

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
ATTORNEY-GENERAL'S DEPARTMENT

**Output 1.1**

**Question No. 17**

**Senator Kirk asked the following question at the hearing on 24 May 2006:**

Please provide the Committee with a copy of the statement by the Chief Federal Magistrate relating to Court standards and performance.

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

The Federal Magistrates Court has provided a copy of the statement (**Attachment A**).

**Statement of Chief Federal Magistrate John Pascoe, AO**

It is fundamental to the administration of justice in Australia that judges are independent in their decision making and subject to review only through the appeal process. The judicial head of any court cannot interfere in the judicial decision making process or the expression of reasons. Under the Australian Constitution federal judges can be removed from office only for proven misbehaviour or incapacity on an address from both Houses of the Parliament. The judicial head of a court has no role in that process.

Federal Magistrate Rimmer and I met for some time this week to discuss the circumstances surrounding the judgment in *Frith v The Exchange Hotel*. As there is a possibility of an appeal, it is not appropriate to canvass matters which may be relevant to the appellate process.

The matter was heard on 30 November 2001. Unfortunately judgment was not delivered until 1 April 2005, a delay of over 3 years. This is inexcusable and cannot be condoned. However, I make the following points:

- Federal Magistrate Rimmer has told me her caseload during this period was overwhelming;
- Legal practitioners who conduct litigation in the Federal Magistrates Court, especially in Brisbane, are aware of the enormous workload in the Court and the pressure placed on all Federal Magistrates;
- from the establishment of the Court the caseload of Federal Magistrates in Brisbane has consistently been the highest of any in Australia and Federal Magistrates were required to sit regularly well beyond normal court hours;
- these problems were compounded by the need for Federal Magistrate Rimmer to sit in general federal law, an unfamiliar jurisdiction given that her background experience is in family law; and

- Federal Magistrate Rimmer has told me she asked for help throughout 2002, 2003 and 2004 but the court nationally was managing a heavy workload and was not able to provide her the assistance she was seeking.

By 2004, the Court nationally had a significant back-log of reserved judgments. Later in the year, after additional appointments were made to the Court, a program was implemented to allow Federal Magistrates adequate time out of court for judgment writing. Additional resources were engaged to assist in clearing the back-log of judgments and a protocol implemented whereby judgments would be delivered within 3 months of being heard. Currently, this protocol is being met in all but a very small minority of cases.

Federal Magistrate Rimmer made a significant effort to clear all outstanding judgments in the latter months of 2004 and early 2005. Currently she meets the Court's protocol in terms of outstanding reserved judgments and has continually done so since mid-2005.

The judgment in *Frith v The Exchange Hotel* was first brought to my attention by the Court's internal Judgment Committee. Shortly after this, I went to Brisbane to meet with Federal Magistrate Rimmer about the matter. I note that Federal Magistrate Rimmer relied upon the earlier judgment of Federal Magistrate Walters. She accepts and regrets she did not make the proper attribution. Federal Magistrate Rimmer, as the original decision maker, subsequently sought to remedy the matter. It is a matter for an appeal court to decide whether she has made an appellable error and it is not appropriate for me to make any further comment. The use of material without attribution, where it occurs is, however, simply unacceptable in all areas of professional life.

Federal Magistrate Rimmer has agreed to take leave so that she may be provided with additional training, counselling and appropriate mentoring over the next two months before returning to sitting duty. This will be provided to her by appropriate resources both internal and external. On her return, she will sit in family law.

In addition, the Court is taking the following steps in relation to its workload and the need for timely deliver of judgments:

1. A further review of all Federal Magistrates workload and available judgment writing time.
2. An approach to the Attorney-General to bring forward additional appointments to the Court together with additional administrative resources to facilitate proper support for all Federal Magistrates.
3. Review the current induction program for new Federal Magistrates to ensure it provides a solid grounding in fundamental judicial principles and practice.
4. Continuation of the process of establishing panels in general federal law throughout Australia to ensure that this work is allocated to Federal Magistrates with appropriate experience and that new members of panels are appropriately mentored. As a further step, all members of the Court will be allocated between federal law and family law according to expertise. Some Federal Magistrates may sit in both areas depending on their experience.
5. Where possible providing additional resources to ensure that Federal Magistrates are able to continue to meet the protocol for timely delivery of judgments.
6. Continuation of the program of ongoing judicial education for all Federal Magistrates, including on judgment writing.
7. Developing through the Court's Judgment Committee more extensive guidelines on the writing and delivery of judgments, as well as their correction.
8. The Court will seek to engage a senior retired Judge to assist it in an overall mentoring program, especially for new Federal Magistrates.

**Attachment A**

As a general comment I would like to stress that since its creation much has been asked of the Federal Magistrates Court and its judicial officers and staff have worked tirelessly to provide low cost and effective access to the federal justice system.

