

Audit Report No. 46, 2003-2004

Client Service in the Family Court of Australia and the Federal Magistrates Court

Introduction

Background

- 5.1 For many couples undergoing a divorce, negotiating the complexity of Australia's Family Law environment is a daunting and emotional task. Divorce applications are handled by both the Family Court of Australia (FCoA) and the Federal Magistrates Court (FMC) where workloads are heavy, especially given the highly sensitive and emotive nature of cases. The Australian Bureau of Statistics (ABS) reported that in 2003, 53,100 divorces were granted nationally. This was the third-highest number in the last 20 years.¹

1 2001 had the highest number of divorces in 20 years (55,300), followed by 2002 (54,000). This represents a 22 per cent increase over the past 20 years. Australian Bureau of Statistics (2003) Feature Article: *Marriages and Divorces, Australia 2003*, available at <http://www.abs.gov.au/Ausstats/abs@.nsf/0/7F31BF47DCE50135CA256FCE000007E6?Open>, accessed June 2005.

- 5.2 The Family Court of Australia was established in 1976 and aims to resolve disputes as a result of family separation. The court is responsible for the administration of a number of pieces of legislation, including the *Family Law Act 1975* and the *Child Support (Assessment) Act 1989*.²
- 5.3 The Federal Magistrates Court was established by the *Federal Magistrates Act 1999* and heard its first cases in July 2000. The FMC's jurisdiction includes family law and child support, administrative law, bankruptcy, unlawful discrimination, consumer protection law, privacy law, migration and copyright. The court shares those jurisdictions with the Family Court of Australia and the Federal Court of Australia.
- 5.4 The objective of the Federal Magistrates Court is to provide a simpler and more accessible alternative to litigation in the superior courts and to relieve the workload of those courts. Over half of all migration matters and more than 40 per cent of family law children's and property applications are now completed in the FMC. Approximately 80 per cent of the court's workload is in the area of family law.³

The audit

- 5.5 The ANAO conducted an audit on the client service arrangements of both the FCoA and FMC in November 2003 and the report was tabled in Parliament in May 2004.
- 5.6 The audit concentrated on the effectiveness of the client service arrangements for their clients, the effectiveness of coordination between the courts, and the courts' administration of Primary Dispute Resolution (PDR) services.

Audit findings

- 5.7 The ANAO found that both courts were working towards implementing many promising initiatives to better serve their clients.
- 5.8 In relation to client service, the ANAO found that there were issues of inconsistency in service to some of the courts' clients, especially those

2 A full list of the legislation administered by the Family Court of Australia is available at its internet site:
<http://www.familycourt.gov.au/presence/connect/www/home/judgments/legislation/>; accessed August 2005.

3 Federal Magistrates' Court, internet site:
<http://www.fmc.gov.au/html/introduction.html>, accessed August 2005.

who are unable to attend a registry in person. Some of these concerns are being alleviated by way of building further partnerships with stakeholders and recognising and meeting challenges in relation to management of cases and cultural diversity. The ANAO also found that improvement could be made in the area of receiving feedback from clients to further improve service delivery.

- 5.9 The ANAO recognised that although the courts are separate, much of their work and service provision are similar owing to the sharing of jurisdiction within family law. The ANAO found that integration of core functions could help ease the administrative workload on both courts, while reducing the confusion felt by clients in relation to which court was being dealt with. The ANAO felt that initiatives which had proved successful at a local level should be implemented registry-wide.
- 5.10 The ANAO found inconsistencies with PDR services between the court registries and Community Based Organisations (CBOs) who administer them contractually. Lack of qualitative data was also found to hinder a complete evaluation of outsourced PDR services. PDR services should improve with new approaches to quality assurance yet to be implemented by the FCoA.

ANAO recommendations

- 5.11 The ANAO made eleven recommendations:

Table 5.1 ANAO recommendations, Audit Report no. 46, 2003-04.

