FEDERAL MAGISTRATES COURT OF AUSTRALIA

Speech by Federal Magistrate Michael Baumann

Working Together - National Access to Justice and Pro Bono Conference 2008

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In June 2000, 10 yet to sit judicial officers met for the first time to contemplate how the newest Court established under the Australian Constitution should manage its work.

The Federal Magistrates Court of Australia (FMC) was established to provide support and ease the load of less complex litigation which was burdening the lists of the two superior courts – the Family Court of Australia and Federal Court of Australia.

Although the creation of the Court, it must be said, was not universally applauded, there was very much a prevailing thought amongst the first groups of Federal Magistrates that we were presented with a unique opportunity to shape a Court which would make a really positive impact on the needs of everyday Australians who come the Court in the hope of securing a just resolution.

The mantra which heralded this baby of the Federal Judiciary was “faster, simpler and cheaper.” The ethos then as now, was very much a solution orientated “can do” mentality which drove its case management aims and was adopted throughout the Country. As one of the privileged few to be appointed to this Court at the beginning, I do not seek to hide my immense pride in the

performance of my colleagues and the staff who have made the FMC a great success story.

Rather, I welcome the opportunity to share with you, at this important conference seeking to enhance the ideals of access to the justice, how we got there and why the Court's position in the legal landscape is important.

Let me record at the outset, the support this Court has received from the superior courts – particularly their judicial officers and administrations. Inevitably, there have been tensions along the way. Resources are finite. The pressures on performance at all levels are always present. The intellectual guidance and proud histories of the two superior Courts was a constant source of support and a reminder of high ideals the Australia Federal Judiciary had demonstrated.

But in the end, the FMC was created to serve the interests of the litigants. It is not - and can never be - anything else. Judicial appointment is a privilege and what comes with such privilege is the responsibility to continually strive to fairly, courteously and in a timely manner exercise the powers given to a Judge.

The Current Landscape

From a standing start just over 8 years ago, the development and impact of the Court has been outstanding. It is hard to almost recall the limited jurisdiction that was originally exercised by that hardy group of 10 Federal Magistrates.

Now:

- There are 61 Federal Magistrates making it the largest of the Federal Courts;

- The jurisdiction is essentially concurrent with that of the Family Court of Australia, including unlimited monetary and full parenting jurisdiction;
- The Court is the primary Court in Bankruptcy and Migration and has a growing workload in Industrial Law, Discrimination, Intellectual Property and Trade Practices;
- The Court sits now in every state of Australia and, as I will soon mention, widely in regional Australia;
- Over 80% of all Family Law applications are now initiated in the FMC; and
- The Court looks forward to the arrival of de-facto property jurisdiction next year and, depending on the will of Parliament, and arising from yesterday's announcement by the Deputy Prime Minister, and increased work load under the Fair Work Australia Initiative.

Access to Justice has many facets

It is immediately apparent that the work of the Court – the people's Court – attracts, in the main, individual litigants, not corporations. Although a range of exciting initiatives to direct and encourage Australians to find solutions to their issues without coming to Courts have been developed – and in the Family Law area the Family Relationship Centres through Australia are proving to be a very successful early intervention model – nonetheless for a variety of reasons many still see the Courts as, if not the first, than at least an early destination.

Very few, if any people (other than lawyers), like going to Court. It is not a naturally friendly place to be. Its structures, language and processes are often a cause of great stress and confusion to people who are usually already anxious and uncertain – if not agitated. Lessening those stresses inevitably helps the post litigation recovery for most people.

If one was to “google” words like “sensitive dispute resolution” and “a fair go” it is unlikely any Court will be on the page of results. Yet they comprise some of the ideals of the FMC.

Access

Some of the hallmarks of the FMC include:

- The Court sits out of the main city registries in 35 locations across Australia. The paper sets out those locations (see attached). Allowing people to attend a local court is immensely important for those of limited means; parents with young children and persons with disabilities. It reduces obstacles to seeking the Court’s assistance. It reduces costs for them. It allows the Court to better understand the local environment. It allows better use of community services and support. It simply makes sense. It is expensive to circuit a Court, but the FMC has a strong aim to offer those who live in remote and rural Australia the same level of service as those who chose to live in the city.
- Less formal Rules and procedures, less forms and flexible attitude to substantial compliance.
- Constant use of telephone attendances; video evidence and more recently electronic filing.
- The National Enquiry Centre in Family Law receives over 300 000 calls a year – and as the FMC has such a significant share of the workload, the ability at the cost of a local call to access information and be transferred quickly to an appropriate Registry cannot be underestimated.

