

Law Council Submission relating to  
the Federal Magistrates  
Amendment (Disability and Death  
Benefits) Bill 2006

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Senate Legal and Constitutional Committee

Date: 18 April 2006

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## **Status Statement**

This submission is lodged by the Law Council of Australia but has not been approved by the Council of the Law Council due to time constraints.

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## **The Federal Magistrates Amendment (Disability And Death Benefits) Bill 2006**

The Law Council supports the Bill as circulated by the authority of the Attorney-General.

The provision of disability benefits for Federal Magistrates in the form of a pension of 60 per cent of salary payable until age 65 or death is an appropriate step which can only enhance the administration of justice in the Federal Magistrates Court (FMC).

The payment of a lump sum covering the period between the date of death and age 65, where either a Magistrate dies in office or a former Magistrate in receipt of a disability pension dies before reaching age 65, is also appropriate.

Federal Magistrates will be reassured that, notwithstanding their eligibility to superannuation entitlements, including a contribution by the Commonwealth, their future needs in the face of a disabling illness or accident, or the future needs of their families in the face of their untimely death, will be appropriately looked after by the Commonwealth.

The Law Council commends the Attorney-General for sponsoring the Bill and wishes to draw attention to some further matters affecting the FMC that the Federal Government could usefully consider.

### **Matters of Relevance to the Bill**

The FMC has, since its establishment, grown significantly in importance to the administration of federal justice. The Court was originally established on the basis that it would provide a quick, streamlined and inexpensive service to its users.

In a few short years both the jurisdiction and workload of the Court have grown considerably. The volume of civil case filings is very high and the Law Council understands that around 60% of general federal law filings, and around 50% of family law filings, are made in the Court.

Surveys commissioned by the Court appear to establish that it is continuing to provide a very satisfactory service for most of its customers with savings over the comparable cost of litigating in the superior courts.

The Law Council has particularly welcomed the establishment of Coordinating Federal Magistrate positions. The early emphasis on family law matters is gradually giving way to a more diverse mix of work and this has posed some challenges for the Court, and for the government in its endeavours to recruit persons with an appropriate mix of skills and knowledge for the bench.

The Law Council has also welcomed the establishment of the Court's specialist panel system

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There seems no doubt that the FMC will, before much longer, become one of the largest courts in Australia, and certainly the largest federal court.

The Law Council, in the course of liaison discussions with the Court, has been made aware that Federal Magistrates are concerned about their perceived standing and about their independence.

In the superior courts, whether federal or local, these issues are taken very seriously for very good reason.

While the overall cost to government of the provision of judicial services is an important budgetary issue and governments need to ensure that expenditure on the courts will be both efficient and effective in furthering the administration of justice, it is also incumbent on the executive to ensure that judicial independence is a hallmark of any court.

Judicial independence is not entirely guaranteed for the FMC because it is a Chapter III court.

Remuneration levels and conditions of service are also important means of ensuring that judicial independence is maintained.

The Law Council recommends that the Committee give some consideration to the following matters:

- Remuneration levels for Federal Magistrates should be fixed at levels sufficient to ensure that good quality applications are received for appointment to the FMC. This could be achieved by linking remuneration levels to an appropriate proportion of the remuneration of Judges of the Federal Court. This would serve to ensure relativity of remuneration within the federal judicial system. A similar relativity exists between judges of the Federal and Family Courts and the High Court.
- Federal Magistrates should be considered for inclusion in the federal judicial pension scheme. As we have already noted, this Bill's introduction of a pension entitlement for a Magistrate required to resign due to permanent disability or infirmity is a step in that direction.

## **Attachment A**

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### Profile – Law Council of Australia

The Law Council of Australia is the peak national representative body of the Australian legal profession. The Law Council was established in 1933. It is the federal organisation representing approximately 50,000 Australian lawyers, through their representative bar associations and law societies (the “constituent bodies” of the Law Council).

The constituent bodies of the Law Council are, in alphabetical order:

- ACT Bar Association;
- Bar Association of Queensland;
- Law Institute of Victoria;
- Law Society of the ACT;
- Law Society of NSW;
- Law Society of the Northern Territory;
- Law Society of South Australia;
- Law Society of Tasmania;
- Law Society of Western Australia;
- New South Wales Bar Association;
- Northern Territory Bar Association;
- Queensland Law Society;
- The South Australian Bar Association;
- The Victorian Bar; and
- Western Australian Bar Association.

The Law Council speaks for the Australian legal profession on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

The Law Council is the most inclusive, on both geographical and professional bases, of all Australian legal professional organisations.