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| 1. | <p>The ANAO recommends that, in order to improve the quality of service currently offered to clients, the FCoA and the FMC should actively seek to identify and better understand the needs of their various client groups, and implement a range of measures to address those needs.</p> <p>FCoA response: Agree. FMC response: Agree.</p> |
| 2. | <p>The ANAO recommends that, in order to improve complaints handling procedures, the FCoA should:</p> <ul style="list-style-type: none"> a) ensure that its complaints handling policy is implemented consistently across the registry network; b) collect information on the types of complaints received and their outcomes, analysing any trends, and regularly reporting on complaints activity to registry managers; and c) report on complaints activity to the FMC, where complaints raised and/or resolved within the registries involve FMC clients. <p>FCoA response: Agree. FMC response: Recommendation does not directly affect the FMC.</p> |
| 3. | <p>The ANAO recommends that the FCoA and the FMC enhance the effectiveness of</p> |

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- monitoring and reporting on client service, by: examining their business processes and case management models; developing data quality review systems and improved inter-court performance reporting on FCoA services to FMC clients; and regularly surveying clients on their satisfaction with court processes.
- FCoA response: Agree. FMC response: Agree.***
4. The ANAO recommends that, in order to continuously improve services offered to clients, the FCoA and FMC should have an integrated approach to:
- (a) remaining responsive to changes in technology by coordinating the development and implementation of electronic forms and filing technology, where appropriate;
 - (b) ensuring that the information offered to clients in the registries is relevant, up-to-date, and provides sufficient information regarding both courts to allow clients to make informed choices about their individual matters;
 - (c) developing and distributing information on the courtroom to those clients whose matters cannot be resolved, and providing regular courtroom familiarisation opportunities for these clients; and
 - (d) providing information to clients who have finished their business in the courts on the significance of the orders they have received, and their options for the future should they wish to seek further counselling, appeal, or if their circumstances change.
- FCoA response: Agree. FMC response: Agree in-principle.***
5. The ANAO recommends that both the FCoA and the FMC identify examples of better practice in coordination within court registries, and systematically apply these practices across all registries.
- FCoA response: Agree. FMC response: Agree in-principle.***
6. The ANAO recommends that, in order to facilitate planning and assess and monitor ongoing cost-effectiveness, the FCoA and the FMC jointly develop an agreed model for calculating the cost of providing services to their clients.
- FCoA response: Agree. FMC response: Agree.***
7. The ANAO recommends that, in order to better assist family law clients in making more informed filing decisions, the FCoA and the FMC jointly develop and publish family law information for clients.
- FCoA response: Agree. FMC response: Agree.***
8. The ANAO recommends that, in order to reduce confusion for clients and inefficiencies in court processes, the FCoA and the FMC investigate the possibilities for a common entry point into the family law system and the consequent distribution of workload to each court.
- FCoA response: Agree. FMC response: Agree in-principle.***
9. The ANAO recommends that, in order to facilitate ongoing assessment and evaluation of their PDR services, the FCoA and FMC regularly:
- a) obtain qualitative data on client satisfaction with their PDR services; and
 - b) evaluate this data in conjunction with quantitative data on settlement rates to identify better practice and areas for improvement.
- FCoA response: Agree. FMC response: Agree in-principle.***
10. The ANAO recommends that the FMC obtain performance information from CBOs, through regular monitoring and review activities, to provide itself and stakeholders alike with data on the quality of CBO PDR services, or to identify any deficiencies
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in PDR services.

FCoA response: No response. FMC response: Disagree.

11. The ANAO recommends that the FCoA and FMC conduct evaluations of their PDR services on a regular basis, in order to provide information that will allow the courts to continuously assess and improve their PDR services.

FCoA response: Agree. FMC response: Agree.

The Committee's review

- 5.12 On 4 April 2005, the Committee held a public hearing to review the progress made against the recommendations that came from the ANAO's audit. The public hearing was attended by representatives of:

- Family Court of Australia (FCoA); and
- Federal Magistrates Court (FMC).

- 5.13 The Committee took evidence on the following issues:

- Integration of the courts' processes, publications, forms and fees;
- Court registries;
- Delays in processing, especially for rural and regional clients;
- Family Relationship Centres;
- MOU between the courts;
- Implementation and role of the FMC;
- Services to clients with special needs, such as children and self-represented litigants; and
- Primary Dispute Resolution.

Client service

- 5.14 The provision of effective client service is paramount to the needs of service-based organisations such as the FCoA and FMC. Therefore the Committee examined whether the courts were utilising their client service capabilities effectively and efficiently, taking into account recommendations made by the ANAO. The ANAO found that there

were areas in which both courts could improve their service, particularly to those clients for whom accessing the courts' services required specific assistance.

Current client service arrangements

- 5.15 The FCoA and FMC have numerous arrangements for the provision of information to their clients. Some of the initiatives include access to court registries around Australia and publishing useful information sheets which are made available to potential litigants. The FCoA advised that it had undertaken a Client Satisfaction Survey to gauge levels of satisfaction of processes from its clients.⁴
- 5.16 The Committee was informed by the courts on their progress in implementing new initiatives and enhancing existing arrangements for the provision of information to clients. The Committee was particularly interested in clients who require specific assistance, such as self-represented litigants and children.

