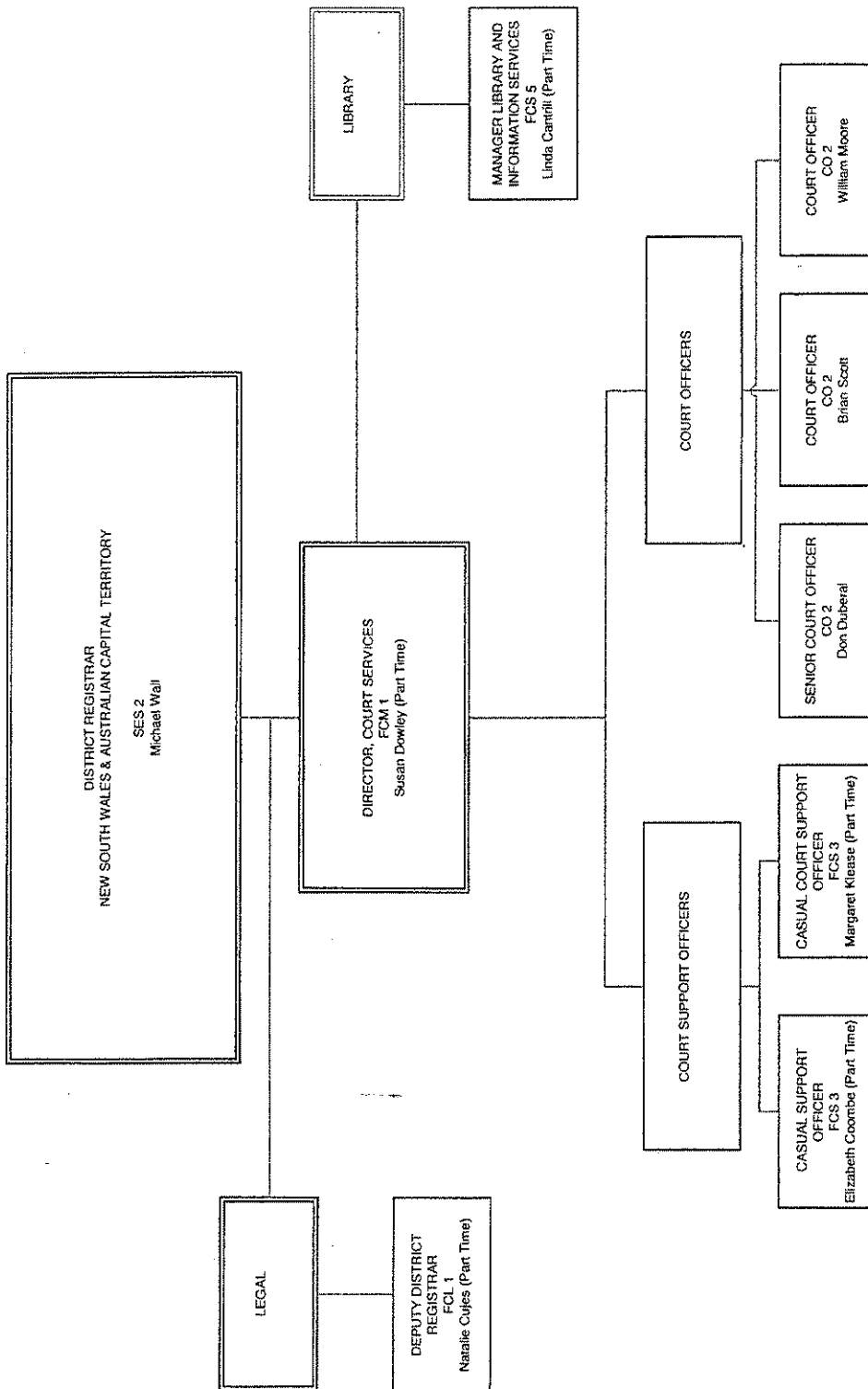
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NORTHERN TERRITORY REGISTRY ORGANISATIONAL CHART





AUSTRALIAN CAPITAL TERRITORY REGISTRY ORGANISATIONAL CHART





**Review of the provision of services to the
Administrative Appeals Tribunal by the
Federal Court of Australia Registry in Hobart,
Tasmania**

FINAL REPORT OF THE REVIEW TEAM

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Executive Summary

The Review revealed that the Tasmanian Registry enjoys considerable support from those it services, both internally and externally. Registry staff are highly regarded for their responsiveness and general willingness to attend to client needs. Nevertheless the Review identified that there are areas in which improvements can be achieved, particularly in the clarification of the roles, responsibilities and expectations of the various agencies serviced by the Registry. The recommendations contained in this report are aimed at strengthening the performance of the Registry and responding to some of the areas of need identified during the Review consultations.

If accepted, the Review Team anticipates that most, if not all, of the recommendations could be implemented by the end of the calendar year. In fact, most could be implemented either immediately or within a very short timeframe.

None of the recommendations, if accepted, will generate any significant cost savings nor involve any significant additional expenditure. They should, nevertheless, lead to more effective and efficient operations and more productive use of Registry resources (particularly human resources).

The Terms of Reference for the review are at Annexure 1.

List of Recommendations

1. The Federal Court and AAT enter into a Memorandum of Understanding in relation to the Tasmanian Registry setting out agreed service parameters, time standards, staffing levels, accountability and reporting lines, training and development commitments, funding arrangements and other relevant matters. A copy of the finalised MOU is at Annexure 7. (Responsibility for implementation – FCA and AAT)
2. The AAT develop agreements with Federal Court staff who perform AAT related work to cover the responsibilities, expected service standards and priorities for AAT work as well as operational consultation and reporting arrangements and training. Regular feedback should be provided to those staff on how well those responsibilities, standards and priorities have been met. (AAT)
3. The Registry consider holding bi-annual liaison meetings with frequent users to encourage two way communication and seek feedback on Registry practices and procedure. (Tasmanian Registry)
4. The Federal Court and the AAT participate, to the greatest extent possible, in continuing legal education activities in Tasmania. (Tasmanian Registry)
5. Primary management of the Tasmanian Registry should remain in Tasmania.
6. The Deputy President of the AAT consider holding monthly meetings with the District Registrar and Senior Client Service Officer (AAT) to discuss the progress of matters, listing issues, non-compliance and difficult applications. (AAT)
7. The AAT engage a designer to examine options for maximising functional space in the AAT Chambers area on level 2 of the Federal Court Building. (AAT)

8. The Federal Court investigate the cost and impact of implementing the suggestions for changes to the layout and design of the workstations installed in the open-plan offices on the Ground floor space occupied by the Registry made by the staff who work in that area. (FCA)
9. Discussions be entered into between the Federal Court, the Commonwealth Director of Public Prosecutions, the Australian Industrial Relations Commission and the Tasmanian Industrial Commission to review the level of contributions to the library, with any change in needs for access to library services being considered and contributions adjusted accordingly. Discussions should also canvass the frequency of future cyclical reviews of contributions and services. (FCA)
10. The Federal Court and the AAT agree on the financial contribution required to restore the level of library services sought by AAT members. (FCA and AAT)
11. Funds collected through agency contributions be retained in the Tasmanian Registry Library budget. (FCA)

Chapter 1 Background to the Review

The Tasmanian Registry of the Federal Court of Australia (Federal Court) has for many years provided administrative services and support for the Federal Court, Federal Magistrates Court of Australia (Federal Magistrates Court) in non-family law matters, Administrative Appeal Tribunal (AAT) and National Native Title Tribunal (NNTT). Services are provided to the AAT in return for a financial contribution to some staff and running costs. However, no Memorandum of Understanding has ever been entered into between the Federal Court and AAT about the provision of Registry services in Tasmania.

In July 2003 the Federal Court conducted an Organisational Review, which made a number of recommendations that, directly or indirectly, related to the Court's Tasmanian Registry. These included that the Court should formulate guidelines for deciding under what circumstances the operations or any of its Registries should be modified; re-negotiate with the AAT the contribution made to the cost of operating the Tasmanian Registry; consider shifting the primary management of the Tasmanian Registry to Victoria; and actively pursue the sharing of resources with other Courts and agencies, especially (along with other places) in Tasmania. The Federal Court adopted Guidelines for the Establishment of New Registries and Modification of the Operations of Existing Registries on 25 February 2004 (see Annexure 2).

In early 2004 the AAT determined that it had an interest in clarifying expectations and service levels offered by the Federal Court Registry in Tasmania. Following discussions between the two organisations, the Federal Court and the AAT decided to undertake a review of the provision of services by the Court's Tasmanian Registry to the Federal Court and AAT.

Review Team

The Review Team was comprised of Mr John Mathieson, former NSW & ACT District Registrar of the Federal Court, Ms Sian Leathem, Assistant Registrar of AAT and, from September 2004, Mr Chris Matthies, who acted in Ms Leathem's position while she was on extended leave. Mr Gordon Foster, Manager of Corporate Services in the Federal Court has assisted in finalising the Review report and MOU following Mr John Mathieson's departure to take up a position in the Federal Magistrates Court in May 2005. The Review Team operated under the direction of a Steering Committee comprised of Mr Warwick Sothen, Registrar of the Federal Court and Mr Douglas Humphreys, Registrar of the AAT.

Methodology

The review has involved a combination of information gathering techniques and analysis, including:

- examination of lodgement and caseload statistics;
- projections/estimates of future workloads;
- consideration of former reviews or assessments of the Hobart Registry;
- consultations with staff in the Hobart Registry;

- discussions with wider Federal Court, Federal Magistrates Court, AAT and NNTT staff;
- discussions with relevant members of the judiciary and tribunals; and
- discussions with key external stakeholders and user groups.

The Review Team visited Hobart on 21 and 22 June and Melbourne on 24 June 2004 to meet with Registry staff and other relevant parties. Telephone interviews were subsequently held with individuals who the Review Team were unable to meet face-to-face. A full list of individuals and agencies consulted during the Review is at Annexure 3.

Chapter 2 Workload

The Tasmanian Registry provides operational support to the Federal Court, AAT, NNTT (since its creation in 1994) and Federal Magistrates Court in non-family law matters (since it commenced operations in July 2000).

Overall the workload of the registry is low with only approximately 1% of the combined total filings or lodgements of the national workload of the Federal Court, AAT, NNTT and Federal Magistrates Court.

Federal Court / Federal Magistrates Court

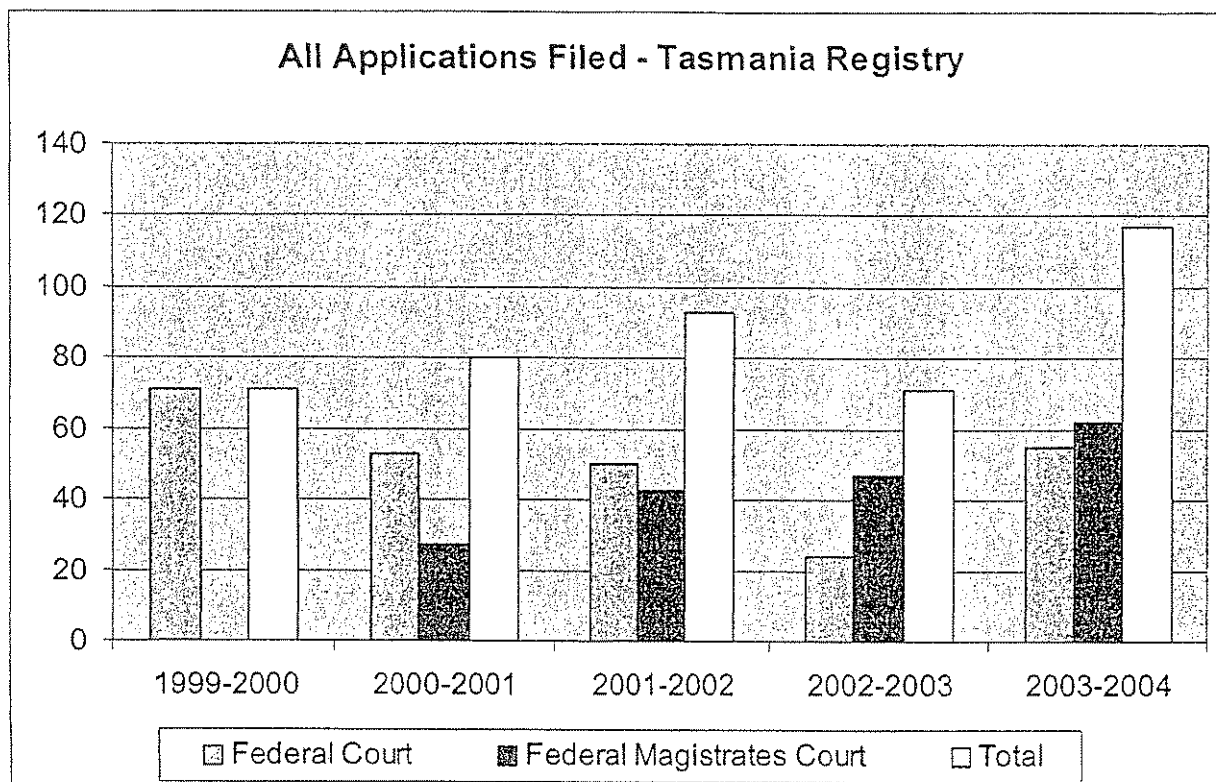
The most significant recent event that has impacted on the workload of the Federal Court, nationally as well as in the Tasmanian Registry, has been the creation of the Federal Magistrates Court. That Court was intended to deal with the less complex matters which previously were dealt with (in non-family law areas) by the Federal Court and to provide a quicker and cheaper option for litigants. To provide improved access to the court system, that Court is required to adopt user-friendly procedures and a less formal judicial culture and its fees are lower (less than half of those applying in the Federal Court).

In non-family law matters, the Federal Magistrates Court has concurrent jurisdiction with the Federal Court in bankruptcy, human rights, judicial review of administrative decisions under the *Administrative Decisions (Judicial Review) Act 1977*, migration (since October 2001), appeals from the AAT (but only if commenced in the Federal Court and transferred to the Federal Magistrates Court), Trade Practices consumer protection (but subject to a limit of \$200,000 which can be awarded by the Federal Magistrates Court for loss or damage), privacy and civil copyright (since April 2003).

A significant part of the 'court' workload of the Tasmanian Registry has for many years been in the high volume and relatively low complexity areas of bankruptcy and corporations, in which Registrars hold delegations from Judges and (since 2000) Federal Magistrates to exercise powers to make sequestration, winding-up and other final orders. Following the establishment of the Federal Magistrates Court in 2000 and the vesting in that court of jurisdiction in bankruptcy combined with court fees of only approximately half of those charged in the Federal Court, almost all of the bankruptcy work shifted from the Federal Court to the Federal Magistrates Court. This trend occurred nationally and is not unique to the Tasmanian Registry. In practical terms, as Registry and Registrar services for both courts are provided by the staff of the Tasmanian Registry, this change has had a neutral impact on Registry workload. The only significant difference being that should a judicial officer be required to hear a matter now being dealt with in the Federal Magistrates Court, arrangements must be made for this to be done by a visiting Federal Magistrate rather than, as previously, a visiting Federal Court Judge.

