



**OFFICE OF THE REGISTRAR
FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000**

Phone: 612 9230 8237
Fax: 612 9223 1906
Email: wsoden@fedcourt.gov.au

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

Dear Mr Hallahan

Inquiry into Access to Justice

I refer to the current inquiry by the Standing Committee on Legal and Constitutional Affairs into Access to Justice and enclose a brief submission.

The submission provides some basic factual information about the Court's practices in relation to the issues being considered by the Committee. I would be pleased to attend before the Committee to clarify or expand upon the matters mentioned in the submission.

Yours sincerely

**Warwick Soden
Registrar and Chief Executive Officer**

Federal Court of Australia Submission - inquiry by the Standing Committee on Legal and Constitutional Affairs into Access to Justice

A. The ability of people to access legal representation

The Court is aware that the costs of legal representation can be a significant factor in determining whether a litigant has legal representation.

In relation to migration cases, in late 1999 the Federal Court proposed the introduction of a legal advice scheme for unrepresented applicants seeking a review of Refugee Review Tribunal (RRT) decisions. The scheme, which is funded by the Department of Immigration and Citizenship, enables these applicants to obtain independent legal advice about their case and the prospects of success before the matter goes to a hearing and before other significant legal costs are incurred. The Federal Magistrates Court now has jurisdiction for these cases and the Scheme is continuing in that Court.

Order 80 of the Federal Court Rules enables the Court, where it is in the interests of the administration of justice, to refer an unrepresented litigant to a legal practitioner who will (if the referral is accepted) provide legal assistance to the litigant.

The Court registries have established pro bono panels of legal practitioners to whom referrals under Order 80 can be made. It should be noted that litigants do not have a right to apply for, or to receive, assistance under the scheme.

A referral may be made for the following kinds of assistance (O 80 r 5):

- (a) advice in relation to the proceeding;
- (b) representation on direction, 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 of part of the proceeding.

B. The adequacy of legal aid

The current legal aid guidelines mean that legal aid is generally not available for proceedings in the Federal Court. This means some people who might otherwise be able to come to the

Court do not do so, or must conduct litigation (either as an applicant or a respondent) without legal representation.

C. The cost of delivering justice

The Federal Court acknowledges that the litigation process can involve considerable time and expense. See comments at item D below about initiatives to reduce the length and cost of litigation.

D. Measures to reduce the length and complexity of litigation and improve efficiency

The Federal Court is committed to the just resolution of disputes as quickly, inexpensively and efficiently as possible. It aims to reduce the costs of proceedings by active case management, the allocation of cases to individual dockets and a comprehensive program of court-annexed mediation and other forms of assisted dispute resolution.

In recent years it has introduced a range of active case management initiatives directed towards further reducing the length and complexity of litigation. The initiatives focus upon early involvement of the judge in identifying the real issues in dispute and carefully managing discovery and other procedural matters.

The Court's capacity to manage litigation will be enhanced by the legislative provisions that have been suggested by the current Attorney-General in his public statements on the need for reforms in relation to costs, discovery, effective and efficient management of cases and specific statutory powers directed at case management.

Two recent initiatives demonstrate how the Federal Court continues to implement measures to address the length and complexity of litigation. On 24 April 2009 Chief Justice Black issued Practice Note No. 30 – Fast Track Directions. The Fast Track Directions has been developed following the highly successful pilot of a Fast Track List in the Victorian Registry. The pilot commenced in May 2007 and involved extensive consultation with the legal profession.

The Fast Track Directions may be used for cases in which the trial is not expected to exceed five days. The aim of the new procedure is to provide a framework in which cases may be heard and finalised within five to eight months from the date of filing and to reduce costs by limiting discovery and avoiding lengthy interlocutory disputes. Urgent cases may be finalised sooner.

The directions were developed in response to the Court's concern that litigation is in urgent need of reform due to significant problems with escalating costs for the parties and the time it takes to complete a case. There is no doubt that reduction in time for completion will reduce costs for the parties.

Another practice note issued earlier this year will assist in reducing the costs of running complex cases. On 29 January 2009 Chief Justice Black issued a new *Practice Note No.17 – The use of technology in the management of discovery and the conduct of litigation*. The aim of the Practice Note is to encourage and facilitate the effective use of technology in proceedings before the Court by setting out the Court's expectations as to how technology should be used in the conduct of proceedings before the Court; and recommending a framework for the management of documents electronically in the discovery process and the conduct of trials.

E. Alternative means of delivering justice

The Court supports the appropriate use of mediation and other alternative dispute resolution mechanisms. To this end it makes extensive use of accredited registrars to conduct court-annexed mediations in proceedings before the Court.

Mediation by Court registrars is an important aspect of the Court's case management system as disputes can be settled without reference to a judge. Even where matters are not settled at mediation they proceed to trial with the issues in dispute more clearly defined.

F. The adequacy of funding and resource arrangements for community legal centres

The Court is not in a position to comment on this issue.

G. The ability of Indigenous people to access justice

The Federal Court has recently completed a major report which presents the research and findings of an in-depth investigation into effective practices for managing conflict involving Indigenous people. The research, to be published shortly, suggests the establishment of an Indigenous Dispute Resolution Service. The research and findings (when available) are likely to be of interest to the inquiry.