Registries

- 5.17 One of the core elements of the courts' client service are the 19 court registries located around Australia. There are 11 in metropolitan areas and a further eight in regional and rural areas. The aim of the registries is to assist clients in filing matters which are to appear before the courts or be referred to mediation.
- 5.18 Although the registries are managed by the FCoA, in theory they are all able to accept filings for the FMC (under the auspices of a MoU between the two courts). The Committee was told that there are some FCoA registries at which matters pertaining to the FMC cannot be lodged. The FMC informed the Committee that the reason for this was:

...because we do not have enough federal magistrates to do the work. But that is changing over time. When we started off, our initial complement was about 12. We now have 31 federal magistrates, but on average only about 19 of those federal magistrates do family law; the balance do general federal law work – migration and things like that.... We do not currently have a capacity to do family law in the Sydney CBD. We do not have any federal magistrates appointed

4 Family Court of Australia (FCoA), *CEO's Report on the Court's Recent Activities*, Exhibit No. 5, p 5.

there. But that is a matter we have made representations to the government about, and I understand the government is actively considering those representations.⁵

- 5.19 Both courts have recently begun staff consultation in response to calls for a combined registry system. The Committee viewed an information kit for staff which outlines the proposed project and intended timeframe. The kit also contains several information sheets along with staff discussion topics and a feedback sheet.⁶

Single point of entry to the family law system

- 5.20 To ease the complication for litigants, the FCoA has begun to explore the notion of a single point of entry to the legal system which would be applicable to any court under Commonwealth jurisdiction, including state courts. Called the *Commonwealth Courts Portal*, it will help reduce the confusion felt by clients entering the system.⁷
- 5.21 While this initiative will be beneficial nationally, one of the recommendations arising from the ANAO report was in relation to the courts finding a common entry point to the family law system.⁸ A number of other reports in recent years have also called for a single point of entry for family law clients.⁹
- 5.22 At the public hearing, the FCoA advised the Committee of the court's work in the area of service integration which advocated, '...one file, one form, one fee...'¹⁰ This integration would lead to working towards combined registries, where the majority of applications would be filed in the FMC initially.

Publications, forms and websites

- 5.23 One of the issues highlighted in the ANAO report was the lack of consistent information available to clients of both courts. At the time of the audit, both courts offered a wide range of publications
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5 Federal Magistrates Court (FMC), *Transcript of Evidence*, 4 April 2005, p. 5.

6 FCoA, *Combined Registry Project*, Exhibit no. 13.

7 FCoA, *CEO's Report on the Court's Recent Activities*, Exhibit no. 5, p. 23.

8 ANAO Audit Report No 46, 2003-2004, *Client Service in the Family Court of Australia and the Federal Magistrates Court*, Commonwealth of Australia, May 2004, p. 78.

9 House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells A Story: Inquiry into child custody arrangements in the event of a family separation*; Parliament of Australia; December 2003.

10 FCoA, *Transcript of Evidence*, 4 April 2005, p.1.

including booklets, pamphlets and information sheets. However, this information was court-specific making it difficult to compare the services and pricing structure between courts.

- 5.24 An example from these pamphlets is the cost of obtaining a divorce in each court. The audit report highlighted the cost differentiation between FCoA's 'Application for Divorce' pamphlet which cost \$574, while in the FMC a 'Dissolution of Marriage' only cost \$273. Applying for either of these will lead to the same result.¹¹
- 5.25 Both courts also currently maintain individual websites. This only serves to add further confusion to clients requiring information on the processes and structure of both courts.

Committee comment

- 5.26 The Committee agrees with the ANAO and other previous reports that the above problems with two points of entry to the family law system, differing forms and fees between the courts, and a lack of consistent information across courts' publications require significant change.
- 5.27 The Committee notes that in May 2005 the Government announced a range of changes to the family law system, including a proposed Combined Registry for family law matters. Under this plan, family law clients will lodge one form, initially at the FMC, and there will be one fee and one file, even if matters are transferred to the FCoA for resolution.¹² Legislation has also made other changes, such as simplifying language – the term 'divorce' is now used across both courts, rather than 'dissolution of marriage' as was previously used in the FMC.
- 5.28 In August 2005 the House of Representatives Standing Committee on Legal and Constitutional Affairs examined the Government's exposure draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005. This Bill includes new counselling and mediation services prior to the courts' intervention in child custody matters (see below for further information on Family Relationship Centres).