Total filings in the Tasmanian Registry in the Federal Court and the Federal Magistrates Court (in non-family law matters) during the last 5 years are relatively stable but with a general trend upwards. Filings in the Federal Magistrates Court have, since 2000/2001, increased steadily year to year with a roughly commensurate decline in filings in the Federal

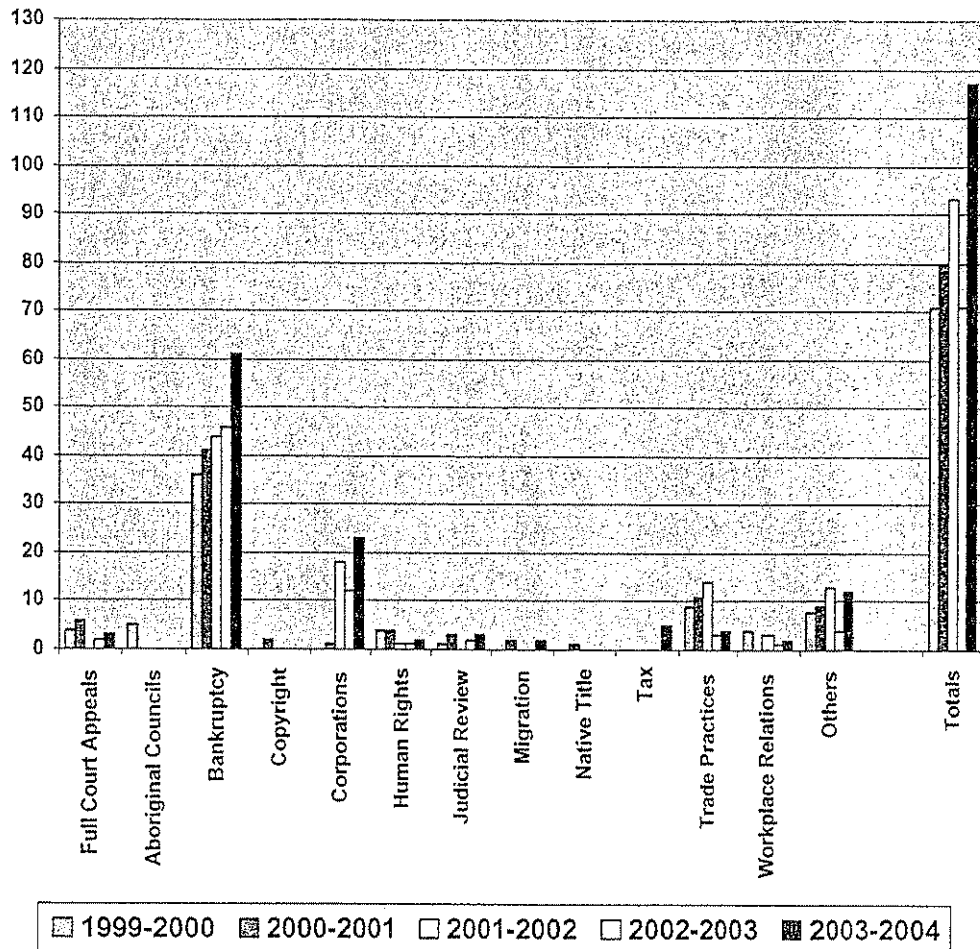
Court in 2000/2001 but, other than in 2002/2003, remained stable in that Court in each of the following years.



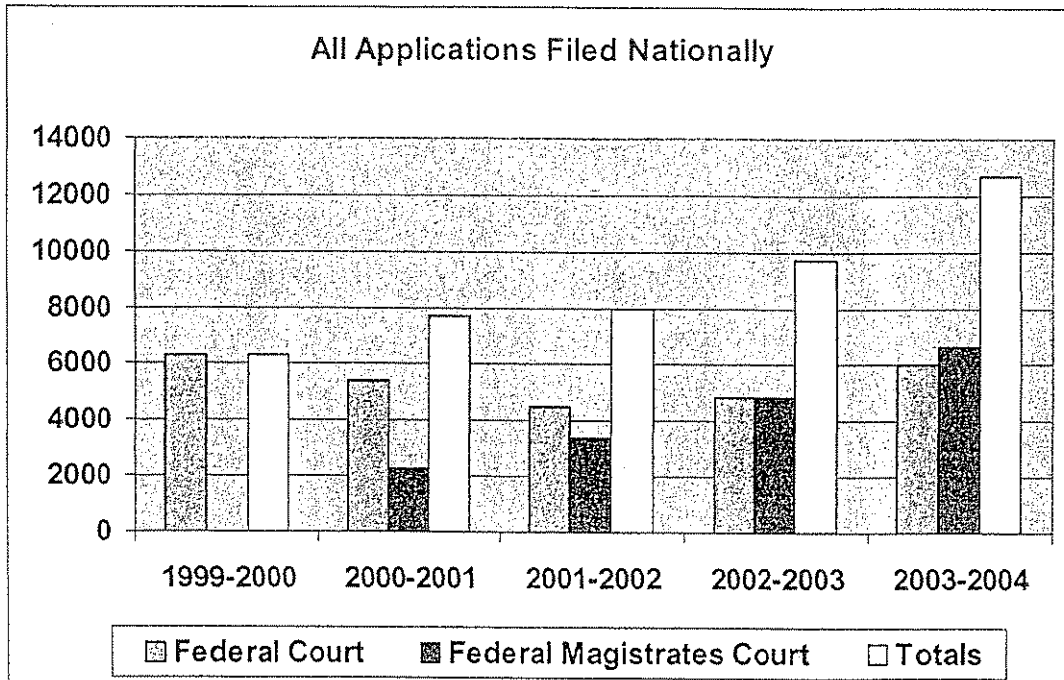
Although there have been some marked changes from year to year in the type of matters filed in the Tasmanian Registry for the two Courts (for non-family law only for the Federal Magistrates Court), trends are:

- the number of Full Court Appeals has remained relatively stable;
- the number of bankruptcy matters have increased year to year;
- since 2001/2002 there has been a dramatic increase in the number of corporations matters filed (see also discussion on page 12 below); and
- the number of Trade Practices matters has declined since 2002/2003.

All Applications Filed By Type - Tasmania Registry - Federal Court & Federal Magistrates Court

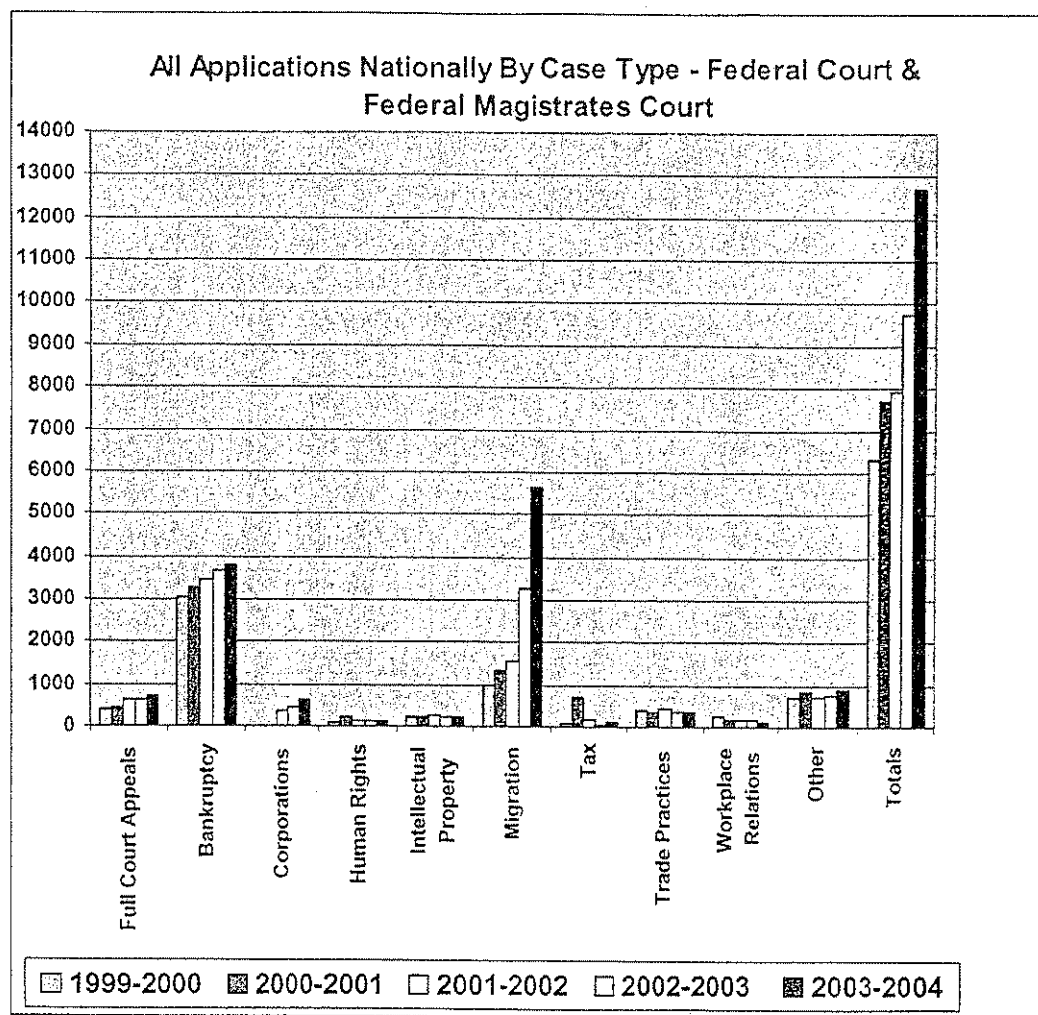


Over the same period nationally there was a relatively gradual increase in the filings in the 2 Courts (for non-family law only for the Federal Magistrates Court) from 1999/2000 to 2001/2002 (more marked in the second of those years) followed by sharp increases in each of the next 2 years.



The national trends over these years in the two Courts (for non-family law only in the Federal Magistrates Court) have been:

- the number of Full Court appeals has increased year to year with marked increases in 2001/2002 and 2003/2004;
- the number of bankruptcy matters has increased gradually year to year;
- the number of corporations matters have increased steadily from 2001/2002 onwards following legislative change to reintroduce the Federal Court's jurisdiction in these matters following a High Court finding that the Court's previous jurisdiction was unconstitutional;
- there have been dramatic increases, particularly in 2002/2003 and 2003/2004, in the number of migration matters year to year. (Note: The numbers of filings in migration as shown in the preceding and following tables are inflated through the double counting of cases which have been filed in the Federal Court and transferred to the Federal Magistrates Court, this is only to an extent of several hundred 'filings' in each of 2002/2003 and 2003/2004, and the increase encountered in each of these years has been considerable notwithstanding. The increase in migration workload is largely confined to New South Wales, Victoria, South Australia and Western Australia); and
- there has been a gradual decline (although with some fluctuations in some years) in Trade Practices and Workplace Relations matters.



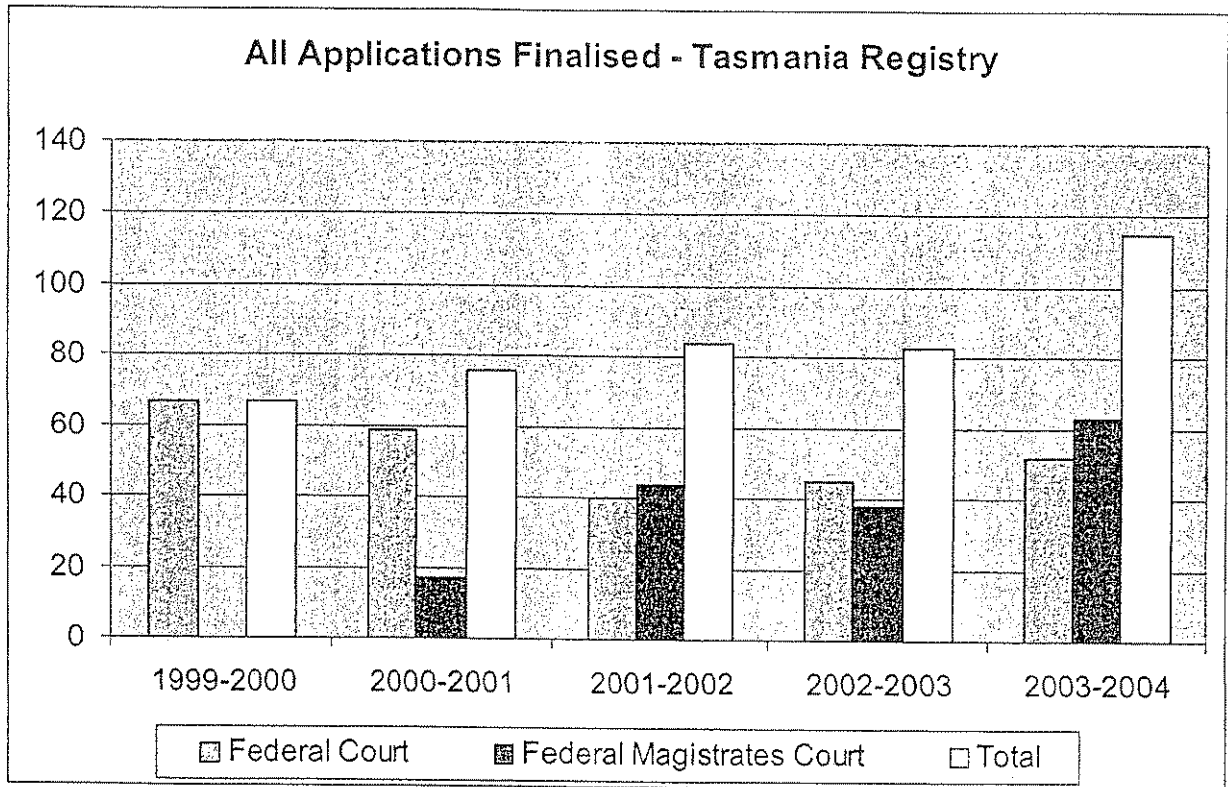
The filings in the Tasmanian Registry represent currently slightly less than 1% of the filings nationally in both the Federal Court and the Federal Magistrates Court. By comparison to other Registries, this is slightly greater than the Australian Capital Territory Registry (which currently has filings of approximately 0.5% of the Federal Court's national filings and approximately 0.6% of the Federal Magistrates Court's national filings) and approximately twice that of the Northern Territory Registry (which currently has filings of approximately 0.5% of the Federal Court's national filings and approximately 0.2% of the Federal Magistrates Court's national filings).

Compared to the national position of filings in the two Courts:

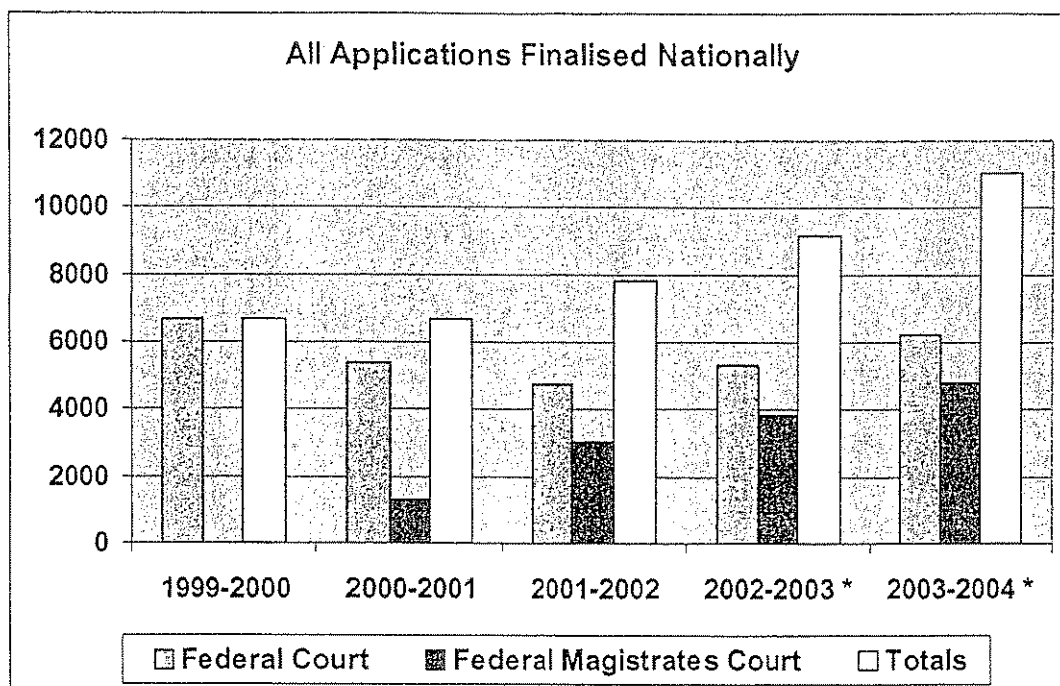
- ❑ the proportion of corporations matters filed in the Federal Court in the Tasmanian Registry (41%) is considerably higher than the national average (10%) and higher than any other Registry (the next highest is the Victorian Registry where it is 27%); and
- ❑ the proportion of bankruptcy matters filed in the Tasmanian Registry of the two Courts (52%) is significantly higher than the national average (30%) and only surpassed by the Queensland Registry (71%).

