



Submission No: 34

FAMILY COURT OF WESTERN AUSTRALIA

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Mr David Monk
Joint Committee of Public Accounts and Audit
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Mr Monk

INQUIRY INTO THE EFFECT OF THE EFFICIENCY DIVIDEND ON SMALL AGENCIES

Thank you for the opportunity to make a submission relating to the impact of the efficiency dividend on the Family Court of Western Australia (FCWA).

Family Law services in Western Australia are currently provided through the FCWA, which is a court administered by the Western Australian Government. In all other States, this function rests with the Commonwealth Government with these services being delivered through the Family Court of Australia and the Federal Magistrates Court. The State-Federal responsibilities in relation to the FCWA are governed by an agreement signed in 1976 by the then Prime Minister and Western Australian Premier.

The funding for the FCWA is principally sourced through a grant/administered appropriation through the Commonwealth Attorney-General's Department, which is provided annually to the West Australian Government for the cost of running the FCWA. While the FCWA is part of the WA Department of the Attorney General (DotAG), funding allocated to the FCWA is not currently used for any other purpose that to cover the direct running costs of the FCWA. The 1976 agreement prescribes that the funding provided by the Commonwealth may only be used towards Family Law activities.

In this context, the FCWA operates as a small organisation and is currently experiencing a significant funding shortfall. A summary of revenue and expenditure for the FCWA during 2007-08 is as follows:

		\$'000
Cash Balance at the 1st July 2007		-242
Funding sources	\$'000	
Commonwealth Grant	13,257	
Retained revenue (predominately divorce fees)	2,260	
State Cash Funding (for State Functions)	168	
Total	15,685	
Expenditure	\$'000	
Salaries, Superannuation, Fringe Benefits Tax, Motor Vehicles	10,678	
Building Rent	2,125	
Property operating costs and life cycle expenses	1,577	
Travel (largely for regional court sittings)	220	
Other items	1,688	
Total	16,868	
Subtotal - Operating Result		-1,183
* Receipt funds from Trust Account closure		1,306
Cash Balance as at 30 June 2008		-119

* The FCWA closed its building trust account in 2007-08. The purpose of the account was to provide funding for building lifecycle works, however due to the shortfall in the operational budget in 2007-08 it was necessary to close the account and utilise these funds for to reduce the operational cash shortfall.

The imposition of an efficiency dividend for the FCWA would appear inconsistent with the 1976 Agreement which states at clauses 9 and 14;

“ 9. The State shall whenever requested by the Commonwealth prepare and submit to the Commonwealth in such form and for such period or periods as the Commonwealth may require and by such date or dates as the Commonwealth may from time to time specify estimates of expenditure. The said estimates shall be revised by the State

- (i) whenever the State is so requested and in accordance with the timetable for so doing set by the Commonwealth;*

- (ii) *whenever the State anticipates increases in expenditure on any items in respect of which estimates have already been submitted to the Commonwealth.*

The State shall provide such further information, including information regarding commitments, as may reasonably be required by the Commonwealth.”

and

“14 If during the period for which an advance has been made, the State, for reasons beyond its control, necessarily expends moneys on matters in respect of which the advance is made in excess of the sums agreed to be expended on those matters, the state shall notify the Commonwealth accordingly and the Commonwealth shall, at the expiration of the period for which the advance was made, pay the State so much of the moneys so expended by the State as the Commonwealth is satisfied were necessarily expended. The moneys paid to the State by the Commonwealth pursuant to this clause shall not affect the amounts agreed to be paid by way of future advances”

These clauses clearly provide for the Commonwealth to fund Family Law Services in WA and to reimburse the state for any additional expenditure incurred. There is no mention of an efficiency dividend in this agreement.