11 ANAO Audit Report No 46, 2003-2004, p. 74.

12 The Hon. Phillip Ruddock MP, Attorney-General, Media Release 25 May 2005: *Easier, Quicker, Simpler: a Clearer Pathway in Family Law*; available at: http://www.ag.gov.au/agd/WWW/MinisterRuddockHome.nsf/Page/Media_Releases_2005_Second_Quarter_Easier_Quicker_Simpler_-_A_clearer_pathway_in_family_law_-_0992005, accessed August 2005.

- 5.29 The Legal and Constitutional Affairs Committee largely endorsed the Bill, stating that it implemented the key family law reforms announced by the Government in May 2005. The Committee recommended a number of changes to the legislation, including some changes to the operations and evaluation of the Family Relationship Centres.¹³

Clients requiring special assistance

- 5.30 One of the major factors identified by the ANAO and reinforced during the Committee's public hearing was the need to identify and cater for the requirements of the courts' clients. The Committee heard that there were many groups within the court's client base who require special assistance from the court. The Committee heard that many initiatives had been progressed in this area since the release of the audit report.

Rural and regional clients

- 5.31 One of the largest groups of clients served by the courts are those living in rural and regional areas. The ANAO outlined several areas in which courts could improve their service to this group of clients.
- 5.32 The ANAO's report was critical of delays by the FCoA in processing applications in the Lismore registry.¹⁴ However, the FCoA argued that:

This is one thing that we took issue with the ANAO over, because they were critical of our service in Lismore for not processing some divorce applications, if my memory serves me correctly. We were saying that it is about priorities and that there was not going to be a circuit for hearing those matters so there was not any great urgency to process them.¹⁵

13 House of Representatives Standing Committee on Legal and Constitutional Affairs, *Report on the Exposure Draft of the Family Law Amendment (Shared Parental Responsibility) Bill 2005*; at: <http://www.aph.gov.au/house/committee/laca/familylaw/report.htm>, accessed September 2005.

14 ANAO Audit Report No 46, 2003-2004, p. 41.

15 FCoA, *Transcript of Evidence*, 4 April 2005, p. 12.

- 5.33 Another concern raised by the ANAO was the inequality of telephone access faced by clients living in rural and regional areas. The report stated that:

Even contacting the registries by telephone to make enquiries can be a challenge for rural and regional clients, as they must pay long distance telephone charges to contact the courts, as the registries do not have toll-free numbers. Telephone waiting times can also be lengthy, with some clients reporting being kept on hold for up to thirty minutes at a time.¹⁶

- 5.34 The FCoA advised the Committee of its intention to set up a “1300” number to assist these clients so that their level of telephone access mirrors that of their metropolitan counterparts.¹⁷ The Committee was pleased to hear of this positive step in reducing the financial burden and improving access to the court for rural and regional clients. However, at October 2005 it appears that this initiative is yet to be implemented.¹⁸

Recommendation 10

- 5.35 **The Committee recommends that as a matter of urgency, the Family Court of Australia introduce toll-free phone numbers for each of its registries.**

Indigenous clients

- 5.36 The FCoA’s indigenous clientele is spread throughout Australia in a variety of metropolitan, regional and remote areas. In order to facilitate indigenous people’s involvement with the court, the FCoA has employed several Indigenous Family Consultants (IFCs) who are based in Cairns, Alice Springs and Darwin. Their role is to assist indigenous families in dealing with the FCoA in the Northern Territory and North Queensland. Each IFC is also assigned to assist particular registries with the needs of local indigenous clients.

16 ANAO Audit Report No 46, 2003-2004, p. 38.

17 FCoA, *Transcript of Evidence*, 4 April 2005, p. 12.

18 Telephone contact numbers for individual registries are advertised on the FCoA’s internet site. At October 2005, these are not toll-free numbers (with the exception of the Townsville and Darwin registries, which list a 1800 number as well as a regular telephone number).

5.37 At the public hearing the Committee heard favourable remarks in relation to the response by the community to the IFCs. The FCoA commented:

We are convinced that, when people are able to deal with an Indigenous worker who supports them and assists them in their dealings with the court, certainly people do come to the court when needed.¹⁹

5.38 The ANAO noted that there have been varying degrees of success in establishing links with local indigenous communities. The Committee shares the ANAO's concern that staff at the FCoA registries had not received recent training in dealing with indigenous clients.²⁰ The ANAO was also concerned with the lack of information directed specifically at indigenous clients available at registries. FCoA informed the Committee that they now have a system in place whereby '...the managers and team in each registry are required to set up links with local indigenous communities and agencies'.²¹

5.39 On a related matter, the Committee recently tabled a report titled *Access of Indigenous Australians to Law and Justice Services*.²² The Committee anticipates that the report's recommendations will assist in improving access to legal services by indigenous Australians.