The number of cases finalised in the Tasmanian Registry in the Federal Court and the Federal Magistrates Court (in non-family law matters) during the last 5 years also increased

gradually commensurate with the increasing number of filings. The overall position has been that the number of pending cases has remained relatively static over time.



Over the same period nationally there also was a relatively gradual increase in the number of cases finalised in the 2 Courts (for non-family law only for the Federal Magistrates Court) although this has not been able to keep pace with the considerable increase in filings in 2002/2003 and 2003/2004 in migration matters.



Conclusion

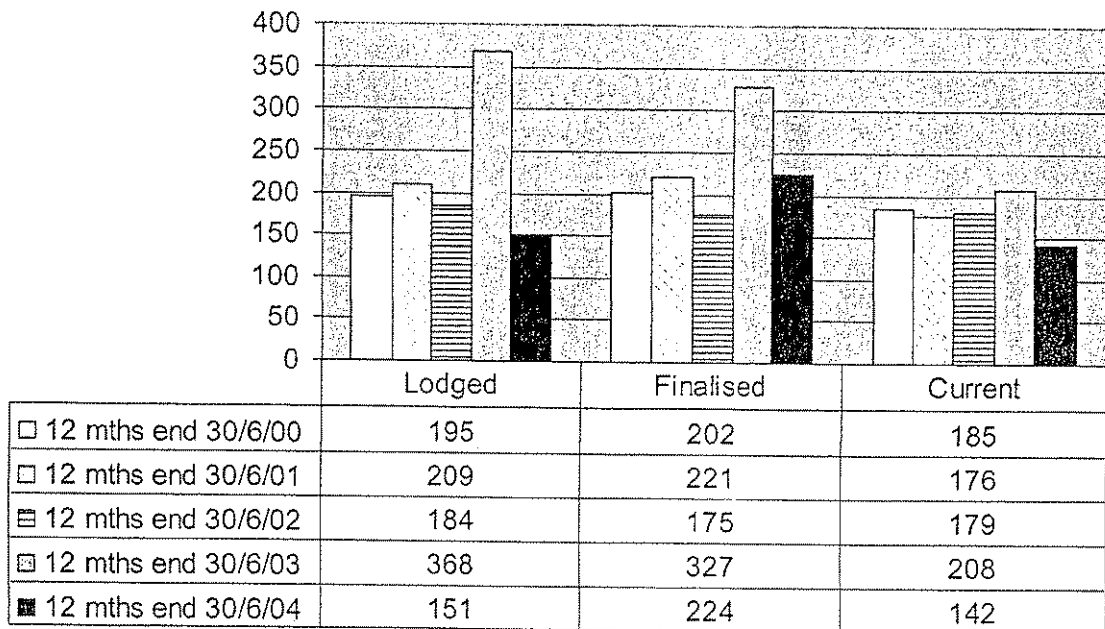
With the increasing number of applications being filed in the Tasmanian Registry in the Federal Court and the Federal Magistrates Court (non-family law) it will be necessary to monitor at least annually the impact on Registry's staffing resources overall. Presently adequate resources exist for the management of this work.

AAT

Lodgements, Finalisations and Current Matters

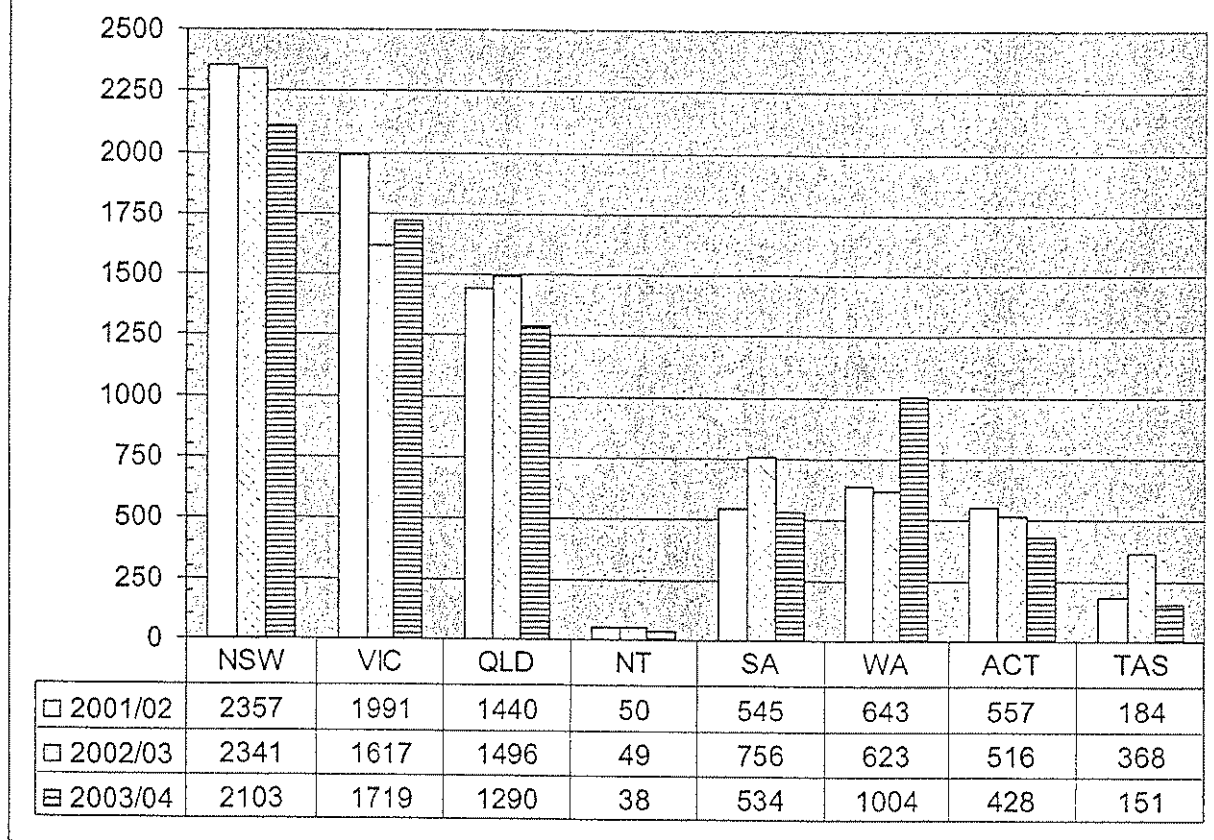
In relation to the AAT work conducted by the Tasmanian Registry, lodgements, finalisations and current matters have remained relatively stable over the last 5 years, except for the year ending 30 June 2003 when there were an unusually large number of applications related to the Aboriginal and Torres Strait Islander Commission (ATSIC) Regional Council elections. When the ATSIC applications are excluded from the figures, over the past 5 years the numbers of lodgements ranged from 151 to 232; finalisations from 175 to 223; and current matters from 142 to 208.

Chart 1 - TAS total lodgements, finalisations and current matters for the last 5 years



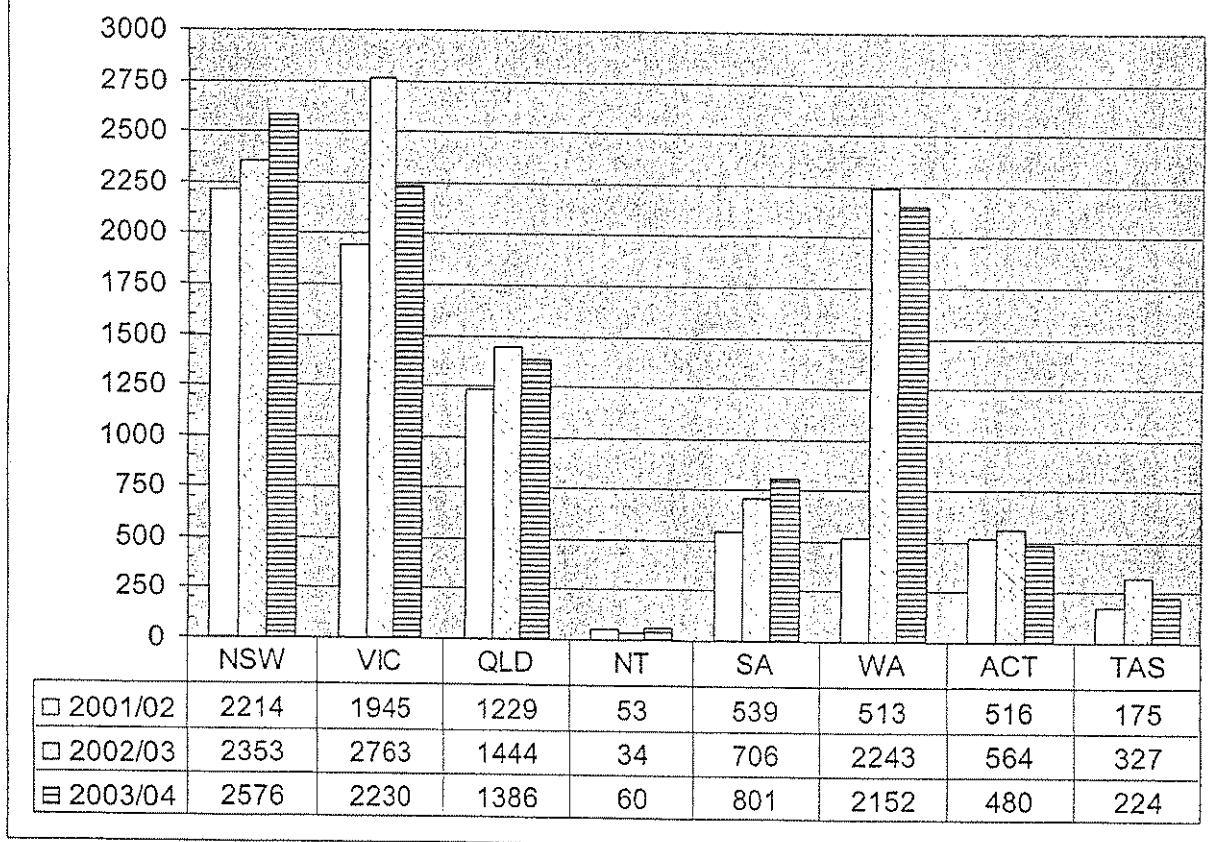
AAT lodgements nationally have been gradually declining for the past few years. The number of lodgements in the Tasmanian Registry has fluctuated somewhat over the years but declined markedly in the 2003/04 year. The number of applications lodged in 2001/02 was 27 less than the number lodged in 2000/2001, a decline of 13%. Excluding the ATSIC applications, the number of lodgements increased in 2002/03 to 232. The number of applications in 2003/04 was 81 less than the number of applications other than ATSIC applications lodged in 2002/03, a decline of 35%. To provide some comparison with other AAT Registries, details of lodgements, finalisations and current cases by Registry appear below.

Chart - Applications lodged in each Registry



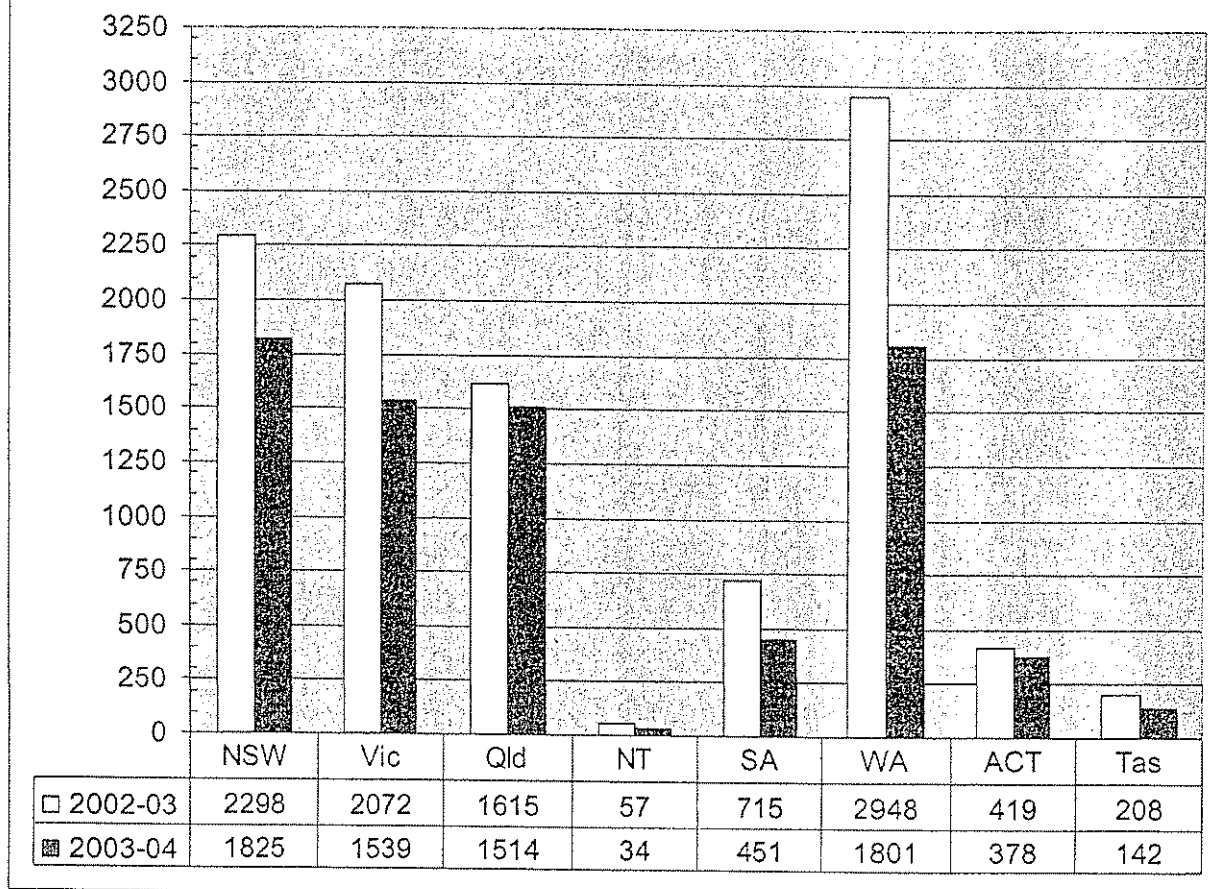
Of the total 7267 lodgements nationally in 2003/2004, 151 or 2 per cent were in the Tasmanian Registry. By comparison, the next smallest AAT Registry by lodgements, the ACT, had a total of 428 or 6 per cent of lodgements.

Chart - Applications finalised in each Registry



Across the entire AAT, the majority of Registries (excluding NSW, NT and SA) experienced a decrease in finalisations for the year ending 30 June 2004. Of the total 9909 applications finalised nationally in 2003/2004, 224 or 2 per cent were in the Tasmanian Registry. By comparison, the ACT Registry finalised 480 or 5 per cent of total matters.