Justice Delayed is Justice Denied

91% of all general federal law applications are completed within 12 months with over 70% finalised within 6 months. The need to allow persons with deportation or bankruptcy (the two main areas of the Court's general federal law jurisdiction) hanging over their heads relieved of those uncertainties should not be forgotten. In Sydney – the hub of the Court's general federal law practice – migration applications are listed quickly and case managed very efficiently. This is a complex area of the law and the consequences for the litigants can be life changing. Most do not speak English as their first language.

In the area of family law, 83% of substantive applications (excluding divorce) are finalised within 12 months with over 50% of all applications resolved within six months. The Court hopes that with the recent increase in appointments, and ability to increase trial opportunities, the time for hearings will reduce particularly here in the Sydney basin.

Because of our Regional network, a greater proportion of applications in local Courts are now filed directly in the FMC. This enhances the opportunity of our Court to identify strategies that might assist families quickly and reduce or defuse tensions.

The Docket System

Individual case management is not a novel approach. It has been successfully used in complex litigation for years by the superior Courts in general and the Federal Court of Australia in particular. The Family Court of Australia has pioneered it in Magellan cases.

However, the FMC is one of the few Courts anywhere that has not only attempted to combine individual case management – called a docket system – with high volumes of applications, but I would argue has successfully accomplished it. The hallmarks of a good docket (and the clear benefits derived by the litigants) include:

- The same FM deals with the matter from the first Court date until, if required, a final determination. The FM has both a personal interest and duty in seeking to ensure efficient and sensitive resolution. The parties know who will be doing their matter and less "re-telling" of their story occurs.
- As the matter progresses, there are plenty of opportunities that can be identified to either resolve the matter without a trial or at least narrow the compass of the dispute. When people have less to argue about, it is more likely a sensible solution and just outcome can be achieved quickly.
- As each case is individually managed – process does not overwhelm common sense. Lawyers are generally comforted by the notion that a fair process guarantees a fair result. However, all FM's are alert to initiating a strategy, at a time unique to that case, that might allow competing interests to be better understood and accommodated. This is vital in family law particularly where, unlike most civil litigation, the parties are more likely to have some form of ongoing relationship, particularly where they have children.
- Self-represented litigants are more comfortable (but not always content) that they can talk directly to the person who will make the decision important to them.

Costs

Less Court visits – or at least striving to only have Court events that add value – and more timely trials leads to less costs. Early resolution is clearly the aim. Well

less than 10% of matters filed ever need a final determination. The endeavours of each FM is to identify as early in the process as possible those matters that do not need a trial. In so doing, those matters that do will achieve an earlier hearing date.

I am confident in claiming, that the average length of trials has reduced. Matters that may have taken two or three days are now routinely heard in one day. Some will protest that trial management is a little robust, however, the legal profession in particular throughout Australia must be acknowledged as having worked well in partnership with the Court in trying to minimise the adverse affect on those paying legal fees that inevitably flows from long hearings and delays. I also wish to acknowledge the support of Legal Aid bodies around Australia who fund duty lawyers, often in circuit locations as well as the major Registries. In migration matters, duty lawyers and assistants from pro-bono schemes are also invaluable. The Court is well aware of the increasing demands on the private legal profession and community legal centres in these times of increasing economic uncertainty.

The initiatives of the FMC – and it is a consistent journey of seeking improvement – hopefully help to reduce the emotional cost on litigants. This is an ever present concern to every judicial officer – as justice delivered at a cost of emotional destruction is hardly justice at all.

The Future

I am, I accept, a little close to the action to be entirely objective about my Court. Everyday I am energised by the dedication and commitment of hardworking Federal Magistrates around Australia who strive to deliver justice according to law.

Being appointed to judicial office is a privilege that brings with it some limitations. All Courts have reduced opportunities to tell the public what they do and how they do it. Often Courts are judged by those matters which at time have disappointing results, and as a result achieve disproportionate media attention, rather than the overriding majority of matters passing through the Courts on a daily basis with fair hearings and just outcomes.

An honest historian – perhaps some time in the future – could look at the creation and impact of the FMC on the legal landscape – and I would expect be able to acknowledge it a success. It is now the largest and major federal civil trial court. That is a badge of honour that brings a heavy responsibility. The culture in the Court is derived from the personal energy, commitment and integrity of its Federal Magistrates and the staff who support them.

The Semple Review will offer an opportunity for further debate and consideration. The Court welcomes any opportunity to work with the Attorney General and other major stakeholders to refine the system to continue to meet the increasing needs and reasonable demands of the Australia community.

Whilst that process is undertaken, Federal Magistrates will continue to go into Court and apply themselves to the difficult yet challenging tasks presented by people who come to a Court with at least the hope, and expectation, that they will be listened to and get a fair go. Anything less is unacceptable.