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THE YEAR IN REVIEW

Definition of
FAMILY VIOLENCE
widened

On 1 July 2013, legislation formalising
A SINGLE ADMINISTRATION
to support the Family Court and
Federal Circuit Court will commence

AGD to conduct a review of the
FINANCIAL VIABILITY
of the three federal courts



The Honourable Chief Justice
Diana Bryant AO.

During the 2012–13 financial year Justices O'Reilly, Coleman, Young and Dessau retired from the Court. It was extremely pleasing that all judicial positions have been replaced with four new judges commencing in 2012–13. In addition, two judges were appointed to the Family Court of Western Australia and hold joint commissions in the Family Court of Australia. The Commonwealth Attorney-General Mark Dreyfus QC also announced during the year the appointment of a further five judges who will join the Court in 2013–14. For further details on judicial retirements and appointments refer to Part 6 of this report. With almost half the Court having been appointed in the last five years, the Court enters a new era with significant generational change.

As well as changes to the judiciary, the Court has seen a significant evolution in the administrative management of the Family Court and the Federal Circuit Court. Changes to the administration of the courts commenced in 2006 with the combined registry project and the implementation of shared family law registries. A number of other milestones have progressively been achieved over the years including the merging of the courts' corporate functions and the appointment of the Family Court's Chief Executive Officer as the Acting Chief Executive Officer of the Federal Circuit Court of Australia. On 1 July 2013, the legislation formalising a single administration to support the two courts will commence but structural changes still envisaged will require some further legislation.

The past uncertainty surrounding the future of the Federal Magistrates Court of Australia was formally resolved during the year with a pleasing outcome and in April 2013, the Federal Magistrates Court of Australia was officially re-named the Federal Circuit Court of Australia and the judicial officers were titled judges. A ceremonial sitting to mark the inauguration of that Court was held on 1 May 2013 and the three Family Court judges who had previously been members of the Federal Magistrates Court sat on the Bench for the ceremony. Both courts can now focus on the needs of each around their differing roles.

RESOURCING AND BUDGETARY ISSUES

Like many other courts, we have been under considerable financial pressure over recent years. In its 2013–14 Budget, the Government has provided revenue of \$149.964 million which is a decrease of \$0.557 million from what was previously reported at Additional Estimates. The requirement of the Court to find further efficiencies means that we must continue to look for ways to reduce costs, despite many years of implementing numerous savings initiatives.

Considering that the courts have undergone a relentless number of reviews all seeking to identify ways to reduce costs, the reality is that there are very limited reductions to be made without having a serious impact on service delivery, particularly given that more than half of the Family Court's costs are fixed such as salaries for judicial officers and property expenses.

Thankfully an injection of funds announced in 2012–13 has enabled the Family Court and Federal Circuit Court to plan for a balanced budget in 2012–13 and 2013–14 but we still expect difficulties in years after that. To ensure that the Government has a thorough understanding of the federal courts' budgetary positions, it has announced that it will conduct a significant review of the financial viability of three federal courts: the Federal Court, the Family Court and the Federal Circuit Court. Such a review is long overdue and I hope for an outcome that will provide all courts with a financial basis which will be effective well into the future. The Attorney-General's Department and the Department of Finance and Deregulation are conducting the review and the report is expected to be finalised by the end of 2013.

INTERNATIONAL FRAMEWORK FOR COURT EXCELLENCE

It is important for the Court to continually seek opportunities to improve the way in which it delivers its services and how it manages the financial and administrative aspects of court business. With this in mind and being mindful of the critical importance of transparency and efficiency, during the year I have further advanced the adoption of the International Framework for Court Excellence as a platform for delivering improvements to our administration.

The framework is internationally recognised as providing the best approach for a court to deliver its core work. It is imperative that courts operating in the modern world are advancing best practice and continually reviewing their business. The view that courts are above scrutiny does not exist and the Court's adoption of the framework clearly demonstrates our dedication to delivering a service that meets international best practice. Although it is early days for the Court in terms of implementation, during 2012–13 the Court undertook a number of initiatives that are aligned to the seven pillars of the framework. A judicial committee, convened by Justice Murphy, has been established to advise me on the integration of this framework. For further details on the initiatives undertaken during the year, refer to page 11 of this report.

PERFORMANCE OF THE COURT IN 2012–13

As I reported in the Court's 2010–11 annual report, there has been, over time, a shift in the balance of workload between the Family Court and the Federal Circuit Court with the majority of all family law matters now conducted in the latter court. This has resulted in the Family Court becoming a smaller court which manages all appeals and deals with the most complex family law cases, most of which involve international family law (including Hague convention abduction matters), significant family violence, serious allegations of child abuse, special medical procedures, cases involving mental illness and/or substance abuse, and complex property cases including accrued jurisdiction and third parties.

During the 2011–12 financial year, the Government amended the family law act to widen the definition of family violence. Since then, the Court has identified an increase in the proportion of applications that involve a family violence notice by five per cent. In 2012–13, 15 per cent of all applications for final orders involved a family violence notice, compared to 10 per cent in the previous year. Given the legislative widening of the definition of family violence, this result is not unexpected.

The Court's key performance target in clearing its cases is to maintain a clearance rate of 100 per cent, which essentially means that it is able to finalise the same number of cases that commence within the year and preventing a backlog of pending cases. The Court has consistently been able to achieve this aim and in 2012–13 was able to achieve a clearance rate of 101 per cent, meaning that it was able to complete more cases than were filed during the year.

LEGAL AID FUNDING IN VICTORIA

At the start of 2013, Victoria Legal Aid (VLA) announced a range of changes to its eligibility guidelines which was likely to have the effect of reducing the ability of family law litigants to access legal representation. There were a number of changes that I was particularly concerned with, fundamentally the reduction in the ability of parties to obtain legal assistance potentially reduces their access to justice.

The decision by VLA to implement a policy where it will only fund representation for a parent if the other party is represented is of concern particularly when there are contested allegations of violence, allegations of child sexual abuse and other allegations which require the Court to make findings of fact. It is inappropriate to expect an unrepresented party who may have been the subject of abuse, to be able to conduct a case to establish facts to the standard required and to cross examine and be cross examined by the alleged perpetrator. This has the potential to increase delay in the courts and to impede the course of justice. I have suggested that the impact of these changes should be closely monitored.

THIRD EDITION OF THE FAMILY VIOLENCE BEST PRACTICE PRINCIPLES

In October 2012 the Family Court and the Federal Circuit Court released the third edition of the *Family Violence Best Practice Principles*. Since they were initially developed, the principles have evolved and now have a much broader audience than that originally envisaged. The principles provide practical guidance not only to the courts, but to legal practitioners, service providers, litigants and others involved in cases where issues of family violence or child abuse arise. The most significant change in this area however, has been in enhancing the communication between those who have a role in family law and in the protection of children.