Chart - Applications current in each Registry



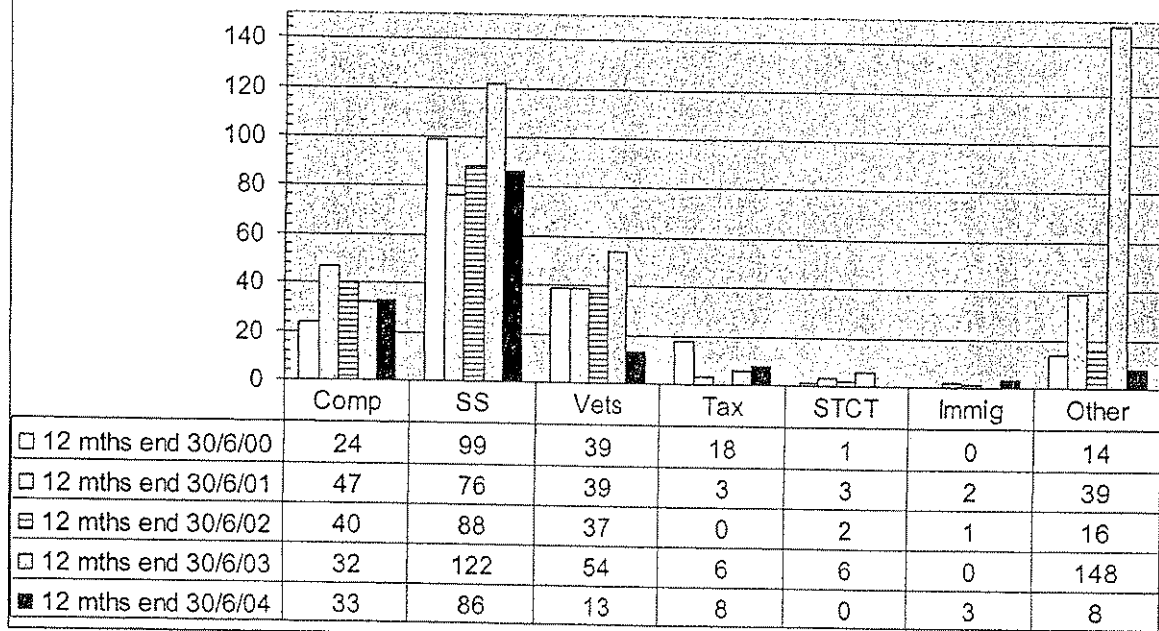
The Tasmanian Registry, along with all other AAT registries, reduced its current caseload in 2003/2004. Of the active national caseload of 7684 applications as at 30 June 2004, the Tasmanian Registry was handling 142 or 2 per cent of total active applications. By comparison, the ACT Registry was handling 378 or 5 per cent of current matters.

Types of applications

Of all the major jurisdictions, social security matters have consistently represented the largest proportion of matters lodged in the Tasmanian Registry over the last 5 years. For the year ending 30 June 2004, social security matters made up 57% of all lodgements, compensation 22% and veterans' affairs 9%.

For the year ending 30 June 2004, lodgements of social security, veterans' affairs and Small Taxation Claims Tribunal matters have all declined since the previous year. Most notably, veterans' affairs lodgements have declined by 76% or 41 applications and social security by 30% or 36 applications.

Chart - TAS lodgements by jurisdiction for the last 5 years



The nature and proportion of applications handled by AAT Registries tends to vary considerably and is largely a consequence of local demographics. For example, the ACT has a large proportion of compensation matters, reflecting the significant numbers of Commonwealth public servants employed in the Territory. It is likely that social security and compensation appeals will continue to comprise the majority of work in the Tasmanian Registry.

Conclusion

According to the Tribunal's own existing staffing formula (the Green formula, See Annexure 6), the Hobart Registry is already overstaffed with 2 full-time officers. On the basis of the 151 applications received in 2003/2004, the Registry should only have an allocation of 1.5 staff. It is also worth noting that most other registries manage within their Green formula allocation notwithstanding the fact that they also manage warrants and Proceeds of Crime work, of which there is none in Tasmania.

Given the above, it is clear that there are sufficient resources within the Registry to manage the AAT workload. In light of the recent decline in the number of lodgements and the fact that the Tasmanian Registry is finalising more matters than it is receiving, there is no basis to increase the current staffing resources devoted by Registry to AAT work. The AAT will need to monitor the workload in the next few years. Should the number of lodgements continue to decline, the AAT will need to examine the level of resources required to manage the AAT workload effectively.

NNTT

The Tasmanian Registry is required by the NTTT to provide only low-level administrative support for that Tribunal's operations in Tasmania. This includes:

- ❑ displaying NNTT publications and information;
- ❑ liaising with the Melbourne office of the NNTT on occasion to ensure that the Tasmanian Registry's stock of publications is up-to-date;
- ❑ on occasion (perhaps once or twice a year) providing a meeting room for use by NNTT Members or staff travelling to Hobart; and
- ❑ referring occasional callers or visitors to the Melbourne Registry of the NNTT if assistance is required.

Conclusion

The NNTT's requirements have minimal impact on the current workload of the Tasmanian Registry and it is unlikely this will change in the foreseeable future. Currently there is only one native title determination application in Tasmania and the NNTT do not expect that it is likely that this application will be the subject of intensive mediation by the NNTT. The NNTT also believe it unlikely that there will be a significant increase in native title activity in Tasmania in the foreseeable future.

Chapter 3 Staffing, Structure, Functions, Accommodation and Finances

History

The AAT commenced operations on 1 July 1976 with only a Registry in Canberra. The Federal Court commenced its operations on 1 February 1977 with Registries in all Capital cities staffed by a small number of officers supplied by the Commonwealth Attorney-General's Department and officers from the former Bankruptcy Registries. Over the following several years Registries of the Federal Court and AAT were established in most capital cities, including Hobart. As the workload of the Court and the Tribunal expanded and increasing numbers of Judges and Members were appointed to the Court and the Tribunal, each organisation outgrew these arrangements in all locations except Hobart, and found it necessary to establish their own separate Registries.

Notwithstanding its history as a registry, it is more accurate to describe the current Tasmanian Registry as a Federal Court registry that provides services to the AAT, Federal Magistrates Court and NNTT (since 1994).

Current Staffing, Structure and Functions

All Registry staff are employed by the Federal Court. The current staffing structure is comprised of a District Registrar (Federal Court Legal 2), Director Court Services (Federal Court Staff Level 6), Senior Client Service Officer (Federal Court Staff Level 5), three Client Service Officer positions (Federal Court Staff Level 3) and a Librarian (Federal Court Staff Level 3). One of the Client Service Officer positions is "job-shared" with one employee employed in that position for three days per week and another employee employed in that position for the remaining two days per week. The Librarian is employed for a total of 15 hours per week and works 3 hours per day.

The District Registrar, in addition to his appointment as such in the Federal Court, holds appointments as a District and Conference Registrar of the AAT, a Registrar of the Federal Magistrates Court, a Deputy Registrar of the NNTT, a Deputy Sheriff of the Federal Court and a Marshal for the purposes of the *Admiralty Act 1988*. The District Registrar is also a Deputy Registrar of the Australian Competition Tribunal and, even though holding no direct appointments in this regard, will assist if necessary with the support of the other Tribunals administered by staff of the Federal Court (i.e. Copyright Tribunal, Defence Force Discipline Appeal Tribunal and Federal Police Disciplinary Tribunal). The District Registrar is also appointed as an "authorised person" for the purposes of the *Public Order (Protection of Persons and Property) Act 1971*.

The District Registrar exercises, in the Federal Court and the Federal Magistrates Court, powers delegated by Judges and Federal Magistrates (eg: making sequestration and other orders under the *Bankruptcy Act 1966*, winding up and other orders under the *Corporations Act 2001* and dealing with interlocutory issues, such as returns of subpoenas, directions, amendment and transfer of proceedings) and conducts conciliation conferences and

mediations; conducts preliminary conferences and conciliation conferences in the AAT; and generally performs the statutory functions under the various appointments held.

The District Registrar is responsible for the management of the operations of the Registry including its human resources, finances, strategic and business planning and local administrative practice and reports directly to the Registrar of the Federal Court situated in the Principal Registry of the Court in Sydney. For the purposes of AAT-related work, the District Registrar reports principally to the AAT Assistant Registrar, located in the Principal Registry of the Tribunal in Sydney. On other AAT-related issues, the District Registrar liaises with other staff in the AAT Principal Registry, including the Registrar. However, these are informal arrangements that are not supported by any written agreement. No structural reporting link exists between the District Registrar and the Chief Executive Officer of the Federal Magistrates Court or the Registrar of the NNTT.

The Director Court Services coordinates the operations of the Registry, is responsible for Registry resources including financial and human resources, provides administrative support and advice to the District Registrar and represents the Court and the AAT on the local Building Management Committee. The Director Court Services also is appointed as a Deputy Sheriff of the Federal Court and a Marshal for the purposes of the *Admiralty Act 1988*. The Director Court Services is also an "authorised person" for the purposes of the *Public Order (Protection of Persons and Property) Act 1971*.

The Senior Client Service Office is responsible for case management and daily operations of the AAT work in Hobart. This includes: dealing with more complex enquiries from AAT Members, parties and their representatives and the general public; 'Outreach' contact with self-represented AAT applicants; managing progress of AAT applications, data entry in the AAT's case management system (AATCAMS), lodgement and acceptance of AAT documents, AAT file maintenance and return of AAT exhibits and subpoena documents; and handling matters relating to fees for AAT applications. Administrative support for this position is provided by one of the Client Service Officer positions which, on a rotational basis, assists with AAT responsibilities such as listings, attending the counter, dealing with enquiries, maintaining the AAT's case management system, file maintenance and Tribunal attendance functions.

The remaining two Client Service Officer positions undertake a wide range of functions for the Federal Court including listing, attending the counter, dealing with enquiries, maintaining the Federal Court's case management system (previously FEDCAMS but more recently Casetrack), file maintenance, coordinating video conference bookings and court officer duties. In addition they provide assistance to the District Registrar and general administrative support such as accounts-payable for the registry generally, Collector of Public Monies, purchasing, travel and debt management.

To provide back-up support during times of illness, leave and other absences and to aid greater job satisfaction, the occupants (treating the shared job as a single occupant) are rotated through the three Client Service Officer positions approximately every 4 months.

The Review Team notes that, while the duties of any particular position are undertaken primarily by the staff member assigned to that position, the staff work cooperatively in carrying out the work of the Registry.

The Librarian is responsible for the management of the library and the provision of library and information services to visiting Federal Court Judges as well as Federal Court staff,

office holders and staff of the Australian Industrial Relations Commission and Tasmanian Industrial Commission, officers of the Director of Public Prosecutions, officers of the Australian Government Solicitor, other practitioners and litigants in person. The Librarian is assisted by staff of the Federal Court's Victorian Registry Library in the management of budget, selection, ordering and cataloguing of materials for the Tasmanian Registry Library.

For the support of the AAT Members based in Tasmania the AAT employs a Members Support Officer (Administrative) (Australian Public Service Officer Level 4). Duties include research, typing of decisions, pre-hearing liaison with parties and their representatives, accompanying members on circuit and Tribunal attendant duties. On a day to day basis, the position holder works directly under the supervision of AAT Members and does not have a formal reporting relationship with the District Registrar of the Tasmanian Registry. On issues relating to human resources or other policy or procedural matters, the position holder liaises directly with the Registrar or Assistant Registrar of the AAT located in the Principal Registry in Sydney.

A chart showing the reporting structure of the staff located in the Tasmanian Registry is at Figure 1. A chart showing the work and communication relationships, internally and externally, in the Registry is at Figure 2.

Federal Court/AAT Registry (Tasmania) REPORTING STRUCTURE – Supervisory & Operational

