

Family Court Bulletin

Issue 2 July 2008

Chief Justice's Column

Review of the family law system

Since the previous edition of *Family Court Bulletin*, the Commonwealth Attorney-General the Honourable Robert McClelland MP has announced a review of the administrative structures of the Family Court of Australia and the Federal Magistrates Court of Australia. I expect some significant changes will come out of the review as its objectives included making savings, reducing duplication and funding the courts internally, but it remains for the Attorney to announce what action he intends to take.

Whatever the outcome, I believe the review is timely and I know that the Chief Federal Magistrate, John Pascoe AO, has expressed the same view. The Federal Magistrates Court has now been in existence for eight years and is dealing with a considerable family law workload. A reappraisal of the family law system is due. I am hopeful that in particular there will be a clear vision for the future.

Progress with less adversarial trials

International interest in the less adversarial trial process continues to grow. This interest, which has resulted in other countries adopting a similar model for handling parenting cases that proceed to a hearing, demonstrates to me that there is a growing international understanding, in common law countries, of the need to move away from traditional adversarial trials in parenting disputes.

The Parenting Hearings Program being piloted in New Zealand is a less adversarial process adopted by the Family Court of New Zealand and is modeled on our process.

In early May the Chief Justice of Singapore, the Honourable Chan Sek Keong, announced the creation



Chief Justice
The Honourable Diana Bryant

of a new family court which would be adopting less adversarial process in its hearings. This decision follows a visit to Australia and New Zealand during the summer to observe our processes (see article on page 7).

Following the announcement by the Honourable Chan Sek Keong, a second delegation of Singaporean judges visited the Family Court to learn about the process in more detail in order to implement it in Singapore.

During April the Honourable Mr Justice Michael Hartmann from the High Court of Hong Kong visited the Sydney registry for two days to observe the less adversarial process.

During my recent attendance at a conference in Vancouver, the Department of Justice of British Columbia arranged a meeting at which I, the Director of Child Dispute Services in the Court, and a member of the Attorney-General's Department met with the

Canadian Attorney-General, two heads of jurisdiction, other judges and members of their Department of Justice to talk about many of the changes in family law in Australia since 2006, including the less adversarial trial. While I was in Vancouver I was interviewed for a documentary being made for the Canadian Broadcasting Corporation on alternate dispute resolution in parenting matters. They came to Sydney in early July to film a less adversarial trial in progress as part of their program.

Launch of the Living in Harmony report

Recently I had the pleasure of launching the Living in Harmony report with the Honourable Laurie Ferguson MP, the Parliamentary Secretary for Multicultural Affairs and Settlement, representatives from the Department of Immigration and Citizenship and other stakeholders.

The Court has been continually improving the services provided to culturally and linguistically diverse clients and in 2004 the Family Court produced a cultural diversity plan to focus on strengthening those services across the court.

The LIH project is an example of the Court's work in this area. It provided an excellent example of community engagement that other courts and agencies can adopt and adapt for their own purposes.

The Indonesian Religious Courts

The Family Court's involvement with the Indonesian Religious Courts continues to fill me with admiration for the desire of the Religious Courts to improve their services, both in support of the judges and for the benefit of those using their courts.

Several visits to Australia by groups of judges and administrators has resulted in them developing a comprehensive website for the Religious Courts and an IT system which enables close to 400 different courts across the archipelago of Indonesia to be in communication.

Their recent court user survey has led to the identification of impediments to access to justice. This enabled them to achieve funding to provide fee waivers for poorer court users in particular and to provide circuits to areas where litigants could not afford to travel to court.

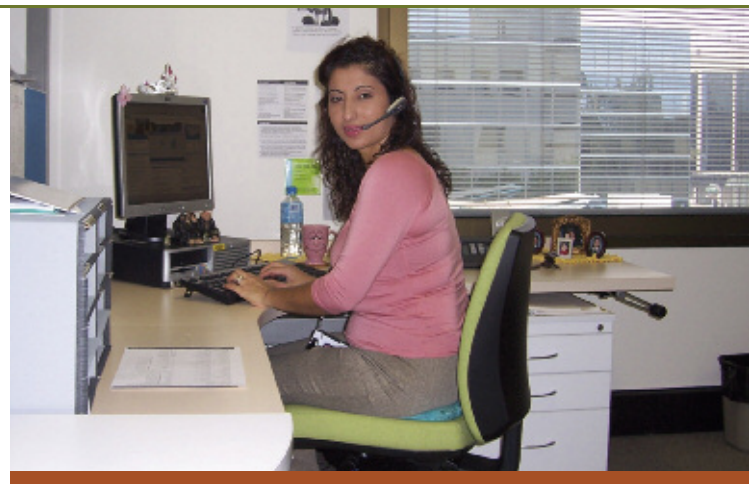
The National Enquiry Centre

Prior to 2006, the Courts telephone services and systems were the responsibility of local registries, with no national approach to call management. The opening of the National Enquiry Centre (NEC) in April 2006 means that all calls are now answered in a centralised location.