Culturally and linguistically diverse clients

5.40 As a result of a multicultural society, organisations must be able to cater to clients from different cultural and linguistic backgrounds. In 1999, the FCoA initiated a review of the services provided by the court to clients who are culturally and linguistically diverse (CALD). Results of the review found that further work could be done by the court to improve the experience of these clients.²³ Since this review, the FCoA has implemented a range of initiatives to improve services to these clients.

5.41 The most pertinent of these initiatives is the FCoA's 2004-2006 Cultural Diversity Plan.²⁴ The Plan's purpose is to '...provide a

19 FCoA, *Transcript of Evidence*, 4 April 2005, p. 17.

20 ANAO, *Audit Report No 46, 2003-2004*, p. 42.

21 FCoA, *Transcript of Evidence*, 4 April 2005, p. 17.

22 JCPAA, *Report 403: Access of Indigenous Australians to Law and Justice Services*, Parliament of Australia, June 2005.

23 ANAO, *Audit Report No 46, 2003-2004*, p. 42.

24 FCoA, *National Cultural Diversity Plan 2004-2006*, Exhibit no. 6, p. 1.

framework for a comprehensive approach by the Court to meeting the needs of its diverse client groups'.²⁵ Key elements of the plan include:

- adopting a policy of providing a welcoming and non-threatening environment for clients;
- review of the information and communication strategies for CALD clients;
- inclusion of quality standards on future tenders for court interpreter services;
- develop cross-cultural training for staff;
- review all publications and information sources to ensure their relevance to CALD clients including the translation of these materials;
- ensuring that new audio-visual material is culturally appropriate;
- implement data collection procedures to keep the court informed on its CALD clientele and seek feedback on progress from CALD clients; and
- develop Local Action Plans at registry level to enhance partnerships with local communities.²⁶

Self-represented litigants (SRLs)

5.42 Another prominent group was that of Self Represented Litigants (SRLs). The FCoA told the Committee that nearly 40 percent of litigants were self-represented at some stage of their dealings with the court.²⁷

5.43 SRLs are those litigants who choose to navigate the complexity of the family law system without obtaining legal representation. These clients come from diverse backgrounds and have to consider their future financial and emotional security. In many cases the welfare of children is also at stake.

5.44 The FMC detailed a two-step evaluation undertaken by the court of the services provided to SRLs:

25 FCoA, *National Cultural Diversity Plan 2004-2006*, Exhibit no. 6, p. 1.

26 FCoA, *National Cultural Diversity Plan 2004-2006*, Exhibit no. 6, p. 1.

27 FCoA, *Transcript of Evidence*, 4 April 2005, p. 9.

During the first phase, three independent consultants were engaged to pose as self-represented litigants in the court and provide feedback about their experience. This was a bit like the mystery shopper that some companies use. In effect, they were asked to step into the shoes of a self-represented litigant. Each was given a scenario that basically involved making telephone inquiries, browsing the web site, obtaining information about primary dispute resolution, identifying documents required for filing, completing an application or request for information at the registry counter, and attending and observing a duty list in the court. During the second phase, 70 self-represented litigants were surveyed. The survey covered topics such as contact with the court, primary dispute resolution, preparing documents, the court hearing and their overall experience with the court.²⁸

- 5.45 The 12 recommendations from the evaluation focussed on 'public information, data recording, the court's web site, self-help kits, forms, signage, training for the judiciary and staff, and ongoing monitoring and research.'²⁹ The FMC told the Committee:

Things that we have progressed in the short term include an increase in the number of brochures and fact sheets – these have been developed in a plain English, less legalistic format – and an increase in the amount of information on our web site targeted at self-represented litigants. With the assistance of the Family Court we have obtained more information about brochures and fact sheets that need to be translated, and we are just about to get those translated. We are also reviewing signage in conjunction with the Family Court.³⁰

- 5.46 The FCoA have also developed initiatives to assist their SRL clients. Mr Richard Foster told the Committee that initiatives being pursued include an electronic learning package for staff and a joint SRL management plan with the FMC. The FCoA are also considering a research project in conjunction with the Australian Institute of Family

28 FMC, *Transcript of Evidence*, 4 April 2005, p. 9.

29 FMC, *Transcript of Evidence*, 4 April 2005, p. 9.

30 FMC, *Transcript of Evidence*, 4 April 2005, p. 9.

Studies into the characteristics of serial litigants (repeat litigants) who are becoming 'an increasing problem in many jurisdictions'.³¹