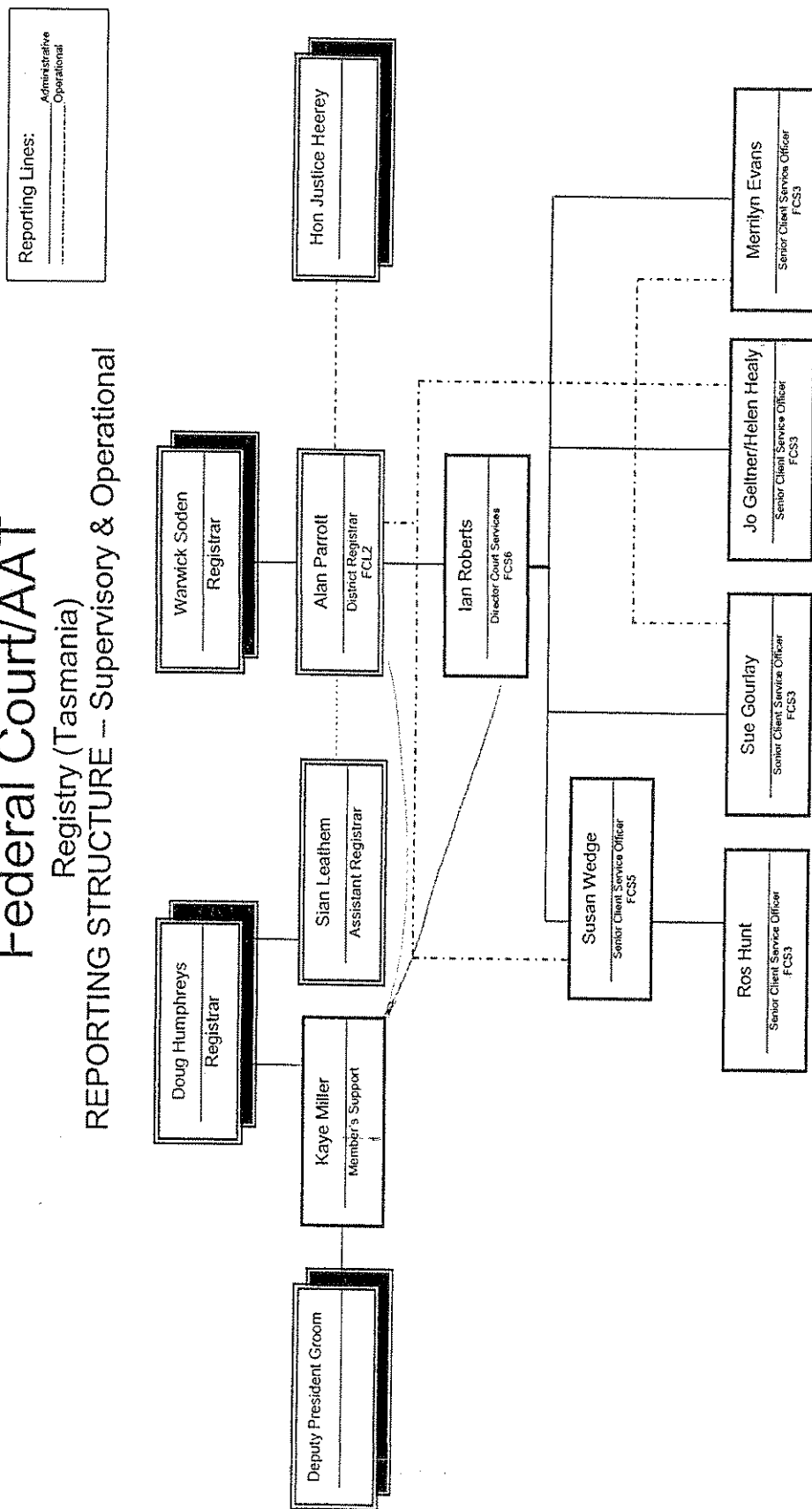


Figure 1

Federal Court/AAT Registry (Tasmania) - RELATIONSHIPS

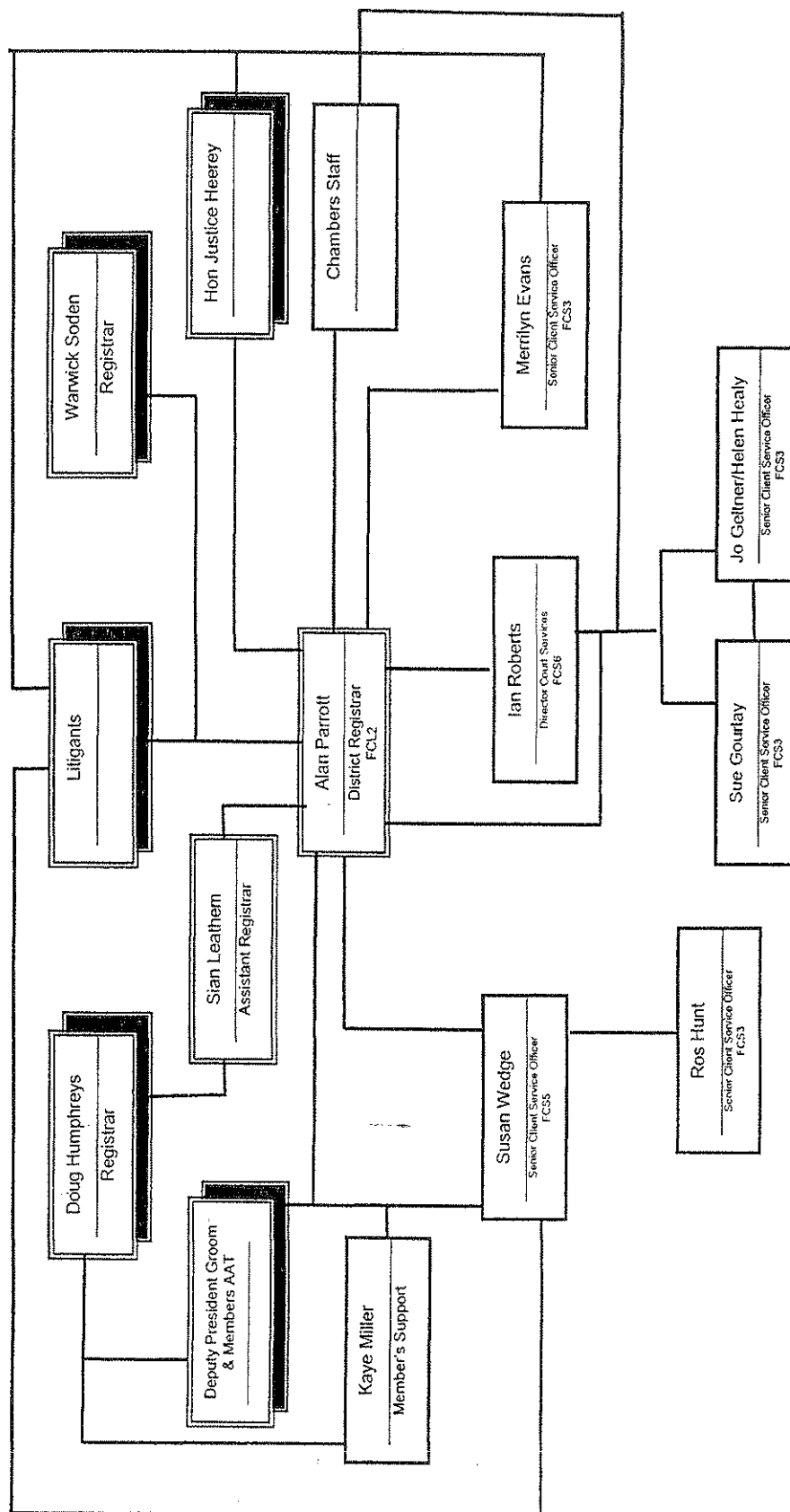


Figure 2

Accommodation

The Tasmanian Registry is located in the purpose built Commonwealth Law Courts Building situated at 39-41 Davey Street, Hobart. The building was commissioned in 1984 and is owned by the Commonwealth of Australia, operated on its behalf by the National Law Courts Building Management Committee and managed under contract from that Committee by United KFPW. A Building Manager, employed by United KFPW, is permanently located on site. In addition there is employed on site a receptionist, a security officer and custodian/cleaner.

Within that building the Registry occupies space on the Ground, Second and Third floors. Currently the other occupants of the building are the Family Court of Australia, the Australian Industrial Relations Commission/Australian Industrial Registry and the Tasmanian Industrial Commission.

The space on the Ground floor occupied by the Registry is approximately 300 square meters in area and comprises a public filing, reception and waiting area, interview rooms, offices, an open-plan general office, a photocopier/printer room, a conference room, store rooms, tea room and staff toilets. All of the registry staff are located in this area. Adjacent common areas provide for building reception, security and waiting areas. A major refit of the Ground floor area occupied by the Registry was carried out in 1999 at a total cost of approximately \$220,000 which was contributed by the Federal Court and the AAT in shares of \$200,000 and \$20,000 respectively.

On the Second floor the space occupied by the Registry is approximately 590 square meters in area and comprises the Federal Court's main court room (Courtroom 1), an adjoining jury room with toilets for jurors, the Federal Court's Courtroom 3, AAT Hearing Rooms 2 and 4, a Judges' lift lobby, chambers for AAT Members, a small open-plan general office, toilets and a tea room. Adjacent common areas provide interview and witness rooms, waiting areas and public toilets.

The space on the Third floor occupied by the Registry is approximately 355 square meters in area and comprises the library, chambers for Judges, Judges' lift lobby, toilets and tearoom. Adjacent common areas provide public toilets.

The Federal Court has been allocated 5 car parking spaces in the basement of the building (although 1 of these is unusable) and the AAT has been allocated 3 spaces. The Registry also has exclusive use of a storeroom and computer room in the basement. The computer room houses network equipment for both the Federal Court and the AAT.

For the accommodation provided in the Commonwealth Law Courts Building in Hobart the Federal Court contributed \$863,505 in 2003/2004 and the AAT contributed \$236,695, each sum being calculated on a formula based on space (including shares of common space attributed to each jurisdiction)

allocated. These contributions cover capital use (i.e. rent), outgoings, ongoing repairs and maintenance, life cycle program works, capital works (if any) and building manager's fees and expenses. The Federal Court and the AAT were fully funded through the Budget for these contributions.

The building is well appointed and spacious with a lot of natural light. It is well maintained and located within the legal precinct in Hobart.

The Ground floor area provides adequate space and facilities for the current number of staff employed. However the staff working in the open-plan office had a number of concerns about the current layout and design of the workstations. Likewise, AAT Members and the AAT Administrative Assistant had a number of concerns about the suitability of the design of the AAT Chambers and adjoining offices and corridors. Options to address these are discussed in Chapter 6. Otherwise the space, fit-out and facilities made available to the Registry provides fully for the accommodation needs of the Federal Court, Federal Magistrates Court, AAT and NNTT.

Finances

The expenses incurred and contributions made by Federal Court and the AAT for building running costs are discussed under Accommodation above.

Leaving building running costs aside, the expenses incurred by the Federal Court in 2003/2004 in relation to the Tasmanian Registry were \$640,122 made up of:

Salaries

[including superannuation and employee benefits]	\$450,122
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Administration costs

[including contractors and consultants; stores; library services and material; hospitality; legal; repairs and maintenance of equipment; telecommunications; court reporting charges; training and development; lease rental of equipment; vehicle expenses; staff health costs; and domestic travel]	\$190,821
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Total = \$640,122

The contribution from the AAT in respect of these expenses for 2003/2004 was \$164,859 calculated as the anticipated cost of one Federal Court Staff Level 5 and one Federal Court Staff Level 3 position and those administration expenses directly related to AAT work, together with a fair apportionment of expenses incurred on administrative items common to the Federal Court and AAT, such as stationery.

In addition the Federal Court received contributions from the Commonwealth Director of Public Prosecutions, Australian Industrial Relations Commission

and Tasmanian Industrial Commission for library services of \$15,000 (see "Federal Court Library" in Chapter 6 below for further discussion).

By way of comparison, the expenses incurred by the Federal Court in 2002/2003 in relation to the Tasmanian Registry were \$620,328 made up of:

Salaries	
[including superannuation and employee benefits]	\$470,987
Administration costs	
(for details see above)	\$149,341
Total =	\$620,328

The contributions from the AAT in respect of these expenses for 2002/2003 was \$173,570.

The AAT is directly responsible for costs associated with the maintenance and staffing of the AAT Chambers, including the salary of the Members Support Officer (APS4), the Chambers' library collection and any fees and expenses associated with Members servicing the Registry.

In 2003/04 the costs incurred directly by the AAT for these items were approximately \$232,000. By way of comparison, the costs incurred in 2002/03 were approximately \$192,000.

Documentation of arrangements between the Federal Court and the AAT

The Review Team notes that there is no current written agreement between the Federal Court and the AAT in relation to services provided to the AAT by the Registry. Nor does it appear that any written agreement has been made in the past outlining the financial and other arrangements relating to the operation of the Registry. There are no established processes for reviewing and considering changes to the arrangements.

The Review Team recommends that the Federal Court and the AAT enter into a Memorandum of Understanding in relation to the Tasmanian Registry setting out agreed service parameters, time standards, staffing levels, training and development commitments, funding arrangements and other relevant matters. In negotiating the Memorandum of Understanding, the existing financial arrangements should be considered and adjusted if necessary.

In the context of developing a Memorandum of Understanding, consideration should be given to identifying a process for considering changes to the arrangements during the term of the Memorandum of Understanding in relation to matters such as significant variations in workload whether in volume, complexity or procedural requirements (including use of different technologies). Consideration should also be given to ensuring that the arrangements are reviewed generally by the Federal Court and the AAT at appropriate future intervals (for example, at least every three years).

Recommendation:

The Federal Court and AAT enter into a Memorandum of Understanding in relation to the Tasmanian Registry setting out agreed service parameters, time standards, staffing levels, training and development commitments, funding arrangements and other relevant matters.

Chapter 4 Expectations of Agencies

One of the challenges facing Registry staff identified during the Review, was the lack of clarity of expectations of the various agencies serviced by the Registry. This section attempts to articulate the main expectations of the relevant agencies, with the purpose of promoting a clear and consistent outline of the main roles and responsibilities of staff and management.

AAT

The AAT expects that the staff of the Federal Court Tasmanian Registry will:

- provide a high quality registry service which meets the needs of the AAT and its clients;
- perform this role in a professional, client focused and courteous manner;
- comply with relevant Practice Directions and other policies and procedures issued by the AAT;
- maintain strong and effective communication with the AAT, including the AAT Chambers in Hobart and Principal Registry in Sydney;
- ensure any known factors which may adversely affect the provision of the services are reported immediately that they become known to the Assistant Registrar of the AAT.

In return, the AAT expects that it will:

- provide Registry staff with training and up to date information on changes to policy or procedures;
- deal with staff of the Registry in a professional and courteous manner;
- maintain regular open and effective communication links with Registry staff;
- ensure that Registry staff are aware with whom they need to deal with in the Tribunal on operational issues;
- ensure that Registry staff are issued with the appropriate delegations and authorisations;
- advise Members of the AAT servicing the Tasmanian Registry of the role of Registry officers performing functions for the AAT; and
- ensure any known factors which may adversely affect the provision of the agreed services are reported immediately that they become known to Registry staff.

The Review Team notes that these expectations have been included in the draft Memorandum of Understanding between the Federal Court and the AAT and should also appear in agreements between the AAT and Registry staff performing AAT work.

Recommendation:

The AAT develop agreements with Federal Court staff who perform AAT related work to cover the responsibilities, expected service standards, priorities for AAT work as well as operational consultation and reporting arrangements and training. Regular feedback should be provided to those staff on how well those responsibilities, standards and priorities have been met.

Federal Court Judges

The Review Team spoke to the two Federal Court Judges who regularly visit the Tasmanian Registry. Both were very complimentary about the helpfulness, levels of service provided by and relationship they had established with the staff of the Registry. Both judges commented favourably on how well run the Library was and the support that they received during their visits from the Librarian.

Overall they rated all aspects of their involvement with the Registry as first class and indicated that they saw no area in their dealings with the staff of the Registry where improvement could be made or where they would like to see change.

Federal Magistrates Court

Similarly, in the discussions that the Review Team held with the Federal Magistrate who most regularly visits the Tasmanian Registry to deal with general federal law matters and the senior staff of the Federal Magistrates Court's central office, very positive feedback was offered in respect of the staff of the Registry.

The Federal Magistrate spoke of the very good service he had received from staff and of having no recollection of any negative experience at all in his dealings with them.

The Federal Magistrates Court central office staff said that their dealings with the Registry staff and the District Registrar in particular had been excellent. They noted that a Memorandum of Understanding was already in existence between the Federal Court and the Federal Magistrates Court which provided, in generic terms, clarification on the services which the Federal Magistrates Court expected would be provided by Federal Court staff. They said that in their experience, even though expressed in high-level terms, this was referred to by staff regularly for direction and guidance on what was expected of them. They said that they did not see any need for any further document specific to the Registry in regard to service to be provided to the Federal Magistrates Court.

NNTT

It was clear from the Review Team's discussions with the Victorian State Manager of the NNTT, that the NNTT's support requirements from the staff of the Registry is very limited.

The State Manager also spoke in complimentary terms of the helpfulness and level of service received by the NNTT in its dealings with the staff of the Registry and said that whilst the NNTT would be happy to formalise their arrangements with the Registry by a Memorandum of Understanding or something similar, if required, it saw no need for this to be done.

Chapter 5 Analysis

External Stakeholders

During the face-to-face and telephone consultations held with external stakeholders during the course of the review, the Review Team was impressed by the level and consistency of positive feedback concerning the service provided by the Registry. This positive feedback was offered by users of both the Federal Court and the AAT. Typical comments included:

"The Registry is much more user friendly and flexible than the Supreme Court which tends to be more antiquated and pedantic in its approach."

"We have a very good relationship with Registry staff who bend over backwards to assist".

"We are very well serviced by the Registry. It has experienced staff who work at the coal face and know the area well."

When matters such as delay and non-compliance were explored, it was generally felt that Registry timeframes and approach to compliance were consistent with the needs and capacity of the local legal profession and that any delays which might be encountered were minimal when compared with the State jurisdictions. However, some comments were made about the potential for the Registry to place a greater emphasis on compliance, particularly in the veterans' affairs jurisdiction of the AAT.

Several stakeholders commented that there was a general lack of knowledge of the Federal jurisdictions amongst the profession in Tasmania. The Review Team was informed that the District Registrar has for some time been involved in continuing legal education (CLE) activities for the profession in the area of bankruptcy. He has also had discussions with the Law Society about involvement in similar but more broadly based activities. In addition, the Review Team learned that the Chief Justice of the Federal Court and Justice Heerey (who is one of the Federal Court Judges who regularly visits the Tasmanian Registry) have also been involved in CLE activities in Hobart.

Notwithstanding the above, it was felt that both the Federal Court and AAT might benefit from participating in greater liaison with the local profession through participation in networking and continuing legal education (CLE) activities.

A number of stakeholders observed that the relatively high filing, setting down and hearing fees applicable in the Federal Court acted as a deterrent to potential clients. On the other hand, one user (the Australian Taxation Office) said that it had, as a matter of policy, decided to bring matters in the Tasmanian Registry of the Federal Court instead of the Supreme Court of

Tasmania, notwithstanding the higher fees, because of the superior service and quicker disposal of matters available through the Federal Court.

Recommendation:

The Registry consider holding bi-annual liaison meetings with frequent users to encourage two way communication and seek feedback on Registry practices and procedure.

Recommendation:

The Federal Court and the AAT participate to the greatest extent possible in continuing legal education activities in Tasmania.

Internal Registry Users

The Review revealed some areas in which internal stakeholders felt improvements could be made to the Registry structure and operations. These suggestions came from Tasmanian Registry staff themselves, AAT Members servicing the Tasmanian Registry, as well as AAT and Federal Court staff outside of the Registry.

The areas identified for possible improvement included:

- internal communication;
- organisation of work within the Registry (particularly in relation to AAT work);
- case management of AAT applications;
- possible implementation of AAT Victorian social security pilot;
- possible engagement of a part-time AAT Conference Registrar;
- liaison between Registry and the AAT Chambers;
- resolution of access rights to the Federal Court Library;
- review of court signage;
- engagement of a casual staff member to perform court attendant duties;
- identification of a person who could perform the duties of the Members Support Officer when that officer is not available;
- establishment of a Memorandum of Understanding between the Federal Court and AAT;
- implementation of agreements between AAT and Registry staff who perform AAT work setting out responsibilities, service standards and priorities;
- introduction of annual or bi-annual liaison meetings with frequent users; and
- better integration of IT systems used by the Federal Court and AAT.

Elsewhere in this report there is discussion and recommendations in regard to the suggestions for the establishment of a Memorandum of Understanding between the Federal Court and the AAT; agreements between the AAT and Registry staff who perform AAT work (see Chapter 4); case management of AAT applications; possible implementation of the AAT's Victorian Social Security pilot; resolution of access rights to the Federal Court library; and the introduction of annual or bi-annual liaison meetings with frequent users (see Chapter 6).

During the course of the review, the Review Team discussed with the District Registrar and Director Court Services the issues of internal communication, organisation of work within the Registry and court signage. The Review Team also notes that over recent times considerable work has been done by the staff of the Registry, with the assistance of an independent management consultant, in addressing a range of communication and similar issues. It is anticipated that the issues concerning internal communication and organisation of the work within the Registry raised in the review would be subject to further discussion in the context of implementing the review recommendations and that, if it was considered beneficial, this may be with the assistance of the same management consultant. As a result, it is not considered necessary to make any specific recommendations in respect to these issues.

