



Australian Government
Attorney-General's Department

Access to Justice Division

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11 December 2012

Ms Anna Dacre
Committee Secretary
House of Representatives Standing Committee on
Social Policy and Legal Affairs
Parliament House
CANBERRA ACT 2600

Dear Ms Dacre

Courts and Tribunals Legislation Amendment (Administration) Bill 2012 – submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs inquiry

I am writing to make a submission on behalf of the Attorney-General's Department to the House of Representatives Standing Committee on Social Policy and Legal Affairs (the Committee) inquiry into the Courts and Tribunals Legislation Amendment (Administration) Bill 2012 (the Bill).

Following the public hearing held by the Committee on Friday 30 November 2012, the Attorney-General's Department wishes to provide further information to the Committee in response to comments made at the hearing by Mr Richard Foster PSM, Chief Executive Officer of the Family Court of Australia and acting Chief Executive Officer of the Federal Magistrates Court.

Please find attached to this letter a submission addressing the issue of a Principal Registrar which was raised by Mr Foster at the hearing. This issue was raised in discussion at the hearing about Schedule 2 of the Bill, which contains proposed amendments to the *Family Law Act 1975* and the *Federal Magistrates Act 1999*.

Yours sincerely

Louise Glanville
First Assistant Secretary
Access to Justice Division

**Submission to House of Representatives Standing Committee on Social Policy and Legal Affairs
Inquiry into the Courts and Tribunals Legislation Amendment (Administration) Bill 2012**

1. The purpose of this submission is to provide further information about an issue raised at the Committee hearing on Friday 30 November 2012 by the Chief Executive Officer (CEO) of the Family Court and the acting CEO of the Federal Magistrates Court, Mr Richard Foster PSM.
2. Mr Foster said in the Committee hearing that the Federal Magistrates Court, including the Chief Federal Magistrate, considers that it should have a Principal Registrar, equivalent to that of the Family Court. Under Mr Foster's proposal, the Principal Registrar would be appointed by the CEO and employed under the *Public Service Act 1999*, and would be responsible to the Chief Federal Magistrate.
3. Mr Foster made these comments during the Committee's inquiry into Schedule 2 of the Bill, which amends provisions of the *Family Law Act 1975* and the *Federal Magistrates Act 1999* which, as they currently stand, are incompatible with the two courts being prescribed as a single agency for the purposes of the *Financial Management and Accountability Act 1997* with a single CEO.

Purpose of this Bill and timing

4. The Government's decision to formally recognise the current shared administrative arrangements of the Family Court and the Federal Magistrates Court is in response to the *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*, completed by Mr Stephen Skehill and released publicly by the Government in June 2012.
5. The Family Court and the Federal Magistrates Court will be prescribed as a single agency for the purposes of the *Financial Management and Accountability Act* and the *Public Service Act*. The amendments to the *Family Law Act* and the *Federal Magistrates Act* contained in the Bill are being progressed to formalise the existing administrative arrangements for the two courts. These measures will provide certainty to the courts about their administrative structure and allow them to achieve savings in the future.
6. It is important that these arrangements are not delayed, and commence at the beginning of the next financial year. The Government decided to progress this Bill purely to address the administrative structures of the Family Court and the Federal Magistrates Court.

Principal Registrar – current legislation

7. There are a number of different statutory models across the federal courts for the positions described as Registrars. The following paragraphs provide an overview of these models.

Family Court of Australia

8. Paragraph 38N(1)(a) of the *Family Law Act* provides for there to be a Principal Registrar of the Family Court. The Principal Registrar is appointed by the CEO of the Family Court and is employed under the *Public Service Act* and is subject only to the direction of the Chief Justice of the Family Court (per section 37B). The *Family Law Act* also provides for there to be Registrars and Deputy Registrars of the Court, who are responsible to the Principal Registrar as well as to the Chief Judge and any other authorised Judges.

9. The Judges of the Family Court may make Rules of Court delegating to the Registrars of the court (including the Principal Registrar) any powers of the court, except for certain specified orders (section 37A). For example, the powers that the Registrars and the Principal Registrar may exercise include:

- the power to dispense with the service of any process under the Family Law Act (paragraph 37A(1)(a))
- the power, in proceedings under the Family Law Act, to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of another person (paragraph 37A(1)(c))
- the power to make, in proceedings under this Act, an order the terms of which have been agreed upon by all the parties to the proceedings (paragraph 37A(1)(g))
- the power, in proceedings under this Act, to make an order adjourning the hearing of the proceedings (paragraph 37A(1)(h)), and
- the power under section 117 to make an order as to costs (paragraph 37A(1)(i)).

10. Primary responsibility for assisting the head of jurisdiction in managing the administrative affairs of the Family Court rests with the CEO (section 38B).

