

## **Submission to Joint Committee on Public Accounts and Audit**

### **Impact of the Efficiency Dividend**

#### Background

The Federal Magistrates Court was established by the *Federal Magistrates Act 1999*. It conducted its first sittings on 3 July 2000. The Court was established to provide a simpler and more accessible service to litigants and to ease the workload of both the Federal Court of Australia (Federal Court) and the Family Court of Australia (Family Court).

The Court is structured and resourced in a way unique in comparison to other federal courts and public sector agencies. At its inception, the Government decided to minimise the expenses associated with establishing a new court by using existing Federal Court and Family Court infrastructure and administrative support. As a result, the Court has no independent registries or court facilities of its own. The Court operates within a leveraged environment relying on the Federal Court and Family Court to provide registry services to litigants governed by Memoranda of Understanding (MoU). This unique shared resourcing arrangement underpins the Courts operating environment. In recognition of this arrangement, the Court's funding base has been closely linked with each of the superior courts. The application of the efficiency dividend has a negatively disproportionate impact on the Court as a result of this unique funding and resource arrangement.

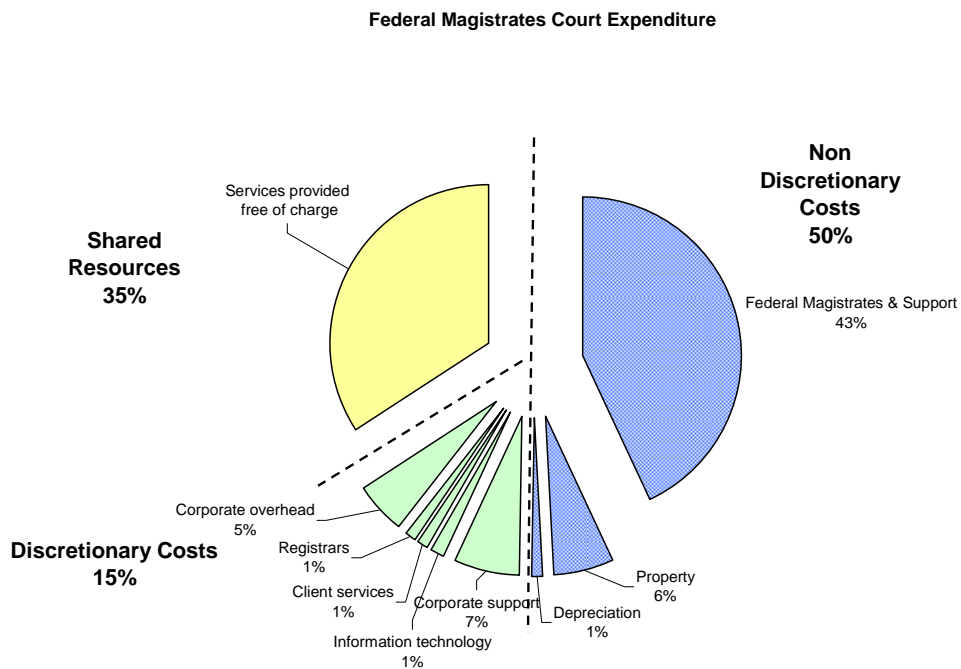
#### Financial Overview

At establishment, base funding for the Federal Magistrates Court was drawn from a transfer of appropriation from the Attorney-General's Department and from each of the superior federal courts. This funding provided remuneration for Federal Magistrates and minimal support costs, an approach that continues today.

One particular feature of the Court's unique funding position has been the accumulating shortfall across the Court's funding as a result of government decisions to replace retiring Federal Court and Family Court Judges with Federal Magistrates. In aggregate, over the past three years, this shortfall amounts to \$2.529m. In practical terms, when a Judge retires from the Federal Court or Family Court, the superior court transfers the share of its funding attributable to the direct costs of the retiring Judge. The Federal Magistrates Court uses those transferred funds to cover expenses for the newly appointment Federal Magistrate. Each time a Federal Magistrate is appointed to replace a retiring Judge the Court has had to absorb the shortfall between the direct cost to the superior court of a judge and the actual cost to this Court of an additional Federal Magistrate. The difference arises from a range of factors; including but not limited to the superannuation contributions that the Federal Magistrates Court pays for Federal Magistrates that is not payable in the superior courts because of Judges' entitlement to a non-contributory

pension paid by the Attorney-General's Department rather than the relevant superior court.