In relation to the issues of engaging a casual staff member to perform court officer duties/tribunal attendant duties and identifying a person who could perform the duties of the Members Support Officer when that officer is not available, the Review Team considers that the coordination of support arrangements for AAT members should be subject to further consideration and discussion within and between the AAT and the Registry.

Better integration of IT systems which are used by staff of the Registry and the AAT's Members Support Officer is, of course, likely to increase staff productivity where they are required to handle simultaneously Federal Court/Federal Magistrates Court and AAT work. However, because of the considerable capital costs invested in these systems and the complexity of the technical, security and other issues associated with any such integration, any consideration of this issue is beyond the capacity of the current review. However, the Review Team notes that the AAT is currently in the process of investigating options for a new case management system (CMS). It is likely that the recently introduced Federal Court CMS, Casetrack, will be one of the solutions under consideration.

Chapter 6 Options for Change

Registry Management

In the Review Team's discussions with legal practitioners, the Law Society and other external stakeholders there was considerable resistance and, at times hostility, to any suggestion that the management responsibility of the Registry be transferred to the Victorian Registry or elsewhere. There was considerable concern about the impact that this would have on the service provided locally and several examples were provided of the negative experience which resulted from transfers of that responsibility in other Commonwealth agencies.

The Review Team notes that such a transfer would be beneficial in providing a ready source of Registrar backup during periods when the Tasmanian District Registrar is absent through leave, illness or otherwise and would also assist in avoiding the difficulty which the Tasmanian District Registrar must find himself in from time to time when he is (as the only legally qualified and experienced person in the Registry) required to provide procedural advice in a matter in which he may subsequently have to make a determination. However, this could equally be achieved through the informal cementing of relationships between the Tasmanian and Victorian Registries without the need for a transfer of management responsibility.

It was clear that a good relationship already exists between the Registrars of the Victorian Registry and staff of the Tasmanian Registry, particularly from two of the Victorian Deputy District Registrars who have acted in the Tasmanian District Registrar's position on several occasions.

There are considerable cultural (including legal cultural) differences between Tasmania and Victoria (unlike those which exist between the Australian Capital Territory and NSW where a transfer from the former to the latter of the management responsibilities has worked well). As a result, there are real advantages in the person who has management responsibilities in relation to the Tasmanian Registry having the environmental knowledge which can only be gained from living in the community in which the Registry operates.

Overall it is considered that little would be gained financially or otherwise and that there would be considerable disadvantages, particularly in the perception created in the legal and general community, by any transfer of the management responsibility for the Registry to the Victorian Registry.

Recommendation:

Primary management of the Tasmanian Registry should remain in Tasmania.

Registry Staffing Structure

A number of the Registry staff suggested to the Review Team that while the current staffing structure at the lower classification levels has a number of advantages, it has also a number of drawbacks.

As discussed in Chapter 3, the lower classification staffing is comprised of a Senior Client Service Officer and 3 Client Service Officer positions with one of these "job-shared" between 2 employees.

This arrangement provides, as between the Client Service Officers, back-up support for absences and, by the regular rotation of the employees through each of the 3 positions, aids job-satisfaction. However it does mean that with each rotation there is some loss of efficiency as each employee reacquaints themselves with all of the tasks and duties of a position they have not performed fully for approximately eight months. Additionally, the gap between the Federal Court Staff Level 5 Senior Client Service Officer and Federal Court Staff Level 3 Client Service Office positions inhibits career development of the staff at the lower level.

It was suggested to the Review Team that a better structure, at approximately a neutral cost, would be 2 Federal Court Staff Level 4 and 2 Federal Court Staff Level 3 positions.

In a small office, particularly one dealing with a reasonable volume of work with similar complexity, it is inevitable that some gaps will exist in any staffing structure. From the very favourable comments made to the Review Team both internally and externally, it is clear that the current staffing structure is meeting the needs of those served by these staff of the Registry and the Review Team can see no reason to recommend any change at present. However into the future as circumstances change and opportunities present themselves it is suggested that the situation be re-examined and other structural options, including that mentioned above, be considered. One such opportunity may be any general review undertaken by the AAT of the appropriate classifications of its Registry staff.

Case Management of AAT Applications

The AAT has a legislative obligation to deal with applications for review "with as much expedition" as is appropriate.¹ Consistent with the AAT's renewed national focus on improving the timeliness of finalising applications, there are a number of means by which case management in the Tasmanian Registry might be improved to ensure that applications progress in a timely manner.

Firstly, the newly appointed Deputy President has indicated an interest in increasing the level of liaison between the Registry and Chambers. In particular, the Deputy President has shown an interest in assessing applications at an earlier stage in order to provide guidance to the Registry on

¹ See paragraph 33(1)(b) of the *Administrative Appeals Tribunal Act 1975*

how they should be progressed. This would provide an opportunity for Directions Hearings to be held when appropriate so that parties have a clear timetable for the progression of matters and the collection of evidence.

Secondly, improved liaison between the Registry and Chambers and between the Tasmanian Registry and AAT Principal Registry will assist in managing instances in which parties fail to comply with legislative and Tribunal requirements. Consistent with the Registry's strong emphasis on providing friendly and courteous client service, non-compliance can be addressed initially in an informal or low-key manner through the use of follow up phone calls or reminder letters. While this will be effective in many instances, lengthy or repeated non-compliance can be managed more formally and at the earliest opportunity by referral to the Deputy President or another AAT member for a Directions Hearing. Instances of repeated delay, inaction or non-appearances can also be referred to Principal Registry for appropriate action in the quarterly reports from the Registry.

In relation to the management of social security applications, it has been suggested that the revised procedures operating in the Victorian Registry of the AAT could be implemented in the Tasmanian Registry. The main aspect of these procedures is that Conference Registrars conduct outreach where the non-agency party is self-represented. During outreach, or at the conclusion of an extension of time or stay hearing, the issues and preferable course for managing the application is discussed. The process encourages the undertaking of any necessary investigations at this early stage before any conference is scheduled or the matter is referred direct to hearing.

In consultations with the AAT, national Centrelink representatives have expressed support for the Victorian model. Centrelink is of the view that the model facilitates quicker resolution of matters and that staff have readily adapted to it.

The procedures operating in the Victorian Registry are to be the subject of an evaluation which the AAT will conduct in the current financial year. Given the proposed evaluation, it would appear premature to implement the procedures at this time in the Tasmanian Registry. However, it is suggested that the Deputy President and Registry discuss the management of social security applications and the need for any changes to streamline current processes in the proposed monthly meetings.

Recommendation:

The Deputy President of the AAT consider holding monthly meetings with the District Registrar and Senior Client Service Officer (AAT) to discuss the progress of matters, listing issues, non-compliance and difficult applications.

AAT Chambers

The AAT Chambers on Level 2 of the federal Courts Building was fitted-out some 20 years ago, when the building was initially opened. Since that time, the number of AAT members servicing the Registry, along with their working requirements, have altered considerably.

A large proportion of the Chambers floor space is under-utilised, such as the Members' sitting area and the secure lift foyer. In other areas the Chambers is cramped, with members being required to share offices. This can present difficulties if more than two members are working in Chambers at any given time.

During the consultations, a couple of members expressed concern that other occupants of the Federal Court building were transiting through the Chambers area in order to access the two adjacent hearing rooms. This raised both privacy and security concerns, in relation to AAT files, members and staff.

It may be that a designer would be able to devise a new floor plan for the Chambers area which would maximise the functional space and neutralise the current security concerns.

Recommendation:

The AAT engage a designer to examine options for maximising functional space in the AAT Chambers area on level 2 of the Federal Court Building.

Ground Floor Open-Plan Office

The staff who work in the open-plan office on the ground floor suggested that the layout and design of the current workstations in that area is now not ideal for the needs of their work. They have also suggested that, to provide them and other Registry staff with greater privacy, opaque film should be fitted to the glass in the workstations.

A sketch of an alternative layout and design prepared by these staff is at Annexure 4. It shows the current location of the network printer which services these staff as well as the suggested re-location of that printer if the suggestions are adopted.

It was not suggested that there was any urgency about making these changes and it was not possible in the course of the review to assess the likely cost and impact of the suggested changes of the workflow overall or on other Registry staff. The suggestions appeared to have some merit and warrant further investigation at an early convenient time.

Recommendation:

The Federal Court investigate the cost and impacts of implementing the suggestions for changes to the layout and design of the workstations installed in the open-plan offices on the Ground floor space occupied by the Registry made by the staff who work in that area.

Federal Court Library

From the opening of the Commonwealth Law Courts Building in Hobart in 1984 until July 1997, a library for building occupants was operated by the Commonwealth Attorney-General's Department. These included the Federal Court, Family Court of Australia, AAT, Australian Industrial Relations Commission (AIRC), Australian Government Solicitor (AGS) and later (during the period of its operation) the Industrial Relations Court of Australia. Legal practitioners appearing in the federal courts, the AIRC and the AAT were also permitted to use the library.

Following the departure of the AGS from the Commonwealth Law Courts Building in Hobart in late 1996 and extensive negotiations on future management of the library, in July 1997 responsibility for the library was transferred to the AAT. In conjunction, funding covering the library material budget, staff salaries, professional development and building running costs was also transferred along with the then current library staff at level.

It was agreed that access to library services would continue to be provided to the Federal Court and the Family Court of Australia without fee but a "fee for service" arrangement was entered into between the AAT and the AGS for provision of library services to staff of the AGS at a cost of \$20,000 per annum. The arrangement allowing legal practitioners appearing in the federal courts, AIRC and AAT access to library services was continued. Within the AAT, the Hobart library funding remained quarantined.

In April 2002 the AAT decided, with effect from 4 July 2002, to close the library as it had a need to find savings and it wished to move to on-line delivery of library services. With the agreement of the Attorney-General the AAT transferred back to the Attorney-General's Department the funding it had received (less building running costs) for the management of the library. The library staff were retrenched on the closure of the library and all library subscriptions were cancelled.

In December 2002, following further negotiations and agreement from the Attorney-General's Department to transfer funding of \$43,000 to the Federal Court towards ongoing maintenance of the collection and one-off funding of \$5,000 for transfer of catalogue records, the Federal Court reopened the library in the space in which it had previously operated. The building running costs associated with this space were transferred from the AAT to the Federal Court in accordance with the usual arrangements of the National Law Courts Building Management Committee. "Fee for service" arrangements were entered into between the Federal Court and the Commonwealth Director of

Public Prosecutions (DPP), the AIRC and the Tasmanian Industrial Commission for provision of library services at a cost of \$5,000 each per annum.

The library, as reopened, provides only limited services compared with those previously provided, being staffed by one part-time librarian working only 15 hours per week. She is assisted by staff of the Federal Court's Victorian Registry Library in the management of budget, selection, ordering and cataloguing of the materials for the Tasmanian Registry Library. Access is confined to the Federal Court and the agencies that contribute financially to the operation of the library. As a result, the AAT and the Family Court have no access. The arrangement allowing legal practitioners appearing in the federal courts, AIRC and AAT access to library services has been continued.

It is estimated that the current operating expenses of the Tasmanian Registry Library are \$130,506 per annum as set out in Annexure 5.

Following preliminary discussions between the AAT Principal Registrar and staff of the Registry in early 2004 in regard to a possible "fee for service" arrangement for access to library services to be provided to AAT members, Ms Merylyn Evans, the Librarian in the Tasmanian Registry, proposed two options. These are:

Option 1 : For the payment of \$10,000 per annum:

- Access to the Library
- Research by the Librarian
- Borrowing of materials required for Tribunal Hearings
- Inter-Library Loans
- Preparation of Authorities lists for Tribunal Hearings
- Photocopying
- Training in the use of electronic materials.

Option 2: For the payment of \$5,000 per annum:

- Access to the Library whilst the Librarian is present (mornings only)
- Material for the Tribunal hearings may be borrowed but must remain in the building
- Limited research eg finding material readily available in the catalogue

In its consultations with AAT members and staff the review team sought views on the options proposed. Opinions varied, however the consensus was that AAT members needs for research and other services were met by members' support staff and resources in the AAT Principal Registry Library and, as a result, AAT members would not avail themselves of a research facility in the Tasmanian Registry Library. Accordingly the consensus view was that option

1 was in excess of the needs of the AAT members but that there was a need for:

- Access rights to the library for AAT members during normal working hours;
- Standard borrowing rights for AAT members; and
- Directional reference material (i.e. locating an item on a library shelf) to be provided by the Librarian when she was in attendance.

The Tasmanian Registry Library is now the only comprehensive collection of Commonwealth legal materials in the State of Tasmania. It is essential to the Federal Court's operations but is also relied on by practitioners appearing in the federal courts, the AIRC and the AAT. It is also relied on by State courts. The Federal Court believes that the retention of this library is essential to the administration of justice in Tasmania and its operations there and, in the circumstances as now exist, it accepts that it must bear the primary financial responsibility for such. However it also believes that it is not unreasonable for other courts, tribunals and agencies that require access to the library services available to contribute towards operating expenses commensurate with the value of the services obtained.

The Federal Court also believes that in assessing that value, consideration should be given beyond the actual running costs and take into account, as relevant, human resources – not only of the local librarian but of the other librarians and support staff who contribute directly and indirectly towards the running of the Tasmanian Registry Library through the Federal Court's network as a whole.

It is now almost 2 years since the "fee for service" arrangements between the Federal Court and the DPP, the AIRC and the Tasmanian Industrial Commission were negotiated. Running costs have escalated over that time. It is appropriate for discussions to be entered into with these agencies for review of the level of contributions on the basis discussed above. In addition, any change in needs for access to library services should be considered and contributions adjusted for any such changes if appropriate. The frequency of future cyclical reviews of contributions and services should also be discussed.

The Federal Court and the AAT should agree on the financial contribution required to restore the level of library services needed by AAT members.

To maintain the library collection and its services, additional contributions received from the AAT and other contributors should be retained in the Tasmanian Registry Library budget to meet rising salary and material costs.

Recommendation:

Discussions be entered into between the Federal Court, the Commonwealth Director of Public Prosecutions, the Australian Industrial Relations Commission and the Tasmanian Industrial Commission to review the level of contributions to the library with any change in needs for access to library services being considered and contributions adjusted accordingly. Discussions should also canvass the frequency of future cyclical reviews of contributions and services.

Recommendation:

The Federal Court and the AAT agree on the financial contribution required to restore the level of library services sought by AAT members.

Recommendation:

Funds collected through agency contributions be retained in the Tasmanian Registry Library budget.

Implications of Review Recommendations

The Registry enjoys considerable support from those it services, internally and externally, and is highly regarded for its service and helpfulness. Nevertheless improvements can be achieved and the recommendations made throughout this report, if implemented, will assist in it building from what is already a strong position.

If adopted, all of the recommendations could be implemented by the end of the current financial year. In fact most could be implemented either immediately or within a very short timeframe.

None of the recommendations, if adopted, will generate any significant cost savings or involve any significant additional expenditure. They should, nevertheless, lead to more effective and efficient operations and more productive use of Registry resources (particularly human resources).

The financial contribution to restore library access to AAT members would result in an additional cost to the AAT estimated at present at between \$5,000 and \$10,000 per annum. This would not be a saving to the Federal Court as (with any additional contributions received from other agencies with whom "fee for service" arrangements exist) it would be retained in the library budget and utilised in meeting increased material and staff costs. However this would result in indirect savings to the Federal Court over time in it not having to otherwise fund those increases which will inevitably occur.

Annexures

- 1. *Terms of Reference***
- 2. *Federal Court Guidelines for the Establishment of New Registries and Modification of the Operations of Existing Registries***
- 3. *Consultation List***
- 4. *Suggested Changes to Layout of Workstations in Open-Plan Office on Ground Floor***
- 5. *Estimate - Hobart Library Running Costs***
- 6. *AAT Green Staffing Formula***
- 7. *Finalised MOU***

1. *Terms of Reference*

1. Report on the Registry workload, past and projected, in relation to the Federal Court, Federal Magistrates Court, AAT and NNTT matters.
2. Report on the current structure, staffing, functions (including statutory and judge-directed/delegated functions) and services provided, physical layout and resourcing of the Registry, including:
 - existing cost sharing arrangements regarding salaries and administrative expenses;
 - existing property operating expenses and obligations in respect of the Commonwealth Law Courts Building in Hobart; and
 - library facilities and funding arrangements.
3. Report on the service and performance expectations of the courts and tribunals served by the Registry both current and future, including the need to service users outside of Hobart.
4. Analyse the combined resource implications of the projected workload and future service delivery expectations.
5. Consider and present a range of structural and resource options for the future, including the possible use of alternate service delivery models and an increased use of appropriate technology with applicable resource and other implications.