Children

- 5.47 The rights and needs of children involved in family separations are another aspect which both courts carefully consider. The Committee heard about initiatives to aid the courts' work with children.
- 5.48 In the *CEO's Report on the Courts' Recent Activities*³², several programs involving the management of cases involving children were outlined. One of the initiatives, *Magellan*, involves management of cases relating to serious child abuse. The system has currently been implemented across all registries except those in NSW, due to reservations expressed by the Department of Community Services. The Committee was told:

I think there is a willingness from both parties for Magellan to be implemented in New South Wales, but I must admit that I am not entirely certain what the department's concerns are. There have been no real concerns expressed by any other department of the various states and Magellan has been successful everywhere. To be fair, the Department of Community Services in New South Wales is keen to implement Magellan as soon as possible. It is the biggest state and it is not happening in New South Wales.³³

- 5.49 Another initiative by the FCoA is the *Children's Cases Program* (CCP). The CCP is currently being trialled in several registries and involves a less adversarial approach with a judicial officer determining which issues are in dispute, and what evidence is used in support of those issues. This then allows for parents (through the family separation process) to gain a clearer understanding of their future with their children, rather than focus on past issues.

Other client groups

- 5.50 Other groups which have been considered by the FCoA include service provision to men and also those with mental health issues.

31 FCoA, *Transcript of Evidence*, 4 April 2005, p. 10.

32 FCoA, *CEO's Report on the Court's Recent Activities*, Exhibit no. 5, p. 8.

33 FCoA, *Transcript of Evidence*, 4 April 2005, p. 20.

- 5.51 In terms of the courts relations with mens' groups, the FCoA informed the Committee of preliminary research currently being conducted to gauge the experience of male clients. Both courts have also run a staff training program in association with Crisis Support Services and Mensline, which was deemed highly successful.³⁴
- 5.52 The FCoA has also initiated a pilot project on mental health with the assistance of funding received from the Department of Health and Ageing. The FCoA told the Committee:

...The original intent was to try and identify whether there was any causal link between the court and its processes, and male suicide. But it is called the mental health project, so there are much wider implications for staff. Part of the project will be providing some training for staff to perhaps recognise when people may have a mental health problem, and providing the staff with information about where they might be referred... We are initially going to set up a pilot project in Adelaide and Darwin. We do not have the resources and the skills to deal with it. That is why we have been partnering with the Department of Health and Ageing. I guess at the conclusion of the pilot there will be some evaluation and decisions made about what happens next.³⁵

Committee comment

- 5.53 The Committee would like to stay informed of progress in relation to the implementation of a toll-free telephone number, and also of the progress with various projects aimed at helping certain groups of the courts clientele, especially the implementation of the *Magellan* project in NSW.

34 FCoA, *Transcript of Evidence*, 4 April 2005, p. 20.

35 FCOA, *Transcript of Evidence*, 4 April 2005, p. 16.

Recommendation 11

- 5.54 **The Committee recommends that both the Family Court of Australia and the Federal Magistrates Court:**
- **investigate best practice initiatives in client service which have worked successfully in individual court registries and implement these across all registries;**
 - **investigate the appointment of Federal Magistrates specialising in family law in the Sydney Central Business District in order to alleviate work pressures;**
 - **conduct more frequent surveys of client satisfaction to further enhance processes and levels of service;**
 - **investigate methods of further assisting clients who are in positions of disadvantage in their dealings with the courts; and**
 - **progress the initiative to identify and support clients with mental illness.**

Coordination between the courts

- 5.55 The ANAO audit highlighted problems in coordination between the two courts. The ANAO outlined several key areas where coordination between the courts would enable clients to have a greater understanding of the objectives of each court. At the public hearing both courts advised the Committee of detailed initiatives that would enable this to occur.
- 5.56 Chief among these was the consideration being given to a single point of entry to the family law system, a more streamlined approach to administrative matters and joint information dissemination services. Recently, both courts agreed to an updated Memorandum of Understanding to formalise the processes being implemented, especially in regards to resource allocation and service provision by the FCoA to the FMC.

A new approach to client service in family law

5.57 As already highlighted, one of the major concerns expressed by clients of either court was information on the courts and the choice of court in which to file their matter. Even though litigants may choose to file their matter in either court, as a typical benchmark, the establishment of the FMC was to:

... provide a faster, simpler and less expensive forum for the resolution of less complex disputes. Typically, less complex disputes would not involve allegations of serious child abuse or domestic violence, or property in dispute worth more than \$700 000.³⁶

Collaborated information dissemination

5.58 As outlined previously, the ANAO found it difficult to reconcile the separate information provided by the individual courts for the benefit of their clients. Both courts outlined to the Committee the extensive work that has been undertaken to streamline information on the courts and their respective processes.

