



FEDERAL MAGISTRATES COURT OF AUSTRALIA

Chambers of the Chief Federal Magistrate

Federal Magistrates Court of Australia
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7 August 2009

Mr Peter Hallahan
Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

LegCon.Sen@aph.gov.au

Dear Mr Hallahan,

Inquiry into Access to Justice

I refer to the public hearing on Wednesday 15 July 2009 conducted by the Senate References Committee on Legal and Constitutional Affairs for the Inquiry into Access to Justice.

Please find attached answers to questions taken on notice with respect to the Federal Magistrates Court.

I hope this information will assist the Committee with its inquiry and I look forward to the final report. Please do not hesitate to contact me if you require further information.

Yours sincerely,

John H Pascoe
Chief Federal Magistrate

encl.

SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE

Reference: Access to Justice

Federal Magistrates Court of Australia

Question No. 1

Senator Barnett asked the following question at the hearing on Wednesday 15 July 2009 (at page 4 of the Hansard transcript):

What are the figures on self-represented litigants in the Federal Magistrates Court (the Court)? Are there any trends in the last twelve (12) months?

The answer to the honourable senator's question is as follows:

The table below shows data for matters in family law with respect to finalised applications for final orders during the period 1 July 2008 to 30 June 2009.

Party Representation	Number of Applications	Percent
Both have legal representation	10 148	63.5%
Neither have legal representation	1 563	9.8%
Only applicant has legal representation	3 579	22.4%
Only respondent has legal representation	687	4.3%

During the life of a matter a party's status with regard to representation may change, i.e. they may commence proceedings without legal representation and then have legal representation at the final hearing. Such changes are not reflected in the above data and are not discernable using current reporting procedures.

Information on self-represented litigants is not captured on the database used for general federal law.

No trends are discernable on this data as the reporting procedures do not delineate by month.

Question No. 2

Senator Barnett asked the following question at the hearing on Wednesday 15 July 2009 (at page 5 of the Hansard transcript):

Are there any statistics that cases are taking longer?

The answer to the honourable senator's question is as follows:

The statistics below indicate that in the 2008/2009 financial year there were more family law matters which took 12 months or longer to finalise than in 2007/2008. However, this was not the situation for general federal law matters.

Applications for Final Orders in Family Law Finalised in 2007/08 and 2008/09 – Finalisation Timeliness

Finalisation Timeliness	2007/08	As % of total 2007/08 finalisations	2008/09	As % of total 2008/09 finalisations
Less than 3 months	3 776	26%	3 675	23%
3 – 6 months	4 072	28%	4 002	26%
6 – 12 months	4 881	33%	5 195	33%
More than 12 months	1 876	13%	2 766	18%
Total finalised	14 605	100%	15 638	100%

All Family Law Applications (including Divorce) Finalised in 2007/08 and 2008/09 – Finalisation Timeliness

Finalisation Timeliness	2007/08	As % of total 2007/08 finalisations	2008/09	As % of total 2008/09 finalisations
Less than 3 months	52 946	70%	54 067	68%
3 – 6 months	12 187	16%	12 629	16%
6 – 12 months	8 084	11%	8 827	11%
12 – 18 months	1 763	2%	2 356	3%
More than 18 months	790	1%	1 411	2%
Total finalised	75 770	100%	79 290	100%

General Federal Law Applications finalised in 2007/08 and 2008/09 – Finalisation Timeliness

Finalisation Timeliness	2007/08	As % of total 2007/08 finalisations	2008/09	As % of total 2008/09 finalisations
Less than 6 months	5550	73%	5285	79%
6 – 12 months	1364	18%	904	14%
12 – 18 months	520	7%	337	5%
More than 18 months	158	2%	135	2%
Total finalised	7592	100%	6661	100%

Question No. 3

Senator Barnett asked the following question at the hearing on Wednesday 15 July 2009 (at page 6 of the Hansard transcript):

Who pays for the costs of the interpreter service and what is the cost?

The answer to the honourable senator’s question is as follows:

In the 2008/09 financial year, the Court spent \$809,000 on interpreters. The Court is not provided with discrete funding for interpreter and translator services and, accordingly, interpreter costs are factored into the Court’s Annual Appropriations.

The Court’s Interpreter and Translator Policy provides:

3.1 Availability of Funds: A registry shall not refuse to fund access to an interpreter in accordance with these guidelines for the reason that sufficient funds are not available.