After 2 years in operation, the NEC has proven to be an essential part of the Family Law Court environment, answering up to 33,000 calls and 900 emails per month.

Natalie McMahon, Manager of the NEC said, "The NEC was established to answer calls to the Family Law Courts to allow registry staff the ability to concentrate on case coordination and serve 'face to face' clients. It's now the first point of contact clients have with the Family Law Courts. There's only a small percentage of phone calls which are transferred to the registries when NEC staff are unable to answer the enquiry."

The NEC aims to provide a consistent and seamless service to all clients, and aims to answer 80% of calls in under 90 seconds.



A staff member answers calls at the NEC

Anecdotal feedback from clients, lawyers, registry staff, legal centres and government departments such as the Child Support Agency, has also been overwhelmingly positive.

The NEC can be contacted on 1300 352 000 or by email at enquiries@familylawcourts.gov.au



Judgments of interest

Black & Black and the Full Court's interpretation of binding financial agreements

There has been a degree of media interest in the case of Black & Black and members of the legal profession have suggested that many cases may need to be reviewed in the light of the Full Court's decision.

The first instance judgment by Benjamin J found that the binding financial agreement should stand even though the assumptions on which the parties entered into the agreement turned out to be wrong. The husband and wife agreed to buy a house together with the proceeds of the sale of the husband's house and the wife's personal injuries claim, among other smaller contributions from each party.

The wife settled her claim for substantially less than the husband expected/had been led to believe would be the outcome. As a result, she was not able to contribute as much to the purchase price of the house as the husband did. When the relationship ceased, the husband argued that the property should not be divided 50/50, as per the agreement, because it had not been purchased at or near to 50/50, as expected.

The husband appealed to the Full Court on the basis that the relevant section of the Family Law Act 1975, 90G, should be interpreted strictly as it was written. He argued that Benjamin J had taken a purposive rather than an interpretive approach.

The Full Court agreed with the husband that the section had to be strictly adhered to. While acknowledging that the Act permits parties to come to an agreement and settle their financial matters, the Full Court said they must do so in a way that explicitly excludes the Court's jurisdiction in the matter. If the agreement was not strictly in accordance with the Act, there was no guarantee that either party could not go back to the Court for the orders to be adjusted. In short, it is in the parties' best interests to make sure that the i's are dotted and the t's crossed.

The Full Court ruled that the case be retried. The case provided clear guidance to the profession on how to advise clients on binding financial agreements. It remains to be seen how many parties return to the Court for a reexamination of the legality of their binding financial agreement.

The judgment can be viewed on the AustLII website [Black & Black \[2008\] FamCAFC7](#).

Initiatives and programs

Strengthening our international relationships

The Family Court of Australia has developed a strong relationship with the Supreme Court of Indonesia and the Religious Courts of Indonesia through a number of exchanges between judges and staff dating back to early 2004. This relationship has been strengthened further with the most recent visit of 21 Indonesian Judges and Senior Court Administrators to the Melbourne Registry for the purpose of learning more about client services and access and equity for clients of the Family Court.

Earlier this year, the Chief Justice, Diana Bryant, made her first visit to Indonesia in her capacity as Chief Justice of the Family Court of Australia. This visit provided opportunities for both the Chief Justice and the Chief Executive Officer, Richard Foster, to have discussions with their counterparts in the Supreme Court of Indonesia and the Religious Courts of Indonesia on issues of relevance to each court.

The key issues discussed at this visit included:

- Increasing access for disadvantaged groups to family courts in both Australia and Indonesia.
- Increasing judicial transparency in family law decisions by publishing anonymised judgments on the Internet.
- The delivery of better services to court clients.
- Equality of access to Family Law Courts in Australia and Indonesia.



