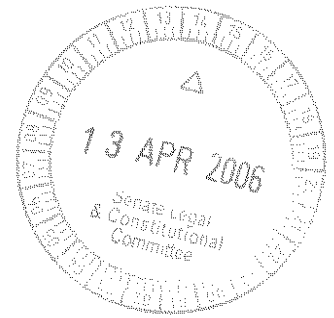




FEDERAL MAGISTRATES COURT OF AUSTRALIA

**Federal Magistrate Kenneth Raphael**



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Members  
Senate Legal and Constitutional Committee  
Parliament House  
PARKES ACT 2600

Dear Members

**Federal Magistrates Amendment (Disability and Death Benefits) Bill 2006**

I am writing to you in my personal capacity as the oldest (born 2.7.44) member of the Federal Magistrates Court.

When I was appointed to the court at its commencement in 2000 I rather foolishly assumed that death benefit and disability cover would in some way be provided to judicial officers who succumbed during their period of tenure. I suppose that I took into account the fact that there is not a single public servant, member of Parliament or other government employee who does not receive such benefits and that every Judge of the Commonwealth, States and Territories has such a benefit. I probably took into account the fact that Magistrates (although I have never considered the Federal Magistrates Court to be a Court of Magistrates by virtue of its creation under Chapter III of the Constitution and the work that its members undertake) are covered by their state and territory superannuation schemes.

As you will appreciate, my assumptions were totally incorrect.

I did two things to respond to this problem. The first was that I commenced a correspondence with the Attorney General that continues to this day in which I put to him the case for the provision of appropriate benefits. I cannot say that I ever received a satisfactory response, probably because my case was unanswerable. The second thing I

did was to take, at my own personal expense, salary continuation insurance. When the court was founded Federal Magistrates were in receipt of a salary of approximately \$148,000.00 per annum. I was able to secure salary continuation only up to the age of sixty five at an annual cost of approximately \$4,000.00 and an annual benefit of 75% of current salary. Although I have hardly taken a day off sick in the six years in which I have been a member of the court some matters in my past medical history made the insurer determined that it was not prepared to increase the benefit given to me when Federal Magistrates' remuneration was increased. So now the maximum benefit payable to me would be 75% of \$148,000.00 plus some increases under CPI. I am unable to obtain death cover given my age and no one is prepared to provide insurance until my retirement date at the age of 70.

The publication of the bill upon which you are sitting in committee was obviously a step forward, but it seems to me that the bill is deficient in several areas for the reasons set out below.

Firstly, the bill only provides cover until the age of 65 when Federal Magistrates are appointed until the age of 70. I have been told (although possibly unreliably) that the public service officers responsible for this bill suggested that 65 was an appropriate age as it is an average of the age at which judicial officers normally retire. I do not dispute this at all. But judicial officers normally retire at the age of 65 because they have pensions to retire upon. If I was to retire at age 65 I would have received nine years of a superannuation payment. This payment has averaged about \$22,000.00 per annum over the years which I have spent in the court to date. As Federal Magistrates are required to place their superannuation funds either in a commercial superannuation trust or to self manage as well as to pay the superannuation surcharge the net amount available for any pension arrangement is extremely small. It is made smaller by the requirement to pay over \$4,000.00 per annum prior for inadequate salary continuance. This situation will not change when I achieve the age of 65 because the current bill does not provide any assistance to me thereafter. There is no logical explanation for the decision to limit the benefit to the age of 65, it is ageist and it is likely to add to the other reasons why:

- (a) The quality of persons advising the Attorney that they are interested in an appointment to the position of Federal Magistrate is disturbingly low;
- (b) No Federal Magistrate would ever resign his or her position however ill they may feel;
- (c) The morale of Federal Magistrates, as reflected by their view of the way they are seen by the Attorney General's Department, is extremely low.

Secondly, the amount paid by way of death benefit to a Federal Magistrate appointed at the appropriate age of around 50 would be extremely small being only a multiple of the latest superannuation payment up to the age of 65. In my case, if I was to die tomorrow my wife would receive approximately \$50,000.00. I do not think that this is a satisfactory recompense for six years of exceptionally hard work on behalf of the state. No parliamentarian or other holder of office under the Crown would receive so little.

Thirdly, the legislation is discriminatory against persons who are within same sex relationships. To impose such discrimination on a court which has the prime responsibility for dealing with cases under the Commonwealth Anti-Discrimination legislation is ironic. It is similarly ironic that such ageist legislation can be introduced in respect of the court.

It gives me no particular pleasure to have to write to you in this vein. It is disappointing that six years after my appointment I am still arguing for proper benefits for Federal Magistrates who are the only judicial officers of the Commonwealth not within the Judges' Pension Act although we are Chapter III Justices and prima facie as entitled to the benefits thereof as anyone else. I trust you will agree, in the light of my comments, that the legislation as proposed is mean spirited, inadequate and does little to bolster one's confidence in the perceived importance of the separation of powers. The Bill should be scrapped and Federal Magistrates should be brought within the Judges' Pension Act and given the full benefit of its provisions. Failing that, the benefits should be increased to 75% of current salary, the benefit should extend to normal retirement age of 70 and there should be a floor under the death benefit so that it is never less than \$400,000.00.

I respectfully urge my views upon the committee.

Yours sincerely

  
Kenneth Raphael  
Federal Magistrate