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# First year of the Federal Magistrates Service

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## Editorial

# First year of the Federal Magistrates Service

*Laurence Boulle*

On 1 July 2001 the Australian Federal Magistrates Service (FMS) celebrated the first anniversary of its existence. The FMS is the first lower level Commonwealth court in the history of the federation and can be seen, in part, as a product of the 'access to justice' movement which emerged in the early 1990s in this country.

The FMS was designed to be accessible, simple to use, and cheaper than the Federal and Family Courts through reducing delays and levying lower costs, such as filing fees. The FMS has the full array of court trappings and powers, subject to its jurisdictional limitations as a creature of statute. Structurally the new court is notable for sharing a range of amenities and services

with the Family Court and Federal Court, placing a premium on co-operative arrangements between the three.

The FMS is also notable for being the first court to emerge after the development of a strong ADR tradition in Australia — it has ADR/PDR built into its very foundations. Thus in both family law and non-family law matters the FMS encourages resolution through counselling, mediation and other modern dispute resolution methods.

Finally the FMS is notable for its incorporation of the new technologies, including electronic communication and video and telephone conferencing, though it is also true to say that most Australian courts have developed impressively in these

areas in recent years.

In terms of its family jurisdiction the FMS has powers in relation to divorce, residence of children, maintenance and property disputes. In terms of non-family matters the FMS has jurisdiction in relation to less complex administrative law, bankruptcy, human rights and trade practices cases, with about 90 per cent of its non-family work during the first year involving bankruptcy matters.

To date a Chief Federal Magistrate and 16 Federal magistrates have been appointed to the FMS, which sits in all capital cities and some regional centres. It also undertakes circuits to many other centres.

Statistical indicators show the new service has been used extensively during its phase in period, both as a forum of choice for the disputing parties and also as a destination for referrals from the higher federal courts. A press release from the Commonwealth Attorney General on 3 July 2001, illustrates this strong usage with the figures shown in the table reproduced here.

These quantitative indicators of the effectiveness of its services show that within a very short period of time the FMS is dealing with the majority of divorce applications, which is not unrelated to the fact that filing fees are considerably lower than in the Family Court. Indeed the Chief Justice of the High Court, the Hon Murray Gleeson, noted recently that he expected that the FMS would become one of the largest courts in Australia within the next few decades.

Judgment will have to be reserved on the qualitative indicators of the effectiveness of its dispute resolution services. Inevitably resources will have an impact on its long term ability to maintain a high level of satisfied users. The very success of the FMS will place a strain on its resources, human and infrastructural. Some of the relevant questions to ask of the FMS in the years ahead will be as follows.

- What are user perceptions of the FMS and its different services in different areas of law and in different locations?
- How well are cases managed and on what criteria are referrals made to ADR services?

Location	Family law applications	Non-family law applications	Divorce applications	Cases transferred from Family and Federal Courts
National	28000	2000	23500	2000+ (both courts)
Brisbane	4000	490	3550	340+ (both courts)
Townsville	1200	-	950	53+ (Family Court only)
Sydney	3000+	460	3000	40+ (both courts)
Parramatta	4500	-	3350	256+ (Family Court only)
Newcastle	3000	-	2500 +	245+ (Family Court only)
ACT	1100	20	800	155+ (Family Court only)
Melbourne	7000	710	5450	600+ (Family Court) 25+ (Federal Court)
Dandenong	1500	-	1350	60+ (Family Court only)
South Australia	2000	250	1750	140+ (both courts)
Tasmania	700	15	500	85+ (both courts)
Northern Territory	400	8	300	-
Western Australia	-	50	-	-

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➤ to reward a co-operative party and punish those who are seen as non-compliant. These rules are binding on all participants. The mediator has the specific power to order that:

- all parties shall attend all scheduled meetings; and
  - all parties shall send representatives 'knowledgeable about the issues involved and who possess sufficient ability to discuss such issues'.
- In addition, the rules provide the following:
- a failure to participate 'in good faith' will be grounds for remedial action;
  - all parties shall retain 'competent professionals', share information on a transparent basis and respect the legal rights of the parties;
  - the Government may direct a party to participate;
  - within five days of referral a case manager will be allocated;
  - within 10 days of referral an initial meeting with the referring party will be held;
  - within 20 days of referral the mediator will hold a meeting with the other party;
  - within 30 days of referral a preliminary report by the mediator on the issues is to be distributed, together with a preliminary schedule;
  - within 40 days of referral the negotiations shall commence — if no agreement on the schedule is possible then the case manager will issue determinations on timing;
  - a matter may be dismissed by the case manager as 'not appropriate', to be accompanied by a draft report which will

comment on compliance or non-compliance with the schedule, a statement on facts of negotiation and current status;

- if, within 30 days of the draft report, parties are unable to resolve issues, the final report is to be issued and there is a discretion to file with 'appropriate government authorities'.
- any party may introduce the report into 'any litigation for any purpose'.

If the case manager finds 'bad faith' the Attorney General can initiate bankruptcy proceedings.

Such procedural assistance is of real benefit to the mediator. However, it also involves the mediator moving into a dual role in which the mediator acts also as a referee or umpire. These procedural rules reflect the reality of the current Indonesian political and economic climate.

Some mediators adopting and wishing to retain a neutral stance decry the presence of these extra 'sticks'. Yet they have proved effective and largely responsible for the successful restructuring of US\$12 billion in corporate debt. It appears that in this area, at this time, such adaptations to the mediation model are justified.

Part 2 of this article will identify the array of 'tools in the toolbox' that are used as options for settlement. ●

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