Chief Justice The Hon Diana Bryant in Indonesia

During the visit to Indonesia, the Chief Justice, and the Chief Justice of the Supreme Court of the Republic of Indonesia, Professor Bagir Manan, launched a publication entitled *Providing Justice to the Justice Seeker—A report on the Indonesian Religious Courts Access and Equity Study 2007*. This report involved cooperation between the Supreme Court of Indonesia, Religious Courts of Indonesia, Family Court of Australia, State Islamic Universities (UIN) in Jakarta and Yogyakarta and an

Indonesian Non-Government Organisation called PEKKA which works with female heads of households living under the Indonesian poverty line.

The study involved a survey of over 1000 clients of the Religious Courts and 160 members of PEKKA. Report findings can be seen on the Indonesia Australia Legal Development Facility website www.ialdf.org, and the Family Court of Australia's website www.familycourt.gov.au

In Indonesia, the two Chief Justices launched an online database of decisions of the High Religious Courts. The Australasian Legal Information Institute (AustLII), through an AusAID funded Regional grant, has now created the largest free-access database of Asian legal information, called the Asian Legal Information Institute or AsianLII. AsianLII has collaborated with the Supreme Court Directorate General for the Religious Courts in developing an online database of High Religious Court decisions which can be seen via www.asianlii.org or www.badilag.net

While in Indonesia, Chief Justice Diana Bryant was also invited to the opening of a new Religious Court in Bandung.

During the Indonesian visit, Chief Justice Diana Bryant participated in a forum on the subject of Equality of Access to Family Law Courts in Australia and Indonesia. Her Honour spoke to a large forum with representatives from various Indonesian government departments including the Department of Religious Affairs, the Department of Women's Empowerment; Bappenas, the Department of Law and Human Rights as well as AusAID, the Supreme and Religious Courts of Indonesia and representatives from the Delegation of the European Commission to Indonesia.

The benefits stemming from the partnership between the Supreme Court of Indonesia, the Religious Courts of Indonesia and the Family Court of Australia include:

- The establishment of the website of the Religious Courts Administration in Indonesia following the visit of judges, registrars and court administrators from the Family Court of Australia in November 2005 www.badilag.net



Some of the visiting judges and senior court administrators from Indonesia on their visit to Melbourne in May 2008

- The Religious Courts of Indonesia are now perceived to be a leader amongst other courts in Indonesia in the use of information technology and the Internet in relation to courts administration.
- An increase of the 2008 budget for the Supreme Court of Indonesia (MA) and subsidiary courts of 400% over the 2006 budget. The LDF Financial Management Consultant assisted in budget development and negotiation.
- The Supreme Court of Indonesia decided to increase the Religious Courts' budget to waive court fees for the poor (pro deo cases) and to hold circuit courts. This has been a 29-fold increase in the Supreme Courts budget allocation for court services to the poor and is a result of the Access to Justice study, of which the Family Court of Australia was a study partner.
- The Religious Courts represent the only jurisdiction in Indonesia to have undertaken an access and equity study of this nature and magnitude. The idea for the client survey was developed during the Religious Courts' visit to the Family Court of Australia in November 2005.

Judges and staff of the Family Court of Australia who have worked on this programme commend the work being done by the Indonesia Australia Legal Development Facility funded by AusAID and look forward to continuing our valued relationship with the Supreme Court of Indonesia and the Religious Court's of Indonesia long into the future.

Family Law Forum

When Chief Justice Bryant was appointed in 2004, one of her priorities was the establishment of a consultative group, known as the Family Law Forum. The Family Law Forum was created to enable family courts, government, academic and community based organisations involved in the family law system to discuss issues of shared interest and concern.

The Forum meets on a quarterly basis and is chaired by the Chief Justice. In addition to the Chief Justice, the Deputy Chief Justice, the CEO, the Principal Registrar and the Director, Child Dispute Services of the Family Court, membership comprises:

- the Federal Magistrates Court of Australia
- the Commonwealth Attorney-General's Department
- the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs
- the Australian Institute of Family Studies
- the Family Law Section, Law Council of Australia
- National Legal Aid
- the Child Support Agency
- the Federation of Community Legal Centres
- Relationships Australia
- Family Relationship Services Australia
- Catholic Social Services

The Family Law Forum works as a collegiate body where information can be provided and ideas expressed without fear or favour.

It has been particularly effective in providing an avenue through which participants can discuss their experience of the 2006 reforms to the family law system.