The following information is submitted in direct response to the terms of reference –

- 1. Whether the efficiency dividend has a disproportionate impact on smaller agencies, including whether or not smaller agencies are disadvantaged by poorer economies of scale or a relative inability to obtain funding for new policy proposals.*

The FCWA has only limited capability to achieve cash efficiencies through economies of scale. With the Commonwealth Efficiency Dividend applying to the annual grant of \$13.4 mil, the annual cash efficiencies needed to be realised as a direct result of the efficiency dividend is approximately \$170,000 per annum. It is also worth noting in this context, that the base indexation which applies to the FCWA is quite low, and is insufficient to meet cost growth (such as salary increases, rental increases etc). The combined impact of low base indexation and the further imposition of the efficiency dividend results in the FCWA needing to generate approximately \$300,000 in cash savings each year.

A large component of the FCWA’s annual expenses is fixed in nature. Large agencies are able to meet efficiency dividends through measures such as rationalisation of locations, system enhancements or internal restructuring. The FCWA only has one office and hence is unable to rationalise locations. The FCWA does not control the development of the core case management system (this is done by the Family Court of Australia), and hence cannot lead technology driven reforms.

The FCWA's internal structure already has a minimum number of functional units and does not have any capacity for policy or business development. The court's workload is currently more than the existing resources are able to service and hence reductions in customer service staff would not be appropriate. One area where efficiencies could be achieved is through reducing court sittings in regional locations, which would have a drastic effect on the community. Even if this were to occur, the amount saved would not be sufficient to realise the necessary efficiency dividend on a recurrent basis.

Whilst the FCWA has access to the Western Australian DotAG's Corporate Services, it would not be possible to expect the wider DotAG to bear some of the Commonwealth efficiency dividend. The Western Australian Government already provides free access to Corporate Services and regional facilities to the FCWA and DotAG has to meet an efficiency dividend from the Western Australian Government.

With respect to new policy proposals, the FCWA will rarely obtain additional funding through the Commonwealth Budget process for a 'new policy proposal'. In the last five years, this has only occurred once (2003) and as such there is very limited scope for the FCWA to obtain new funds with which to increase its base funding.

2. *Whether the Efficiency dividend is now affecting the capacity of smaller agencies to perform core functions or to innovate*

The FCWA has recently experienced significant financial difficulties, with available cash exhausted. The instigation of the efficiency dividend on the FCWA has been a key contributor to these financial difficulties. With the growth in expenses now far exceeding growth in funding sources, this deficit position will continue to worsen until structural changes are made.

These funding shortfalls have impacted on the ability of the court to deliver core services and to expand services to other areas of the state. The FCWA is short of funds to employ more Family Consultants in order to reduce the existing pressure on an already overloaded workforce. In addition, record growth within the State has placed further pressure on traditional customer service and back office processing areas.

The FCWA has no discrete internal business development resources and hence limited capacity to implement innovation. The business development resources of the DotAG are focused on the State's court reform agenda, which is extensive.

3. *What measures small agencies are taking to implement the efficiency dividend, and the effect on their functions, performance and staff arrangements*

The existence of the efficiency dividend has in the past reduced the court budget by 1.25% which has proven devastating for the Court. The FCWA has no capacity to implement the efficiency dividend. In the past the dividend has been offset by not filling positions on the staff establishment, closing down the Building Trust fund and

through a lack of service provision to regional areas. The above measures were drastic, once off and unable to be repeated.

The impact on regional areas is particularly significant as they receive a lesser service compared with the metropolitan area, particularly in relation to child related matters.

In view of the circumstances being faced by the Court, the Hon Robert McClelland MP, Attorney-General has instigated a baseline funding review of the FCWA. The review has commenced and it is hoped that this will provide an improved funding base from which the court would be able to operate. However, given the lack of any flexible line items on the budget, (ie programme or project funding) the implementation of the efficiency dividend would again place the court in a negative budgetary situation within a couple of years.

Notwithstanding, the court has been able to introduce a number of key innovations to improve service delivery and increase the efficiency and effectiveness of the Court. For example, the FCWA has introduced a unique model for dealing with child related matters. The model is centred on enabling a risk assessment of issues relating to children followed by immediate access to a judicial officer. This model has attracted both national and international interest. Despite the success of the model, it is only applied in the metropolitan area as funding is not available to expand the service to regional locations. It is important to note that this model has anecdotally increased the effectiveness of the outcomes of the court process, with a forthcoming evaluation likely to confirm less parties continually re-entering the system.