3.2 Booking an Interpreter: The Court will pay for interpreters assessed to be essential, when their engagement is authorised and booked by court staff. The Court will not pay for an interpreter booked by a barrister or solicitor, nor for a preferred interpreter selected by a solicitor in addition to an interpreter provided by the Court. Where a solicitor considers that the services of an interpreter may be required, the solicitor shall request the Court authorise and book the services of the interpreter. Unless particular circumstances apply to the contrary, the Court will only book one interpreter where the parties are from the same ethnic background. Every endeavour should be made to obtain the services of an interpreter who is independent from either of the parties.

3.3 The Court may access interpreter services from any source which is considered to be cost-effective, including from a tendered service. An interpreter engaged by the Court shall be engaged for an estimated fixed period of time but shall be paid only for time worked with a reasonable travel component. Where it is necessary to extend the engagement beyond the initial booking time, a second estimated period of time should be fixed. Booking officers should have regard to minimum and/or penalty charges imposed by agencies in selecting the most cost-effective booking period. The Court would not normally expect to pay a cancellation fee where the services of an interpreter are not required after the booking has been made. However, any cost incurred by the agency or the interpreter may be reimbursed at the registry manager or district registrar's discretion.

Question No. 4

Senator Barnett asked the following question at the hearing on Wednesday 15 July 2009 (at page 15 of the Hansard transcript):

Are there any details on the pro bono scheme and the extent of pro bono work that is undertaken in the Federal Magistrates Court.

The answer to the honourable senator's question is as follows:

The court-based pro bono scheme is similar to schemes which operate in a number of Australian courts including the Federal Court of Australia. Referrals to the scheme have generally been confined to general federal law matters, particularly migration matters. Part 12 of the Federal Magistrate Court Rules 2001 (see Annexure A) sets out rules in relation to the court-administered scheme, with referrals only made where a Federal Magistrate is of the opinion that representation is appropriate in the interests of the administration of justice with respect to various considerations. A panel (organised by jurisdiction) has been established comprising barristers who have indicated their interest in acting pro bono. If a referral is made, a registrar will make contact with members of the panel to see if one may be in a position to provide assistance in that particular matter.

In Victoria, the Court has made arrangements with the Victorian Bar to enable parties who do not have a lawyer in the Court to obtain free legal assistance in certain circumstances. These arrangements are not intended to cover those who may qualify for legal aid and a number of guidelines will apply.

Additionally in Melbourne, assistance to migration litigants is available through Victoria Legal Aid, which has established a Migration Duty Solicitor Scheme. The scheme provides free advice to unrepresented litigants in migration-related proceedings whereby a duty solicitor attends on migration list call overs and directions hearings.

In Sydney, a legal advice scheme operates with respect to appeals from decisions of the Refugee Review Tribunal (RRT), comprising a panel of barristers and solicitors nominated by the Bar Association of New South Wales and Law Society of New South Wales respectively and funded by the Department of Immigration and Citizenship. This is generally known as the RRT Legal Advice Scheme. The scheme covers preliminary advice only and does not cover the cost of a solicitor appearing at the hearing. If an applicant wishes to participate in the scheme, they will need to fill out a form (available in court) entitled "Notice to Unrepresented Applicants in RRT Review Cases".

The form is usually filled out by the applicant (with the assistance of an interpreter where required) at a First Court Date and then handed up to the Federal Magistrate. The RRT Legal Advice Scheme coordinator will then process the forms.

Another scheme operating in Sydney for general pro bono assistance comprises a panel of solicitors representing the larger firms who provide initial advice. A formal referral under Part 12 of the Federal Magistrates Court Rules is made where the assistance extends to representation at a hearing.

Self-represented litigants with family law matters before the Court are assisted by duty lawyer schemes operating in capital cities and regional areas. The Court works co-operatively with legal aid commissions and other organisations which provide lawyers to assist litigants at Court on the day of their hearing. Assistance may include legal advice, negotiating consent orders and, in urgent matters, the preparation of documents and representation.

Statistics on the extent of pro bono work undertaken in the Federal Magistrates Court is difficult to accurately reproduce and any figures provided would be an underestimation of the true extent of pro bono work being conducted in the Court as not all pro bono work is notified to the Court or recorded. Keeping in mind the limited utility of this statistical data, as an example of the extent of pro bono work conducted under Court-related programmes, in Sydney during the 2008/09 financial year ten (10) matters were referred to the Court's scheme under part 12 of the Federal Magistrates Court Rules. In the same period, 651 matters were referred under the RRT Legal Assistance Scheme.