L-R Laurie Ferguson MP, Samia Baho, Chief Justice Bryant, Maria Dimopoulos, Justice Mushin

Living in Harmony Report Launched

The Family Court was the first court in Australia to conduct a community-driven education strategy as a means of introducing emerging communities to the Australian legal system.

On 20 May 2008, the Parliamentary Secretary for Multicultural Affairs and Settlement Services, Laurie Ferguson, assisted Chief Justice Bryant to launch the report *Families and the law in Australia* which is an evaluation of the project.

The Family Court, partner agencies and the communities involved all reported substantial and significant gains from the project. The report also provides a practical insight for other organisations wanting to engage with emerging communities and a model to use as a basis.

The Living in Harmony Partnership (between the Family Court of Australia and the Department of Immigration and Citizenship (DIAC)) began in 2004 when funding was received from DIAC for the Court to work towards their initiative aiming to improve services to culturally and linguistically diverse clients.

The communities from the Horn of Africa (Ethiopia, Eritrea, Sudan and Somalia), Iraq and Afghanistan were identified as not only recently established in Australia, but with a history likely to have made them suspicious and fearful of courts. The participants also reported that they were bewildered by the number of written laws and the differences between State and Commonwealth jurisdictions.

The Partnership aimed to

- develop and strengthen relationships between new and emerging communities and the Court
- foster cross-community relations between communities about families and the law
- examine how the Court could contribute to community harmony by strengthening community leadership in communities.

Four pilot projects were developed with the assistance of community leaders who provided advice about what was most needed and would work best. They were conducted in Melbourne, Parramatta, Adelaide and Launceston and involved working with or partnering with other agencies delivering services to these particular emerging communities.

The evaluation of the Partnership revealed that there had been substantial gains for the Family Court and partner agencies. Most of all there had been gains for the communities themselves.

Copies of the report are available from:

www.familycourt.gov.au
communications.office@familycourt.gov.au



Justice O'Ryan and Angela Filippello with members of the Singapore Subordinate Courts

Singapore Subordinate Court (Family Justice Division) adopts LAT

The Chief Justice of the Family Court, the Honourable Diana Bryant addressed the Symposium of Chief Judges of Family Courts held in Singapore in July 2007 on the benefits of the Less Adversarial Trial (LAT) being conducted in the Family Court of Australia and Family Court of Western Australia and piloted in New Zealand.

A delegation of senior Singaporean judges, led by Senior District Judge Richard Magnus, visited Sydney and Parramatta in December 2007 as part of a study tour of New Zealand and Australia to observe the conduct of trials in a less adversarial manner. Of particular interest was the historical development of the Children's Cases Program chaired by the Honourable Justice O'Ryan, and the subsequent implementation by a Committee chaired by the Honourable Justice Le Poer Trench.

The program was extensive and the delegation had the opportunity to meet with judges, federal magistrates and the profession. Discussions were also held with family consultants and registrars, as well as an opportunity to observe Justice Le Poer Trench conduct first day of LAT. In reflecting on his observation, SDJ Magnus said "What came across to us from Justice Le Poer Trench's judgment was his narration of the facts in a story form in which the parties could see themselves as part of the story. This provided an immediate impact on the parents in that case."

With the permission of the Chief Justice of the Family Court of Australia, the Honourable Diana Bryant, the Senior District Judge of Singapore invited Justice O'Ryan and Principal Registrar Angela Filippello, to Singapore as guests of the Subordinate Courts to present a two day symposium on LAT to the judges, senior staff and Singapore profession.

At the 17th Subordinate Court Workplan 2008/2009 in May this year, in his keynote address, the Honourable Chief Justice Chan Sek Keong announced a new program 'CHILD' (**C**hildren's **B**est **I**nterest **l**ess **A**dversarial) adopting the LAT approach developed by the Family Court of Australia. In Chief Justice Chan's speech, he referred to Justice O'Ryan's description of some of the affidavits filed in family law proceedings as detailing all that has occurred in a relationship i.e. "womb to the tomb".

Armed with copies of *Finding a Better Way*, senior judges from the Subordinate Courts—Family Justice Division have, as part of their judicial development, had attachments to the Family Court in Sydney, Parramatta and in the near future, Brisbane.

In order to provide continued support for the Subordinate Court in its development of CHILD, the Chief Justice has agreed to the establishment of protocols between the respective courts to facilitate the exchange of information and knowledge.