In 2007-08 the Court's estimated expenditure is \$76.619m. This can be represented in three components – non-discretionary costs, services provided free of charge and discretionary costs. The Court's non-discretionary costs for that year accounted for approximately 50% of its overall funding. Non-discretionary costs consist of remuneration for Federal Magistrates; circuit travel; provision of court reporting and transcripts; interpreters and reports from independent expert family consultants; judicial support; property costs and depreciation of assets. With 35% of the remaining resources being services provided free of charge from the Family Court, the Court's discretionary funds account for 15% of its overall resourcing.



Impact of the Efficiency Dividend

In the eight years since its establishment, the Court's annual appropriation has been reduced by \$1.184m as a result of the efficiency dividend. In 2008-09 the efficiency dividend (3.25%) will reduce the Court's base appropriation by a further \$1.044m. The application of the efficiency dividend impacts on the Court disproportionately as a result of the Court's funding arrangement.

In comparison to many other larger public sector agencies, the structure of the Court's funding arrangements limits its capacity to implement the efficiency dividend. As foreshadowed in the financial overview, non-discretionary expenditure consumes approximately 50% of the Court's total budget. Of the remaining 50%, 35% is provided

not in the form of money, but as services provided free of charge from the Family Court, over which the Court has no discretion. The result is the Court having to implement the efficiency dividend over the remaining 15% of appropriation that represents discretionary expenditure. As a consequence, the *real* impact of the efficiency dividend is increased. In simple terms, in 2008-09 the Court will need to reduce its expenditure by \$1.044m from a discretionary spending base of \$11.863m making the *real* impact of the efficiency dividend 8.8% rather than the 3.25% intended.

As discussed in the financial overview, the Court's financial position is further influenced by the shortfall that exists as a result of the appointment of Federal Magistrates to replace retiring Judges. This shortfall compounds the burden of the efficiency dividend upon the Court and further reduces opportunities for the Court to deliver ongoing productivity savings.

#### Measures to implement the efficiency dividend

To date the Court has managed to absorb the efficiency dividend without any adverse impact on service delivery. It is unlikely that it will be able to do so indefinitely. The Court has a limited capacity to reduce its expenditure. Unlike some other courts and public sector agencies that can look to reduce administration expenses such as travel, Court travel is a non-discretionary component of this Court's core function. The Court currently circuits to over 33 locations nationally offering services to litigants living in rural and regional Australia.

The Court is currently examining measures to absorb the impact of the efficiency dividend in 2008-09; however an efficiency dividend of 3.25% will be difficult for the Court to sustain under the current funding arrangement. Over the longer-term, the ongoing efficiency dividend will adversely impact on the Court's capacity to provide additional services commensurate with its increasing workload.

#### Conclusion

The Federal Magistrates Court is structured and resourced in a way unique compared to other federal courts and public sector agencies. The application of the efficiency dividend has a negatively disproportionate impact on the Court as a result of this unique funding and resource arrangement. The structure of the funding arrangements means the Court has limited control over its resourcing with 85% of the Court's budget being consumed by either non-discretionary expenditure or services provided free of charge from the Family Court. The result is the efficiency dividend being applied to the remaining 15% of the budget in a way that makes the *real* impact greater than the 3.25% intended by Government. The Court's limited capacity to implement the efficiency dividend is further exacerbated by its need to absorb the financial shortfall of the appointment of further Federal Magistrates. The historical funding arrangement is no longer sufficient to meet the growing needs of this Court and will limit the Court's capacity to implement the efficiency dividend over the longer-term.