Annexure A

Federal Magistrates Court Rules 2001

Part 12 Referral by Court for legal assistance

12.01 Object of Part

- (1) The object of this Part is to establish a scheme to facilitate the provision of legal assistance to parties who are otherwise unable to obtain assistance if to do so is in the interests of the administration of justice.
- (2) The scheme is not intended to be a substitute for legal aid.
- (3) The referral of a party for legal assistance is not an indication that the Court has formed an opinion on the merits of the party's case.
- (4) Nothing in this Part requires the Court to make a referral, or to consider a party for referral, for legal assistance.

12.02 Pro bono panel

An authorised Registrar may maintain, for each registry, a list of lawyers who have agreed to participate in the scheme (the *pro bono panel*).

12.03 Referral to a lawyer

- (1) The Court may refer a party to a Registrar for referral to a lawyer on the pro bono panel for legal assistance in relation to a proceeding before the Court, if to do so is in the interests of the administration of justice.
- (2) The Court may take into account:
 - (a) the means of the party; and
 - (b) the capacity of the party to obtain legal assistance outside the scheme; and
 - (c) the nature and complexity of the proceeding; and
 - (d) any other matter that the Court considers appropriate.
- (3) The Registrar must attempt to arrange for legal assistance to be provided to the party by a lawyer on the pro bono panel.
- (4) However the party must not be referred to a lawyer for legal assistance without the agreement of the lawyer.
- (5) If assistance is unavailable after the Court has referred a party for legal assistance, the Court may proceed to hear the matter.

12.03A Further direction

The Registrar may seek the direction of the Court or a Federal Magistrate in relation to a referral made under rule 12.03.

12.04 Kind of assistance

A referral may be made for the following kinds of assistance:

- (a) advice in relation to a proceeding;
- (b) representation on first court date, interlocutory or final hearing or mediation;
- (c) drafting or settling of documents to be filed or used in the proceeding;
- (d) representation generally in the conduct of the proceeding or part of the proceeding.

12.05 Provision of assistance by lawyer

- (1) If a lawyer agrees to accept a referral, the lawyer must provide assistance to the party in accordance with the referral.
- (1A) Unless the Court or a Federal Magistrate otherwise directs, a referral ceases to have effect if:
 - (a) a lawyer has provided the legal assistance mentioned in the referral; or
 - (b) a lawyer has ceased to provide legal assistance under subrule (2); or
 - (c) the proceeding the referral relates to is finalised or transferred to another court.
- (2) However, the lawyer may cease to provide legal assistance to the party:
 - (a) in circumstances set out in any practice rules governing professional conduct that apply to the lawyer; or
 - (b) with the written agreement of the party; or
 - (c) with the leave of the Registrar.
- (3) If a lawyer ceases to provide legal assistance to a party, the lawyer must inform the Registrar in writing within 7 days.

12.06 Application for leave

- (1) A lawyer seeking leave to cease to provide legal assistance to a party may apply to the Registrar in writing briefly stating the reasons.
- (2) A copy of the application must be served on the party.
- (3) In deciding whether to grant leave, the Registrar must consider:
 - (a) any practice rules governing professional conduct that apply to the lawyer; and
 - (b) any conflict of interest; and
 - (c) whether there is a substantial disagreement between the lawyer and the party in relation to the conduct of the proceeding; and
 - (d) any view of the lawyer that the party's case is not well founded in fact or law or that the prosecution of the proceeding is an abuse of process; and
 - (e) whether the lawyer lacks the time to provide adequate legal assistance to the party because of other professional commitments; and
 - (f) whether the party has refused or failed to pay any disbursements requested by the lawyer; and
 - (g) any other matter that the Registrar thinks relevant.
- (4) An application for leave and any related correspondence:
 - (a) is confidential; and
 - (b) is not part of the proceeding in relation to which the referral was made; and

(c) does not form part of the Court file in relation to the proceeding.

12.07 Professional fees and disbursements

- (1) A lawyer who provides legal assistance to a party under this Part must not seek or recover any professional fees from the party for the legal assistance.
- (2) The lawyer may request the party to pay any disbursements reasonably incurred, or reasonably to be incurred, by the lawyer on behalf of the party in relation to the legal assistance.
- (3) If an order for costs is made in favour of the party, the lawyer is entitled to recover those costs.