3. *Consultation List*

People and/or organisations that were consulted in the preparation of this report:

1. Justice Peter Heerey, Federal Court Judge
2. Justice Shane Marshall, Federal Court Judge
3. Justice Alan Blow, Supreme Court of Tasmania
4. Mr Ray Groom, Deputy President, Administrative Appeals Tribunal, Hobart
5. Mr Christopher Wright QC, Deputy President, Administrative Appeals Tribunal, Hobart
6. Miss Mary Imlach, Senior Member, Administrative Appeals Tribunal, Hobart
7. Ms Anne Cunningham, Member, Administrative Appeals Tribunal, Hobart
8. Associate Professor Bruce Davis, Member, Administrative Appeals Tribunal, Hobart
9. Deputy President Stephanie Forgie, Administrative Appeals Tribunal, Melbourne
10. Federal Magistrate Murray McInnes
11. Mr Alan Parrott, District Registrar, Federal Court, Tasmanian Registry
12. Mr Ian Roberts, Manager Court Services, Federal Court, Tasmanian Registry
13. Ms Susan Wedge, Senior Client Service Officer (AAT), Federal Court, Tasmanian Registry
14. Ms Jo Geltner, Client Service Officer, Federal Court, Tasmanian Registry
15. Ms Sue Gourlay, Client Service Officer, Federal Court, Tasmanian Registry
16. Ms Helen Healy, Client Service Officer, Federal Court, Tasmanian Registry
17. Ms Ros Hunt, Client Service Officer, Federal Court, Tasmanian Registry
18. Ms Kaye Miller, Members Support Officer, Administrative Appeals Tribunal
19. Ms Marilyn Evans, Librarian, Federal Court, Tasmanian Registry
20. Mr Ian Campbell-Fraser, State Manager, National Native Title Tribunal, Melbourne
21. Mr Jamie Wood, District Registrar, Federal Court, Victorian Registry
22. Ms Adele Byrne, Registrar, Federal Magistrates Court, Melbourne
23. Mr Tony Gawne, Deputy Registrar, Administrative Appeals Tribunal, Melbourne
24. Mr Steve Agnew, Court Coordinator, Federal Magistrates Court, Melbourne
25. Ms Jane Mussett, Deputy District Registrar, Federal Court, Victorian Registry
26. Mr Tim Connard, Deputy District Registrar, Federal Court, Melbourne
27. Ms Petal Kinder, Manager Library and Information Services, Federal Court, Victorian Registry

28. Ms Cynthia Butler, Australian Taxation Office, Hobart
29. Ms Leigh Mackey, Jennings Elliot Lawyers
30. Mr Brian Sparkes, Centrelink, Hobart
31. Ms Dianna Hutchison, Centrelink
32. Mr Robert Healey, Building Services Manager, Commonwealth Law Courts, Hobart
33. Mr Mike Castle, Department of Veterans' Affairs, Hobart
34. Ms Dorothy Shea, Librarian, Supreme Court of Tasmania and Vice-President of the Australian Law Librarians Group
35. Mr Martyn Hagan, Chief Executive Officer, Tasmanian Law Society
36. Mr Brett Harrison, Paul Cook and Associates Accountants
37. Mr Mark Rapley, Paige Seager, Barristers and Solicitors
38. Mr Ian Duncan, Argyle Law, Barristers and Solicitors
39. Mr Chris Cunningham, Simmons Wolfhagen, Barristers and Solicitors
40. Mr Greg Sando, Hobart Community Legal Centre
41. Deputy President Patricia Leary, Australian Industrial Relations Commission (also President, Tasmanian Industrial Commission)

Downsizing - good or bad, it's here to stay

Author: CPD - Centre for Professional Development

Corporate restructuring has become the fast track to business success in Australia. With staff the highest cost factor for most organisations, getting the balance right between over-resourced and under-resourced is critical. Many Australian companies are competing on a global platform and have to develop ways of being leaner, meaner and keener. This has caused a change in the way work is conducted and perceived.

Downsizing as a strategy to improve business has been practiced by US companies since the early 1970s says Professor Boris Kabanoff, Head of School of Management, Queensland University of Technology (QUT). "Downsizing got its bad name in the late 80s and 90s when it became synonymous with massive job cuts in recessionary times".

So the bad downsizers got mixed up with the good downsizers, and this strategic corporate practice needed to find a new identity. Workforce re-alignments, company rightsizing, trimming positions, or job eliminations are some more positive names used.

Even the meaning of the word downsizing has got academics "troubled". The definition is so "loose" at present that is hard to research the phenomenon for fear of including or excluding too many workers, says Kabanoff. He describes downsizing as "the shedding of a number of permanent full-time employees". This is probably the definition most commonly used, but accepts it has limitations in today's non-traditional work structure. Traditionally, downsizing implied a large-scale culling but research by career management specialists Lee Hecht Harrison in the US found that, "over the past three years, only 5% of companies that had downsized had terminated more than 25% of their workforce, while 68% had let fewer than 10% go," says Karen Pond, CEO.

The good, the bad and the ugly

Plenty of research has been done in the US to pinpoint the hallmarks of a good or bad downsizer. Kabanoff headed a team in 1999 who took copious, readily available data on 300 US companies (such as financial performance statistics, sections of annual reports, employment figures, etc) over a two-year period following the time a company had been downsized. They analysed the data against industry benchmarks (mainly consumer durables and manufacturing) and general economic indices to come up with a conclusion on how companies fared as a result of downsizing.

Their three main discoveries were:

- Most companies that downsized had been financially under-performing (as compared to the industry average) prior to doing so.
- On average, downsizing did not improve financial performance (it neither went up nor down).

- There was a short-term gain in productivity, but this was not sustained beyond the first year. (Productivity was measured as total sales divided by the number of employees).

The QUT team has been trying to replicate the US study in Australia for more than 12 months, albeit with a more modest 100 companies. The problems they have faced are myriad, but centre around the lack of a single source of corporate information resulting in months of trawling through scattered and hard to access data. It could well be another 12 months before any comparable Australian findings are released.

Australian data

A very comprehensive study of downsizing has recently been released by Professor Peter Dawkins of the Melbourne Institute and Professor Craig Littler of the University of London that supports the theory that downsizing can either be good or bad - from a corporate performance angle.

Instead of analysing corporate data, the Melbourne Institute team ran a telephone survey of Australian corporate representatives, asking those they spoke to their opinion as to the success of downsizing in their organisation. Their result concluded bad downsizers are those companies that use the tactic frequently for short-term cost reductions derived from culling the head count. Professor Peter Dawkins, typifies "bad" downsizers as companies that cut costs by crude methods - such as 10% across the board. "Finding it does not achieve the results, they usually do it again," says Dawkins. Bad downsizers go backwards in areas such as costs and also productivity from the survivors.

This form of downsizing tends to be a knee-jerk reaction to a sudden drop in demand for services, without any serious thought to the outcome or the objective. The report says bad downsizers are often public sector service organisations.

With an eye on the bottom line, those most likely to see the door first are male, middle-aged, middle managers. Without the critical forethought, these organisations suddenly find themselves without the necessary knowledge or experience to weather the next phase.

The report looks specifically at the finance industry that has been repeatedly affected by organisational and technical changes. It says this sector, "has experienced major problems of declining organisational commitment and survivor syndrome", and the "sense of job security, of trust, of tracking the future as a known quantity, has gone".

Committing to the future

Good downsizers, the report says, are those organisations who shed staff, usually as a one-off event and as part of a broad growth strategy and are mainly private sector service organisations. "Good downsizers focus on a problem and a plan, and commit to future growth," says Dawkins.

Kabanoff believes the question is not whether downsizing is good or bad, but rather when does downsizing work or not work. His research reveals downsizing that is done like "throwing a hand-grenade into a gathering and seeing who gets hit" rarely succeeds in the long-term. When a company's main reason for downsizing is cost-cutting and there is little in the way of strategic focus, his research has shown there was no demonstrable improvement in financial

performance. Those companies that use downsizing "to improve productivity, improve marketing strategies, improve corporate direction and downsizing is part of a broader or considered managed strategy" will show a significant upturn in financial performance.

The reasons why

There is plenty of research being carried out on the effects of downsizing on corporate performance, the impact of restructuring on the Australian way of life, and why companies downsize. Kabanoff's research revealed three fairly predictable reasons - economic conditions, global competition and a need "to do things better". A survey of 450 US HR managers by Lee Hecht Harrison added two more likely reasons - changes in technology, and mergers and acquisitions.

Though their survey was done before any economic downturn had set in, it revealed 44% of companies contacted had downsized since 1998, and would likely do so again. The research showed 56% of the HR managers surveyed thought downsizing had helped their company. Businesses with more than 10,000 employees are less likely to downsize than businesses with less than 1,000. Middle managers in operations are the first to go. Sales and marketing is also a target for downsizing, as is professional specialists. Clerical and technical employees are also early victims of an employee cull.

Employee benefits?

From the employees' angle, downsizing appears to make people tougher and even 'liberated' according to research conducted by outplacement company DBM Australia. It has found managers who had been retrenched placed less importance on job security than those managers who had remained employed. (It appears they have already come to terms with jobs no longer being secure.)

For an employer, the new work structure is more likely to measure an employee's success on performance, flexibility, and multi-skilling rather than length of service, loyalty and commitment. And the onus of career development has also shifted - careers are rarely nurtured by organisations any more. An individual is more likely to look after their own career development and training.

Today's employee is no longer a 'company man/woman', more an individual small business marketing his or herself. The Lee Hecht Harrison research showed that more than 40% of the retrenched employees had enhanced their skills sets following a downsizing, 25% had updated their resume, and 22% had sought career advice.

According to an Australian Bureau of Statistics survey, managers who received outplacement support took less time to become re-employed. They found new employment on average 1.5 months faster than those who did not receive any professional assistance. The average job search time for retrenched managers who received outplacement support was 3.3 months compared to 4.8 months for those who did not receive any support. From research by DBM & Associates, the most useful components of outplacement services are resume development, job search advice and help with the process of looking for new work.

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November, 2001

Downsizing, Rightsizing or Dumbsizing?: Quality and Human Resources, in the Management of Sustainability.

Adrian Wilkinson

"American management adopted quality concepts in order to cut costs and regain international competitiveness. Their adoption of quality improvement practices often paralleled organizational restructuring and employment loss. The fact that some TQM cases have occurred simultaneously with or resulted in downsizing and layoffs makes the effect of TQM a serious concern for workers and other stakeholders" Cameron and Barnett (2000 p. 298)

ABSTRACT

In recent years sustainability has become a 'hot topic' and something all organisations want to be seen as being identified with. The twin disciplines of quality and HRM have joined this bandwagon. In HR terms this has meant a shift in emphasis away from human management to resource management with the argument that organisations need to allow the needs and aspirations of individuals to be placed at the heart of the workplace (Gollan, 2004) However, this does not fit with our knowledge of the reality of the contemporary workplace where downsizing remains the order of the day and there are now concerns as to the effectiveness of the post-downsizing 'anorexic organisation.' This paper looks at the debates and raises a number of issues for academics and managers in organisations.

INTRODUCTION

The sustainability debate raises a number of issues for organisations to consider when pursuing sustainable human resource outcomes to reinforce corporate profitability and corporate survival, and also to satisfy employee aspirations and needs in the workplace. Human resource sustainability requires the organisation to recognise and place value on human capabilities which take a more holistic and integrated approach to people management. For corporate sustainability, an organisation must recognise, value and promote the capability of its people (Gollan, 2000; Wilkinson et al, 2001).

However, the cost-cutting regime associated with many organisational change strategies of recent years has resulted in the breakdown of the old employment relationship (Redman and Wilkinson 2001, 2005). Human resource sustainability has been advocated by a number of commentators (Gollan, 2000; Dunphy and Griffiths, 1998; Sennett, 1998). They argue that there is a crisis facing the management of human resources with staff turnover increasing, loyalty declining, stress levels rising and productivity growth diminishing.

In this paper the significance of organizational downsizing is discussed and its potential for causing problems for sustainability when mismanaged. We then examine the processes involved. Lastly, the costs of downsizing, in both financial and human terms are discussed.

DOWNSIZING

Downsizing is the 'conscious use of permanent personnel reductions in an attempt to improve efficiency and/or effectiveness' (Budros, 1999, p.70). Since the 1980s, downsizing has gained strategic legitimacy (McKinley et al., 2000; Boone, 2000; Cameron et al., 1991). Indeed, recent research on downsizing in the US (Baumol et al, 2003, see also the American Management Association annual surveys since 1990), UK (Chorely, 2002; Mason, 2002; Rogers, 2002, Sahdev et al., 1999), and Japan (Ahmakjian and Robinson, 2001; Mroczkowski and Hanaoka, 1997) suggests that downsizing is being regarded by management as one of the preferred routes to turning around declining organisations by cutting costs and improving organisational performance (Mellahi and Wilkinson, 2004a,b).

Organizational downsizing is thus now firmly established as a central aspect of management practice. However, after a study of the TQM textbooks one could be forgiven for thinking that TQM practice is largely associated with a positively virtuous image in the organization. Righteous managers in TQM organisations devise strategies, manage quality circles, involve employees and solve problems for the mutual benefit of the organization and work force. TQM books and those on change management take an upbeat tone with little reference to the more unpalatable

aspects of downsizing and redundancy. Standard TQM texts make scant reference to downsizing or redundancy (see e.g. Oakland, 2004). Evans and Lindsay's (1996, p.552) text on TQM has more to say on redundant components than redundant people and advises downsizing to take place before implementing TQM and that management doing 'anything they can to separate downsizing from TQM effects' How this is to be done and whether employees are likely to be impressed by this is not elaborated. Revitalizing change is an entirely positive process to do with "rooting out inertia", promoting efficiency and fostering innovation (Burnes 2004). Downsizing is rather more apparent in the Dilbert books (Adams, 1996), the Doonesbury cartoons (Anfunso, 1996) and Michael Moore's journalism (Moore, 1997). When managers do discuss downsizing it tends to be couched in very euphemistic terms (see table 1). However, an examination of managerial practice over the last decade or so also finds a darker side to TQM and management practice in organizational downsizing, with Worrell et al (2000) noting 200,000 notified redundancies in the UK each year.

Perhaps work force reduction is considered to be an isolated and unpleasant element of management practice and one that is best hurriedly carried out and quickly forgotten? The statistics for redundancy and dismissal in the modern world, however, suggest that unpleasant though it maybe work force reduction is not isolated event, rather it is a central aspect of management practice in recent years. Particularly worrying here is the numbers of organizations downsizing who are actually making healthy profits. As Cascio (2002) points out these are not 'sick' companies trying to save themselves but healthy companies attempting to boost earnings. Organizational size is no longer a measure of corporate success (Mellahi and Wilkinson, 2004a) and managers such as Jack Welch (known as 'neutron Jack') for getting rid of employees with only the buildings intact are celebrated in the management press (Welch, 2001). Downsizing and restructuring are often used interchangeably but organisations can restructure without shrinking in size and vice versa (Budros 1999).

One trigger for increasing interest and attention for downsizing, above and beyond its greater extent and scale than in the past, is that as Sennett (1998:18) notes:

"Downsizings and reengineerings impose on middle class people sudden disasters which were in an earlier capitalism much more confined to the working classes."

Effectively managing work force reduction is thus of increasing importance in management practice not least because of its greater scale and frequency but also because of the potentially serious negative effects of its mis-management. The mis-management of work force reduction can clearly cause major damage to both the organization's employment and business reputations. Damage to the former can seriously effect an organization's attractiveness with potential future employees by producing an uncaring, hire and fire image. Similarly bad publicity over retrenchment can cause customers to worry that the firm may go out of business or give rise to problems in the continuity or quality of supplies and services and so on (Redman and Wilkinson, 2001, 2005).