5.59 The FCoA informed the Committee that it had reviewed all of its publications:

That was something that the ANAO commented on. We reviewed every publication, every brochure and every document that we had to ensure as far as is possible that where we can put out a joint publication we do. We have been working very closely with the FMC and their communications area in that regard.... We have also reviewed every form letter that we use – firstly, to reduce the number of them and, secondly, to ensure that there is some consistency with the FMC in relation to form letters. We have also made our intranet available to the FMC...³⁷

5.60 The FCoA also stated that the courts were working to develop a joint family law website to further reduce confusion, especially over the court process. A major emphasis of the new website would be on self-represented litigants who form the majority of website users.³⁸

36 ANAO Audit Report No 46, 2003-2004, p. 17.

37 FCoA, *Transcript of Evidence*, 4 April 2005, p. 4.

38 FCoA, *Transcript of Evidence*, 4 April 2005, p. 4.

Recommendation 12

- 5.61 **The Committee recommends that the Family Court of Australia and the Federal Magistrates Court continue to work towards minimising duplication in areas such as client processing, information available to the public via publications, websites and the like, and duplication of administration across the courts.**

Funding / resource allocation

- 5.62 The ANAO noted the differences in funding and resources between the two courts. The FCoA informed the Committee that at the time of the audit report:

...we provide a number of services free of charge to the Federal Magistrates Court, which are in the budget. I think currently we provide \$12.5 million of services to the FMC free of charge.³⁹

- 5.63 The FMC added:

...the Family Court budget ... was around \$120 million and ours is around \$15.7 million or thereabouts. At the time this report was done we had about 82 staff, including magistrates, and I think the Family Court had just under 700 staff.⁴⁰

Memorandum of understanding

- 5.64 The disproportionate size of the courts and their budgets lead to the new Memorandum of Understanding (MoU) between the Courts. Key elements of the MoU include management of cases in the FMC and provision of services by the FCoA to the FMC.⁴¹
- 5.65 The new shared services agreement will be administered by '...a board comprising the Chief Justice, the Chief Federal Magistrate and the two CEO's' which came into force on 1 July 2004.⁴²

39 FCoA, *Transcript of Evidence*, 4 April 2005, p. 5.

40 FMC, *Transcript of Evidence*, 4 April 2005, p. 6.

41 FCoA, *Memorandum of Understanding between the Family Court of Australia and the Federal Magistrates Court for the Provision of Services*, Exhibit no. 11, p. 6.

42 FCoA, *Transcript of Evidence*, 4 April 2005, p. 6.

Service provisions by the FCoA to the FMC

5.66 A significant part of the MoU is directed at outlining the services that the FCoA will provide to the FMC.⁴³ The main services which will be provided are:

- registry services, including filing services;
- mediation services, provided by lawyers or FCoA mediators and mediation reporting services;
- litigation support, including FCoA Deputy Registrars to hear divorce matters in support of the FMC;
- provision of all Information Technology and related support services;
- knowledge management services;
- physical and personnel security services; and
- accommodation services, including chambers, courtrooms and office services.⁴⁴

5.67 A section of the MoU also outlines the obligations of the FMC under the agreement. Key elements of the FMC's responsibility include the provision of training for FCoA staff on the requirements of the FMC and the publication of information for relevant stakeholders.

Committee comment

5.68 The Committee is pleased to note the working relationship between the two courts given the difference in resource allocation and budgetary differences. The Committee strongly advocates the use of MoUs. The Committee considers that the MoUs that have been established between FCoA and the FMC play an important role in ensuring that both courts are operating well together.

43 FCoA, *Memorandum of Understanding between the Family Court of Australia and the Federal Magistrates Court for the Provision of Services*, Exhibit no. 11, p. 14-33.

44 FCoA, *Memorandum of Understanding between the Family Court of Australia and the Federal Magistrates Court for the Provision of Services*, Exhibit no. 11, pp 14-33.