Angela Filippello, Principal Registrar, spoke on behalf of the Family Court in saying, "the Subordinate Courts of Singapore are considered to be leaders in their region of South East Asia and having had the privilege of visiting the court and working with its judges confirmed my confidence in the courts ability to embrace new initiatives. The Family Court of Australia has always contributed to the discussions around innovative developments in family law, not only by the introduction of pilots, but also through the sharing of its learnings and experiences with other courts. Interest has been expressed by a number of jurisdictions including Canada, Hong Kong and UK."

In expressing his appreciation of the valuable experience the delegation had, SDJ Magnus said "...the Family Court of Australia is seen as a leader in the family justice systems and processes in the developed common law world."

Withdrawal from the regulation and quantification of practitioner/client costs

The Family Court of Australia has joined all other courts in leaving the issue of determining, regulating and enforcing practitioner/client costs to the State and Territory legal costing agencies.

The Judges' decision was prompted partly by the changes to the national legal profession arrangements, particularly the establishment of cost commissions, and partly to achieve harmonization between the Family Court of Australia and the Federal Magistrates Court of Australia.

After 1 July 2008, the arrangements under the various State and Territory legal costing systems will apply, as already occurs in the Federal Magistrates Court. The routine quantification, assessment and enforcement of those costs by officers of the Court will cease, however, the Court's powers to make orders for costs will not change.

The arrangements for party/party costs are not affected and the Court has no present plans to alter its involvement in that area.

The Chief Justice has written to the Family Law Section of the Law Council of Australia advising of the judges' decision and providing details of the transitional arrangements.

The State and Territory law societies and bar associations, the officers of the Attorney-General's Department and the Federal Magistrates Court of Australia have been advised.

Full details of the transitional arrangements are available from the Law Council of Australia, the State and Territory law societies and bar associations and www.familycourt.gov.au



A courtroom first

The Family Court of Australia's first purpose built less adversarial courtroom was opened on 22 May 2008 at the Family Law Courts in Canberra by Deputy Chief Justice the Honourable John Faulks.

The courtroom incorporates the latest technology—including two plasma screen televisions on either side of the courtroom, an individual monitor for the judge, a touch screen control panel, a document camera and a built in sound and amplifier system.

The courtroom has been specially designed in a 'u' shape to complement the less adversarial approach. The 'u' shape is not as confronting as a cube shaped bench, which has been trialled for less adversarial proceedings in some courts, as clients are not forced to face one another, but rather they have the opportunity to look at each other and speak to each other if required.

The courtroom is a significant improvement to the court's infrastructure and will benefit all commonwealth courts who use the less adversarial process.



Deputy Chief Justice Faulks at the opening of the less adversarial courtroom in Canberra



Commonwealth Courts Portal: providing online access for law firms

The Commonwealth Courts Portal (CCP) is an exciting new initiative of the Family Court of Australia, the Federal Court of Australia and the Federal Magistrates Court of Australia.

Launched in June 2008, the CCP is a free web-based service providing access to information about cases before the three courts. The relevant data is drawn from the courts' electronic case management system, *Casetrack*, which contains case related information from all the three courts. The concept of the CCP has become a reality now that all three courts use *Casetrack* and share the infrastructure upon which the system is based.

The Portal differs from current search facilities as it is based on registration and identity management, providing a secure platform for future services such as e-filing. Users log on using a single user ID and access case information from multiple jurisdictions from a single central web-based system. After registering, users can keep track of their cases, identify documents that have been filed, view outcomes and any orders that have been made and view future court dates.

All three courts are committed to expanding the range of web-based services available through the portal. In the future the CCP will also help to deliver a range of other integrated e-services including:

- secure access to information for individuals
- the ability to lodge applications and documents online, and
- the ability to attend hearing electronically.

Other benefits of the CCP include:

- streamlined and integrated delivery of Commonwealth Court services
- streamlined help desk and administration support through single sign on
- improved information management and consistent reporting, and
- improved service delivery through feedback.

This project shows what can be achieved when three Commonwealth Courts have a common goal and combine resources and knowledge to benefit clients.

The CCP can be viewed at:

www.comcourts.gov.au

www.familycourt.gov.au

www.federalcourt.gov.au

www.familylawcourts.gov.au

Court fees up from 1 July 2008

The Court has received notification of the biennial increase of the prescribed Family Court and Federal Magistrate Court fees from Attorney-General's Department, pursuant to *regulations 21AA and 21AB of the Family Law Regulations 1984*.

The new fee schedule applies from 1 July 2008.