There have also been increasing concerns about the organizational effectiveness of the post-downsized "anorexic organisation". The benefits, which organizations claim to be seeking from downsizing centre on savings in labour costs, speedier decision making, better communication, reduced product development time, enhanced involvement of employees and greater responsiveness to customers (De Meuse et al, 1997, p 168). However, reports suggest that the results of downsizing are illusory. Downsizing has a negative effect on "corporate memory" (Burke, 1997), employee morale (Brockner et al, 1987), distracts social networks (Priti, 2000), causes a loss of knowledge (Cole, 1993), and disrupts learning networks (Fisher and White, 2000). As a result, downsizing could "seriously handicap and damage the learning capacity of organisations" (Fisher and White, 2000: 249). Further, given that downsizing is often associated with cutting cost, downsizing firms may provide less training for their employees, recruit less externally, and reduce the research and development (R&D) budget. Consequently, downsizing could "hollow out" the firm's skills capacity (Littler and Inns, 2003: 93). The chaos at Heathrow in the summer of 2004 was alleged to be the result of over reaction (with 13,000 posts redundant since 2001) to the downturn in the airline industry with the result being shortages on ground staff (Innan, 2004). Some writers draw attention to the 'obsessive' pursuit of downsizing to the point of self starvation marked by excessive cost cutting, organ

failure and an extreme pathological fear of becoming inefficient. Hence 'trimming' and 'tightening belts' are the order of the day (Hancock and Tyler, 2003).

Paradoxically, restructuring has also been seen as a sign of corporate virility and stock market prices boomed in the arena of such plans. However, there is some suggestion from the literature that while shares of downsizing companies have outperformed the stock market for six months there is little evidence to suggest that long run performance or stock prices are improved by job cuts (Hunter, 2000).

The potential negative impact of downsizing is not restricted to those who leave but it has also a major effect on the remaining employees. Such employees are by their very nature now much more important to the employer but are often overlooked in downsizing situations. The impact of downsizing on the remaining employees is such that commentators now talk of "the survivor syndrome" (Brockner, 1992). This is the term given to the collection of behaviours such as "decreased motivation, morale and loyalty to the organization, and increased stress levels and skepticism" that are exhibited by those who are still in employment following re-structuring.

ALTERNATIVES TO REDUNDANCY

Employers are often encouraged to consider alternatives to redundancies and to view compulsory redundancy especially, only as a last resort. There is a wide range of possible alternatives to redundancy. These include redeployment, freezing recruitment, disengaging contractors and other flexible workers, reducing overtime, secondments, career breaks, and introducing more flexible working patterns such as job-sharing and part-time work. For example, in the US, Delta Airlines, Lincoln Electric and Rhino Food are often cited exemplars of how adjustments can be made in the use of temporary workers, subcontracting, etc, to reduce the impact of downsizing on core staff (De Meuse *et al*, 1997, p 172).

Wage cuts as an alternative to job cuts tend to be sparingly used, although there have been a number of prominent examples of this, as a method of cost reduction most notably at Volkswagen in Germany (Pfeffer 1998). In the UK Thomas Cook cut

jobs by 1500 in 2001 and asked staff to take pay cuts of 10% as business collapsed in the wake of terrorist attacks in the USA. Senior executives cut their own pay by 15% and all those earning more than £10,000 had salaries cut by 3-10% (McCallister, 2001).

DOWNSIZING PROCESS

Redundancy, despite the practice that managers have had in undertaking it of late, is often badly managed with many negative consequences. In part this may stem from the rarity of formal redundancy procedures. However, there is much to be gained from a humane and strategic approach to downsizing. According to Cameron (1994, 1998), the way downsizing is implemented is more important than the fact that it is implemented. He reports on three approaches to downsizing.

Workforce reduction strategies are focussed primarily on reducing headcount and are usually implemented in a top-down, speedy way. However, the downside of such an approach is that it is seen as the "equivalent to throwing a grenade into a crowded room, closing the door and expecting the explosion to eliminate a certain percentage of the workforce. It is difficult to predict exactly who will be eliminated and who will remain" (Cameron, 1994, p 197), but it grabs the immediate attention of the workforce to the condition that exists. Because of the quick implementation associated with the workforce reduction strategy, management does not have time to think strategy through and communicate it properly to employees. This may result in a low "perceived distributive fairness" (Brockner et al, 1987). As a result, employees may be negatively affected by the stress and uncertainty created by this type of downsizing (Greenhalgh, 1983) and may react with reduced organisational commitment, less job involvement, and reduced work efforts (Byrne, 1994; Greenhalgh, 1983). Secondly, **work redesign strategies**, aimed at reducing work (in addition to or instead of reducing the number of workers) through redesigning tasks, reducing work hours, merging units, etc. However, these are difficult to implement swiftly and hence are seen as a medium-term strategy. Thirdly, **systematic strategies** focus more broadly on changing culture, attitude and values not just changing workforce size. This involves "redefining downsizing as an on-

going process, as a basis for continuous improvement; rather than as a programme or a target. Downsizing is also equated with simplification of all aspects of the organization - the entire system including supplies, inventories, design process, production methods, customer relations, marketing and sales support, and so on" Cameron (1994, p 199). Again, this strategy requires longer-term perspectives and is more consistent with the ideas of TQM (Hill and Wilkinson, 1995; Wilkinson et al 1998).

Three Types of Downsizing Strategies

	Workforce Reduction	Work Redesign	Systemic
Focus	Headcount	Jobs, levels, units	Culture
Eliminate	People	Work	Status quo
Implementation time	Quick	Moderate	Extended
Payoff target	Short-term payoff	Moderate-term payoff	Long-term payoff
Inhibits	Long-term adaptability	Quick payback	Short term cost savings
Examples	Attrition	Combine functions	Involve everyone
	Layoffs	Merge units	Simplify everything
	Early retirement	Redesign jobs	Bottom-up change
	Buy-out packages	Eliminate layers	Target hidden costs

Source: Cameron 1994.

Cascio (2002) looks at the issue of restructuring and argues that organisations can be divided into two groups with quite different approaches to their staff. One group of firms, saw employees as costs to be cut. The other, much smaller group of firms, saw employees as assets to be developed.

- **Employees as costs to be cut** - emphasis on the minimum number of employees needed to run the company and the irreducible core numbers of employees that the business requires.
- **Employees as assets to be developed** - emphasis on changing the way business is done, so that people can be used more effectively.

As Cascio notes

"The downsizers see employees as commodities - like paper clips or light bulbs, interchangeable and substitutable one for another. This is a "plug in" mentality: plug them in when you need them; pull the plug when you no longer need them. In contrast, responsible restructurers see employees as sources of innovation and renewal. They see in employees the potential to grow their businesses" (Cascio, 2002, p. 84).

Sahdev (2003) suggest that the main focus of HR appears to be in implementing the procedural aspects of redundancy, including fair selection and provision of outplacement services for the leavers. While this is in keeping with the organisational justice approach, the contributions need to be directed towards managing the strategic aspects of decision-making processes with a view to managing survivors effectively. He suggests that HR practitioners need to be influential at both the strategic and operational levels, in order to manage survivors effectively and thereby enable the organisation to sustain competitiveness. Chadwick et al (2004) confirm that downsizing is more likely to be effective in the longer term when accompanied by practices that reinforce the contribution of HR. e.g. extensive communication, respectful treatment of redundant employees and attention to survivors concerns over job security.

Many problems relate to a low level of trust between those making decisions and those receiving them. A convincing rationale for downsizing is essential as is a degree planning. Having said that the process needs to be dynamic to take account of consultation with employees (Hunter, 2000, p3).

As Hunter notes

"Clarity of purpose, credible, two way communication and attention to the psychological and economic well being of employees are hallmarks of effective downsizing. This should not be a surprise: these characteristics reflect good strategic and human resource management. Organisations that downsize skillfully are likely to be well-managed and it would be surprising if those that are badly managed could master such a process" (Hunter, 2000, p4).

Indeed, the threat of further downsizing may create difficulties in that the most able seek alternative employment.

A number of downsized companies have recognized such problems and have set up training courses for managers in how to deal with downsizing effects, and by providing counseling programmes and help lines. One study found that the response of survivors is closely linked to the treatment received by those laid off (Brockner *et al*, 1987). Survivors react most negatively when they perceive their colleagues to have been badly treated and poorly recompensed. The implications are clear here for managers; humane treatment of redundant employees has double pay off.

CONCLUSION

We are more aware today that downsizing is not the route to corporate nirvana. As Pfeffer puts it: "downsizing may cut labour costs in the short run, but it can erode both employee and eventually customer loyalty in the long run" (1998, p 192). Research has shown that downsizing has mixed effects on performance. For instance, Cascio *et al*'s (1997) study of the impact of downsizing over a period of 15 years on performance found that, in all firms studied, reduction in employment was not translated into improvement in performance. There is thus little evidence that downsizing improves long-run profitability and financial performance (Cascio, 2002).

Employment security is often seen as a precondition for the practice of HRM (Pfeffer, 1998) yet as discussed above the trend has been away from secure tenured employment to the slimmed down anorexic organization form of today. But as Cappelli *et al* note that for new work arrangements to pay off, employment needs to be reasonably stable:

"The investment in learning required to make employees completely competent in new works systems is costly for employers, who recoup the investment only when the systems settle down and start performing well. If employees are continuing moving in and out of these systems, the cost of the investments in learning goes through the roof and cannot be recouped...the work system in which these employees sit while they are

learning are constantly disrupted and never perform well. Downsizings and other restructuring that move employees around inside organizations also disrupt these work systems and seem incompatible with them." (Cappelli *et al*, 1997, pp 210-211.)

In the jargon, it appears that to achieve economic effectiveness, downsizing is far from always 'rightsizing'. Strategic decision makers seem to have forgotten the benefits of growth strategies. Downsizing itself will not fix a strategy that is flawed (Cascio 2002).

Why then do managers persist with downsizing? A number of explanations have been put forward. Firstly, it is increasingly argued that managers have simply become addicted to downsizing because being lean and mean is now fashionable in itself. Downsizing, according to Brunning (1996) has become the "cocaine of the boardroom". Secondly, rather than a more 'acceptable' and appropriate use of downsizing because firms are now more productive or better organized or too bureaucratic and over-staffed, managers are often forced to do so by the markets demands for short-term boosts in profits. Downsizing, even if it does not deliver on profitability over the long term, it seems that the very fact of announcing it can give short term stock gains as investors and market makers respond favourably to such announcements (Worrell *et al*, 1991). Depressingly, it seems downsizing acts a reassuring signal to markets that managers are 'in control' and acting to put things right.

Farell and Marondon (2004:396) suggest that

"managers resort to downsizing because it is simple, generates considerable "noise and attention" in the organisation, and may be viewed by some managers as tangible evidence of their "strong leadership." However, managers that pursue a reorientation strategy, must necessarily engage in the much more difficult intellectual task of deciding how to reorient the organisation, combined with the associated challenges of building support, generating commitment and developing a shared vision."

It seems that the claim of HR and TQM writers that people are an organizations most valuable resource is difficult to sustain in light of how such resources are so wantonly discarded.

THE SANITISATION OF DISMISSAL

Redundancy and dismissal are one area of management practice that particularly suffers from euphemistic jargon. Some of the terms managers use include:

- building down
- career alternative enhancement program
- career re-appraisal
- compressing
- decruting
- de-hiring
- dejobbing
- de-layering
- demassing
- de-selection
- disemploying
- downscoping
- downsizing
- involuntary quit.
- lay-off
- letting-go
- non-retaining
- outplacing
- payroll adjustment
- previously unrecognized recruitment errors
- rationalizing
- rebalancing
- re-engineering
- releasing
- resizing
- re-structuring
- retrenchment

rightsizing
separation program
severance
slimming
streamlining
termination
volume-related production schedule adjustment
wastage

Source: Redman and Wilkinson, 2005.

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From: Nicholson, Simon [Simon.Nicholson@justice.tas.gov.au]
Sent: Wednesday, 12 August 2009 2:09 PM
To: Info
Subject: Young Lawyer's Committee - President's report for the Law Letter

In July of this year the Young Lawyer's Committee farewelled one of its members, John Moore, who moved to Melbourne to begin practice. John was a member of the Committee for a number of years and was secretary up until his departure. Many in the profession would know John and remember his participation in events put on by the Committee, such as Golden Gavels and the "Great Debate" held as part of the end of year function staged at the Old Hobart Gaol in 2008. I would like to recognise and thank John for the valuable contribution he made as part of the Committee and wish him all the best for the future.

The Committee's series of CLE lectures have proved popular and there are still a few more to go. Recently, Magistrate Michael Daly prepared and presented a detailed paper on adducing evidence-in-chief, which was well received. I know in my practice how difficult leading evidence can sometimes be. His insights into the skills he developed in his time as an advocate, as well as his observations from his more recent time on the bench, were very helpful. I encourage anyone who missed that or any of our other lectures to contact the Law Society about obtaining a digital recorded copy. Keep an eye out in the weekly Law Society update for upcoming lectures.

On 10 July 2009 the Committee hosted another of its "Winter Long Lunches". The Committee chose Catch as the venue and it was – as usual – a good way for those in attendance to mingle, down a few drinks and enjoy a nice meal. Tim Bugg from Dobson Mitchell and Allport spoke and we thank him for his time and particularly for his support both of the Committee and young lawyers generally. Most of those who came kicked on after to other venues, although some (like myself) made the mistake of going back to work a bit glassy eyed and thirsty for some more of the wine that had been on offer. Thank you to the members of the Committee who took the substantial time necessary to put together such an event.

Another great night was had at the annual Golden Gavel public speaking competition on 24 July 2009. David Sealy, Samantha Byles and Kirsten Siejka each (bravely) presented a 3 to 5 minute humorous talk to a large audience at the Law Society and to judges Anita Smith, Luke Rhienberger and Chief Magistrate Michael Hill. Kirsten won with her talk on *"Twitter Time: How making all my work 140 characters or less would improve productivity in my practice."* Samantha gave an insight into "Ways to make yourself indispensable at work" and David came up with some interesting ideas about how firms could save money in the era of the global financial crisis so as to not cut out Friday night drinks. Kirsten will represent Tasmania at the National Final of the Golden Gavel in Western Australia in September, and we wish her all the best. Again, I received a lot of very positive feedback from those who came along. It wouldn't have been possible to stage such a successful event without the significant time and effort put in by members of the Committee, which I recognise, as well as the support of the Law Society.

At our last committee meeting prior to me writing this report, we began to hatch ideas for the end of year function. It was agreed to stage another "Great Debate". This year's debate will again feature prominent members of the legal fraternity but will be based around a "family feud"-type concept with brothers and sisters and husbands and wives "in law"

battling it out. It should be another massive night (if last year was anything to go by), so do keep an eye out for an invite and for promotion. We are looking at mid-November dates at this stage.

Also, by the time this report is printed another new group of young lawyers will have been admitted to the profession. On 21 August the Law Society and the Committee will host drinks and I have no doubt that it will be a good opportunity to meet all the new practitioners (and the drinks as an event will become an annual fixture). One of the good things about being on the Committee this year is that it has kept growing. New members are always welcome, so please send me an e-mail if you would like to be a part.

Next year we hope to become involved more with graduates as they go through the legal practice course. The Committee resolved to encourage some mentoring between young practitioners and graduates, and would offer to move admissions for graduates at their admissions ceremony at the end of the course, which I think is an excellent way to build a rapport between graduates and young practitioners during their transition into the profession.

My linda Sheppard has been keeping us up-to-date with young lawyers events that are happening around the country in her role as our State's representative on the national young lawyer's forum. There are certainly a few events our interstate colleagues host that I would like to see made a part of our agenda for (maybe) late this year and next year. I thank My linda for her continued and valued contribution to the Committee.

As always if you would like to know more about the Committee or any of the events we put on, please send me an email.

Simon Nicholson

President, Young Lawyer's Committee

(simon.nicholson@justice.tas.gov.au)

SIMON NICHOLSON

Crown Counsel

Office of the Director of Public Prosecutions

Level 8, 15 Murray Street Hobart 7000

T. 6233 2574

F. 6234 2892

E. simon.nicholson@justice.tas.gov.au