Primary Dispute Resolution

- 5.69 The major focus of Primary Dispute Resolution (PDR) is to assist litigants to resolve disputes without judicial intervention. The FCoA provides PDR services for its clients through a combination of court mediators, Deputy Registrars with expertise in property matters and outsourced Community Based Organisations (CBOs). The FMC's PDR services are provided by the FCoA and CBOs.
- 5.70 The MoU between the courts includes provisions for mediation and conciliation services through lawyers (FCoA Deputy Registrars also acting as FMC Registrars) and court mediators. FCoA Deputy Registrars are also able to make orders and may direct unresolved issues back to the court. Court mediators are able to resolve situations between parties or if matters are unresolved, may provide written advice to the Federal Magistrate.⁴⁵

Outsourced services

- 5.71 As noted above, both courts are able to outsource their mediation services to Community Based Organisations (CBOs). The ANAO report highlighted the fact that FMC settlement rates for mediation (relating to children) or conciliation (relating to financial matters) conducted by CBOs are relatively low and do not meet the targets set in each agency's Portfolio Budget Statements (PBS). The FCoA aims to have 75 per cent of referred matters resolved through PDR and the FMC aims to have 60 per cent of referred matters resolved.
- 5.72 Only 20.8 per cent of mediation and 42.7 per cent of conciliation matters were fully settled in the 2002-03 year. A further 20.4 per cent of mediation and 6.6 per cent of conciliation matters were partially settled. A large proportion of mediation and conciliation cases (46.5 per cent and 39.4 per cent respectively), were not settled at all. The FCoA's rate of settlement aggregated across registries was 69 per cent, also falling short of the prescribed PBS target. However the majority of cases were settled by court mediators.
- 5.73 The Committee was told that when the FMC was established, the court contracted 35 CBOs to provide mediation services. These organisations were required to adhere to the '...quality framework and approval requirements established by the Department of Family

45 FCoA, *Memorandum of Understanding between the Family Court of Australia and the Federal Magistrates Court for the Provision of Services*, Exhibit no. 11, p. 20-24.

and Community Services under their Family Relationships Services Program'.⁴⁶ Due to the nature of the program, the FMC '...considered that it was reasonable to rely on the requirements of that program'.⁴⁷

Recommendation 13

5.74 **The Committee recommends that the Federal Magistrates Court:**

- **seeks to gain further performance information from Community Based Organisations, in order to assess their effectiveness in dispute resolution and their adherence to the government's Family Relationships Services guidelines ;**
- **undertakes further evaluation of the settlement outcomes from outsourced Primary Dispute Resolution providers; and**
- **investigates client satisfaction with Primary Dispute Resolution services provided by Community Based Organisations to understand why rates of settlement are low and how they could be increased to reach targets set in Portfolio Budget Statements.**

Family Relationship Centres

5.75 In 2003, a report tabled by the House of Representatives Standing Committee on Family and Community Affairs recommended significant changes to the family law system. One of the recommendations involved the formation of a single entry point of entry for families to resolve shared parenting issues.⁴⁸

5.76 In the 2005-06 Federal Budget, the Government announced funding of \$199 million over four years to fund 65 new *Family Relationship Centres* Australia-wide. These Centres aim to help couples facing separation resolve issues relating to child custody in a less adversarial setting.

⁴⁶ FMC, *Transcript of Evidence*, 4 April 2005, p. 21.

⁴⁷ FMC, *Transcript of Evidence*, 4 April 2005, p. 21.

⁴⁸ House of Representatives Standing Committee on Family and Community Affairs, *Every Picture Tells A Story: Report on the inquiry into child custody arrangements in the event of family separation*, Parliament of Australia, December 2003, paragraph 4.156.

5.77 The FCoA expressed its views regarding the new Centres and its likely level of involvement with them. The FCoA told the Committee that it is considering the ways in which its services will best complement the new Centres. As the FCoA may in future require that litigants have a certificate of attendance from a Centre prior to further judicial determination, it proposes:

...that we not continue to provide the privileged services that we currently do – that is, the confidential services to clients. We think that the family relationship centres will in fact take over what we have described in the past as our resolution phase in the Family Court...⁴⁹

Recommendation 14

5.78 **The Committee recommends that the Family Court of Australia and the Federal Magistrates Court:**

- **report to the Committee by June 2006 on progress of both courts' evaluations of their outsourced PDR services and whether PBS targets have been met; and**
- **provides the Committee with feedback in regards to both courts' developing relationship with the new Family Relationship Centres.**

Conclusion

5.79 The Committee welcomes the substantial changes to family law introduced since the ANAO completed its audit. The Committee believes that after a settling-in period, it would be appropriate for the ANAO to conduct a follow-up audit on client service in the two courts, to ensure that the changes to family law in Australia have brought about significant improvements for clients.

49 FCoA, *Transcript of Evidence*, 4 April 2005, p. 22.