The Court was also able to implement a state of the art digital recording facility which provides court rooms with more accurate video and audio records of proceedings. This provides the court with capacity to allow parties to listen to parts of their court proceeding without having to seek a costly transcript. In addition, Court staff can easily replay parts of the digital recording to check the accuracy of court orders or agreed outcomes.

The Court is constantly reviewing its listing practices to increase judicial efficiency and reduce wait times. The efficiency of circuits is currently being examined to try and provide more effective services to country areas without adversely impacting on the metropolitan operation. Unfortunately, due to limited resources, this often becomes a balancing act where services in one area may need to be sacrificed in order to meet a demand in another.

While the above examples demonstrate the Court's desire to continually improve efficiency and provide better services, none of these improvements has capacity to realise anything more than minor savings. They are essentially based around service improvement, accuracy and getting more out of what are currently limited resources.

The efficiency dividend reduces the capacity of the court to introduce other efficiency initiatives in order to benefit the court and its users.

4. *Any impact of the efficiency dividend on the use by smaller agencies of "section 31" agreements to secure non- appropriation receipts (eg through user charges or cost recovery) – noting that these receipts are not subject to the efficiency dividend.*

The FCWA's revenue is retained in accordance with section 23 of the State *Financial Management Act 2006*. This revenue is not 'windfall' in nature with the grant only meeting approximately 80 % of the court's expenditure and any growth accompanied by increased workload or costs.

The unit value of these fees is set by the Commonwealth Government, on a bi-annual basis with the main component being divorce fees. Waiver of fee provisions exist for certain circumstances.

5. *How application of the efficiency dividend is affected by factors such as the nature of an agencies work(for example, cultural, scrutiny or regulatory functions) or the degree of discretion in the functions performed by smaller agencies*

Court work is in essence non discretionary. There are a number of high fixed costs which are outside the control of the FCWA and increase the burden of the efficiency dividend. Some of these include, Judicial salaries and buildings with purpose built court and conference rooms. It is expected that rent for the current building where the FCWA is located will more than double over the next 12 months which would further reduce the capacity of the FCWA to meet the efficiency dividend from a higher funding base. In addition, the Court also provides funding to the Family Court of Australia for the development and support of the information database. Funding is also allocated to enable judicial officers the capacity to travel on circuit to regional areas in order to provide services to these communities. Being a large state, travel to some parts of WA can also be very expensive, particularly up north where accommodation is limited due to the mining boom. Court processes are generally determined through legislative or regulatory processes which often direct how the work is to be conducted within the court environment.

The Court has no discretion about whether to cease performing functions or to discontinue services. At the most it may reduce the number of circuits conducted to regional areas, however the amount saved would not cover the efficiency dividend (and could only be done once) and regional communities would be negatively impacted. This is not a sustainable option for the court.

6. *If appropriate, alternatives to an across-the-board efficiency dividend to encourage efficiency in the Commonwealth public sector, including consideration of whether certain agencies should be exempted from the efficiency dividend, or whether the rate of the dividend should vary according to agency size or functions.*

It is my strong view that capacity should exist for exemptions from the efficiency dividend for small agencies that do not have access to substantial discretionary funds. In this case “discretionary” would refer to policy, project or programme funds and not administrative costs required to conduct core business.

If a small agency were to receive significant discretionary funding and be eligible for the dividend then the dividend should only be applied to the discretionary funding and not to any fixed costs such as salaries, buildings and rent.

I thank you for the opportunity of putting forward the position of the Court on this important issue. The FCWA would be pleased to provide any additional information or clarify any issues presented in this submission if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'S. Thackray', with a long horizontal flourish extending to the right.

STEPHEN THACKRAY
CHIEF JUDGE

14 July 2008

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