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The Committee Secretary
JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT
P O Box 6021
Parliament House
Canberra
ACT 2600

Dear Secretary,

INQUIRY INTO THE EFFECTS OF THE ONGOING EFFICIENCY DIVIDEND ON SMALLER PUBLIC SECTOR AGENCIES

INTRODUCTION

The efficiency dividend, and the additional one-off 2% efficiency dividend for 2008-09, has had a major impact on the Federal Court of Australia particularly given the nature of the Court's work, its size and national presence in all states and territories, and the fixed nature of a large portion of the Court's costs.

The objectives of the Federal Court are to:

- Decide disputes according to law- promptly , courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the constitution;
- Provide an effective registry service to the community; and
- Manage the resources allotted by the Parliament efficiently.

Judges are primarily responsible for carrying out the objectives of the Court. They are assisted by Registry and administrative staff appointed by the Registrar of the Court.

BUDGET OVERVIEW

The Court's total appropriation for 2008-09 is \$77.478m. This is used to fund judges' remuneration and entitlements, judicial staff, registry including corporate services staff, administrative expenses and special purpose property operating costs. The annual appropriation is an adjusted figure which takes into account an increase from the previous financial year by way of a parameter adjustment and an offsetting decrease by way of an efficiency dividend. Total net adjustments on a percentage basis over the past few years are set out below and are significantly less than cost escalations faced by the Court in almost all areas of its operations.

2006-07	+0.85%
2007-08	+0.59%
2008-09	-1.15%
2009-10	-1.15%

For analysis purposes the Court's budget can be divided into fixed and variable costs.

COSTS OF A FIXED NATURE

Approximately 28% of the Courts costs in the 2008/09 budget relate to Judges and their direct staff. These costs are fixed in nature but are not quarantined from the impact of the efficiency dividend. Judges are appointed by the Australian Government for a tenure that is only ended by their resignation, death or retirement at the age of 70. The Court has no control over the tenure of judges nor can it reduce the number of judges after they have been appointed. While it would be possible for the government not to replace a judge, the Court would not expect to retain the budget for this judge. In addition the number of staff employed by a judge was set a number of years ago by agreement between the then Chief Justice of the Court and the Attorney General. Each judge has two staff, a legal associate and a personal assistant, who perform essential case management functions in respect of the judges workload in accordance with the individual docket system.

A further 22% of the Court's costs in the 2008/09 budget relate to purpose built buildings, owned by the Commonwealth, that contain specialised court related facilities including courtrooms and chambers. Under formal lease arrangements, as part of the Australian Government Property Ownership framework, the Court pays for all lease costs, rents and outgoings along with maintenance and life cycle costs. Despite the non commercial nature of these buildings, the current model dictates that costs are market based and typically escalate well above any indexation provided as part of the Court's appropriation. Lease negotiations are currently underway in relation to the Court's premises in various Commonwealth Law Court buildings, and it is likely that rents will possibly double in a number of locations.

The Court also incurs non cash costs such as depreciation of \$3.4m. These costs account for approximately 3% of the Court's total costs and are a non controllable item in that they relate to prior years capital expenditure. Again, however, they are also subject to the efficiency dividend.

Thus in total 53% of the Court's 2008/09 budgeted expenditure is of a 'fixed' nature and the Court's ability to reduce these costs is extremely limited. This means that the efficiency dividend can, in effect, only be applied to the remaining 47% of the Court's costs, effectively doubling the dividend that has to be applied to these costs.

COSTS OF A VARIABLE NATURE

The remainder of the Court's costs cover registry staff salaries, and various administrative expenses – many of which are also linked to the extent of judicial activities. Typically these include travel, court reporting costs, technology support expenses etc. It is evident that increases across these expense categories are well above any increase in appropriation received via the government's parameter adjustments methodology. Illustrative of this is the fact that wages have typically increased by approx 4% per annum; library and subscription costs have increased at between 8% and 10% each year; and many associated contracts eg transcript, are linked to various CPI indexes.

IMPACT OF THE EFFICIENCY DIVIDEND

The impact of a reduced appropriation, flowing from the efficiency dividend, and escalating costs is that the Court is now running at an operating loss for 2007-08, and is projecting a further loss situation in 2008-09. This has a flow-on effect whereby reserves are funding the operating deficit meaning that the ability of the Court to embark on capital replacement programs or new initiatives is also diminishing.

In past years the Court has been able to embark on several initiatives such as establishing a specialised research directorate, and developing innovative technology solutions such as an on-line document lodgement system. These initiatives have been funded internally from the Court's resources however many of these programs are under review and are being reduced to offset the Court's loss situation. A reduction in the number of front line registry staff is also likely in order for the Court to return to a break even budget situation.

Obtaining funding for the initiatives above is also extremely difficult due to the current rules limiting bids for additional funding through the New Policy Proposal process. Generally submissions need to be greater than \$5m and projects of the scale undertaken by the Court are typically funded from the Court's own reserves.

POTENTIAL TO OFFSET SECTION 31 RECEIPTS

The Court is very limited in the extent it can use its 'Section 31' agreement to secure non-appropriated receipts because of the nature of its activities. Most of the Court's Section 31 receipts are from other courts and tribunals that have in turn been affected by the efficiency dividend. In practice these reductions tend to be passed on to the relevant service provider such as the Court. Only relatively minor amounts, such as charges for the use of video conferencing services, can be recovered from other parties.

SUMMARY

The inability of the Court to apply the efficiency dividend to a majority of its costs indicates that the Court should have a lower efficiency dividend applied to it or alternatively the efficiency dividend should not be applied to that portion of its appropriation that is used to fund its fixed expenditure such as judicial remuneration, its purpose built property operating costs, and items such as depreciation.

The Court would appreciate the Committee taking note of the difficulties experienced by the application of the efficiency dividend, particularly the additional one-off 2% efficiency dividend.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Warwick Soden', with a long horizontal line extending to the right.

Warwick Soden
Registrar/Chief Executive