Information about the new fees is available on www.familylawcourts.gov.au



Members of the Court's first Young Employees Advisory Group

Young Employees Advisory Group

The Family Court of Australia has recognised the importance of utilising the fresh and innovative perspective of young employees and as a result, they are being asked to 'step-up' and share their thinking and ideas on court practices.

The idea grew from Richard Foster, CEO—Family Court of Australia who said, 'I recently spent time in New York city, where I was fortunate to meet with young people connected with the "Court of Innovation". I was very impressed with the way in which the Court integrated the thinking of young people into their court processes and it became clear that this concept would translate well into the Family Court.'

The result of this experience is the Family Court's Young Employee Advisory Group (YEAG) which comprises 6 members under 25 years old, who represent large, medium and small Family Court registries, as well as the Court's National Support Office and the National Enquiry Centre.

The main aim of the group is to engage the thinking and ideas of the Court's young employees as the Court strives to implement best practice. During their 12 month membership, the group works with members of the Court's senior management team on projects of relevance and importance to the future operation of the Family Law Courts.

The representatives attend, as observers, the Court's executive decision making body, Court Management Group (CMG) meetings on three occasions during their membership. At these meetings the YEAG conduct a short presentation on the project they are undertaking. The group are mentored by three different CMG members to discuss the project they are undertaking and the work that is required.

An external consultant has been engaged to work with the CMG mentors and provide the YEAG with strategies on how to work together and maximise opportunities that arise.

The YEAG initiative has been well received by all Family Court employees and the representatives for 2008 are enjoying the opportunity to voice their thoughts and opinions on the Court and are learning about business and management practices through their interaction with and mentoring by the CMG.

'I am very impressed with the way the young people have adopted this new initiative. The strong ideas that have been developed from their discussions are to be commended.'

**Richard Foster,
CEO, Family Court of Australia.**



Brooke, secondary school, Queensland

Madison, primary school,
Australian Capital Territory

Children's Art Competition

The Family Court ran its first Children's Art Competition from March to April this year, with the winners announced during Victoria's Law Week 2008 (12-18 May). The competition was a great success, with entries received from all over Australia. Each of the winners received a personally engraved MP3 player. Displayed at right is the winning artwork of the secondary school female winner from South Australia. Monika's artwork encapsulates the theme of the competition-'reaching out to those who are important to you'.

Winning artwork from other states is also featured on this page.



Imogen, primary school, Victoria



Chet, primary school, New South Wales



Hands of Redemption

With the recent official apology from the Government, it is essential that society starts and continues to reach out to Indigenous Australians. I have many Indigenous Australian friends, of whom I am very protective. They deserve equal treatment to anyone else. We are all human. In the piece I used a mosaic effect to emphasise how it is little changes that will help towards reconciliation. The linked hands symbolise how reaching out will help heal past wounds. HANDS OF REDEMPTION is what reconciliation will look like. Indigenous Australians are an important part of this country. We should reach out to them.

Monika, secondary school, South Australia

Retirements



Justice Joseph Kay

After more than 21 years on the bench of the Family Court of Australia, including the Appeal division on which he served since 1993, the Honourable Justice Joseph Kay retired on 15 February 2008. A ceremonial sitting of the Court to farewell Justice Kay was held on 15 February at the Commonwealth Law Courts in Melbourne.



Justice Paul Guest

The Honourable Justice Paul Guest retired on 2 May 2008 after 10 years on the bench of the Family Court of Australia and brought to a close a law career spanning 43 years. A ceremonial sitting was held in the Commonwealth Courts building in Melbourne on 2 May 2008 to officially farewell him.



Justice John Steele

The Honourable Justice John Steele retired from the Family Court of Australia on 15 January 2008 after more than 10 years on the bench. His Honour was appointed on 1 December 1997. Prior to his appointment with the Court, Justice Steele worked for 10 years as a solicitor, then as a Barrister from 1975–1992, taking silk in 1992. Justice Steele was also involved in many royal commissions.



Judicial Registrar Andrew Forbes

Judicial Registrar Forbes was appointed on 15 February 1989 after 20 years of private practice and was the first judicial registrar appointed to the Family Court. He was a member of SA/NT Aboriginal and Torres Strait Islander Committee and member of the Indigenous Cultural Awareness Committee as well as the multicultural forum. Judicial Registrar Forbes retired on 22 February 2008.

In the next issue

- Review of family law system and its impact on the Family Court.

Further Information

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