Federal Magistrates Court of Australia

11. The Federal Magistrates Act does not provide for there to be a Principal Registrar of the Federal Magistrates Court. However, sections 99 and 101 of the Act does provide for 'registrars', appointed by the CEO and employed under the Public Service Act.

12. Under section 102 of the Federal Magistrates Act, Registrars may exercise powers similar to those exercisable by the Principal Registrar of the Family Court, such as those set out in paragraph 5. Subsection 104(1) of the Act provides that registrars of the Federal Magistrates Court are not subject to the direction and control of any person or body.

13. As in the Family Court, primary responsibility for assisting the head of jurisdiction in managing the administrative affairs of the court rests with the CEO.

Federal Court of Australia

14. In the Federal Court of Australia, the Registrar is responsible for assisting the Chief Justice in managing the administrative affairs of the Federal Court (section 18B of the *Federal Court of Australia Act 1976*). The *Financial Management and Accountability Regulations 1997* provide that the Registrar of the Federal Court is also the CEO of the Federal Court for the purposes of the Financial Management and Accountability Act. The Registrar also has functions under subsection 35A(1) of the Act, which are similar to those exercised by the Registrars of the Family Court and the Federal Magistrates Court. The Federal Court of Australia Act provides for there to be Deputy Registrars and District Registrars, but there is no Principal Registrar position. Pursuant to subsection 35A(4), the Registrar, Deputy Registrars and District Registrars are not subject to the direction and control of any person or body in the exercise of powers under subsection 35A(1).

High Court of Australia

15. In the High Court of Australia, the Principal Registrar is also the Chief Executive Officer of the court, and is titled the Chief Executive and Principal Registrar (section 18 of the *High Court of Australia Act 1979*). The Chief Executive and Principal Registrar is responsible for assisting the Justices in the administration of the affairs of the High Court, and may have other functions conferred on him or her by the High Court of Australia Act or assigned to him or her by the Court. The High Court also has a Senior Registrar and deputy registrars, who are appointed by the Chief Executive and Principal Registrar. Subsection 19(7) provides that the Chief Executive and Principal Registrar must, in the performance of functions or exercise of powers, comply with any directions given to him or her by the Court.

The Department's views

16. The Department's view is that consideration of amendments to this Bill to create a Principal Registrar position for the Federal Magistrates Court is not relevant to the objective or purpose of this Bill.

17. The Principal Registrar issue is completely separate to the administrative reforms proposed in this Bill. The purpose of this Bill is to formalise arrangements that have been in place for some time, and will achieve further efficiencies for the court. The current Registrar arrangements for the Federal Magistrates Court have been in place since the Court commenced.

18. In considering whether it is appropriate to change the current legislative arrangements pertaining to the Federal Magistrates Court, it needs to be borne in mind that there is no consistent approach to the role of the Principal Registrar or Registrars of the federal courts, nor a consistent approach to how a court directs or controls the exercise of powers and functions by registrars. In terms of how a court directs and controls its registrars, the Federal Magistrates Court's current structure aligns most closely with that of the Federal Court. The Principal Registrar model for the Family Court is only one possible structure that could be adopted for the Federal Magistrates Court. The existing statutory framework for registrars in all the federal courts has been in place for a significant period of time. Any proposed changes to this framework for one of the courts would need to be considered in the broader federal courts context.

19. Given the variety of models used in the federal courts for positions described as Registrars, the Government would need to be persuaded that a case for change has been well made out and, if that proves to be the case, then give careful consideration to the most appropriate model for the Federal Magistrates Court. For example, consideration would need to be given to how the role of the Principal Registrar would be defined, including what powers and functions the Principal Registrar would exercise and under whose control the Principal Registrar would act. Any proposed changes to existing structures would need to be made in consultation with the courts, and would most appropriately be the subject of another Bill.

Conclusion

20. In summary, the Department considers that the issue of a Principal Registrar position for the Federal Magistrates Court should not be progressed in this Bill for the following reasons:

- a. the Bill is being progressed to clarify and formalise the administrative arrangements of the Family Court and the Federal Magistrates Court, and does not touch on judicial or quasi-judicial functions of the courts
- b. it is important that the amendments contained in this Bill are implemented as soon as possible to allow the commencement of the new arrangements at the beginning of the 2013-14 financial year, to ensure certainty for the courts' administration and to allow future savings, and
- c. consideration of a Principal Registrar position for the Federal Magistrates Court would involve a number of complexities and would require significant consultation with the courts, and any proposed changes to arrangements would most appropriate be the subject matter of a separate Bill.

Attorney-General's Department contacts

21. The Department would be happy to provide further information to the Committee if required.