

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
FEDERAL MAGISTRATES COURT

Question No. 45

Senator Furner asked the following question at the hearing on 22 February 2011:

Senator FURNER—That is correct. I understand that there have been some pilot programs working at the Brisbane Registry of the Federal Magistrates Court. I would like to hear some feedback in terms of the encouragement of parties to use practical measures other than conciliation and the success of those arrangements since that has occurred...I would like to have some feedback, on notice of course, on how many cases the court has referred and what that has done in terms of the impact on the court workload and the benefits of those litigations that have been made. Lastly, I believe the Brisbane Registry has one as one of the highest volumes of filled contravention orders in the country and I would like to know how the court is handling that particular aspect.

Mr Agnew—There has been a pilot conducted in Brisbane in respect of contravention applications and registrars have been assisting in that pilot. I believe that pilot has also been very successful. I do not have the actual details on me, but I can take that on notice.

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

1. Private Mediation Pilot Federal Magistrates Court – Brisbane

The Federal Magistrates Court commenced a Private Mediation Pilot in Brisbane in mid 2009, encouraging litigants with property pools over \$500,000 to undertake externally funded private mediation in an attempt to resolve property-related disputes. Orders for private mediation made by Federal Magistrates excuse parties from attending a conciliation conference pursuant to s79(9) of the *Family Law Act 1975* and instead are directed to attend upon a private mediator to participate in a genuine attempt at mediation to resolve all issues in dispute. Parties with property pools under \$500,000 were still referred to internal conciliation conferences on a case by case basis.

The FMC's key considerations in adopting this approach were:

- limited Court resources
 - limited number of registrars;
 - insufficient time allowed for conciliation conferences; and
 - a preference for having registrars undertake other work.

- potential better outcomes for litigants
 - external mediation allows for greater time to reach resolution; and
 - improved chance of reaching a compromise with litigants 'buying' in to the process.

The evaluation of the pilot has commenced however the details of the analysis are not yet available.

2. Brisbane Contravention Pilot

On 1 January 2010, due to the high number of Contravention Applications filed in the Brisbane registry, the Federal Magistrates Court launched a pilot to list Contravention applications in children's matters before a Registrar for the first court event.

The pilot aims to assist litigants in moving towards a child focussed outcome whilst expeditiously identifying matters of serious concern that need urgent hearings before a Federal Magistrate.

At the first court event the registrar will:

- identify the issues in dispute between the parties;
- identify what the applicant is seeking; and
- discuss the possibility of resolution without the need of a hearing.

The following is a summary of statistics for the Pilot in 2010:

- 184 Contravention Child applications filed in Brisbane registry and listed before a Registrar in 2010
- 77 (42%) of these 184 applications were finalised without referral to a Federal Magistrate. Of these 77:
 - 61 applications were discontinued
 - 8 applications settled by consent
 - 8 applications were finalised by transfer, dismissal or were otherwise withdrawn
- Registrars referred 100 Contravention Child applications to Federal Magistrates in 2010
- Of the 100 Contravention Child applications referred:
 - 13 applications required hearing
 - 28 applications continuing to future events before a Federal Magistrate
 - 22 matters settled by consent
 - 18 applications were discontinued or withdrawn
 - 19 matters were dismissed, struck out or transferred by a Federal Magistrate at hearing
- 7 of the 184 applications are currently listed before a Registrar for further case management
- In total, 117 matters (64%) were finalised either before a Registrar or Federal Magistrate without having the Contravention Child application formally heard
- 67 matters (36%) required judicial determination or are still listed before a Federal Magistrate or Registrar for further case management

The pilot will continue through 2011 with further analysis.