



Australian Government  
Attorney-General's Department

**FUTURE GOVERNANCE OPTIONS  
FOR  
FEDERAL FAMILY LAW COURTS IN AUSTRALIA**

***STRIKING THE RIGHT BALANCE***

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***IN CONJUNCTION WITH  
THE ATTORNEY- GENERAL'S DEPARTMENT***

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## **REVIEW TERMS OF REFERENCE**

The Review's terms of reference are:

Having regard to continuing difficulties in the administration of the delivery of family law services by the Family Court and Federal Magistrates Court, including continuing confusion among litigants over the appropriate court to handle their matters, the Review is to:

1. Advise on the governance options to achieve a more integrated family law system that provides improved case management practices across the family law jurisdiction, while ensuring practices continue to be tailored to the nature of the work, including in particular that less formal and quicker procedures continue to be adopted for shorter and simpler matters than for longer and more complex cases
2. Provide advice on the structures and management processes necessary to improve the efficiency, effectiveness and integration of service delivery across the family law jurisdiction
3. Provide advice on potential changes in judicial structures and potential changes in structures and reporting relationships of senior administrative positions
4. Assess the potential impact of the administrative efficiencies to be achieved in corporate and registry services across the jurisdiction, and
5. Advise on the potential impact of changes on other administrative or judicial structures.

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

The administration of the delivery by the Family Court and Federal Magistrates Court (FMC) of family law services could be operating more efficiently and services to litigants could be improved. Consultations and submissions to the Review all expressed this view.

It is essential that resources for family dispute resolution, including resources provided to the family law courts, are utilised in a way that maximises the benefits to the people affected by family breakdown. These courts are vital to the well-being of the Australian community. However, it is also important to recognise that litigation should be the option of last resort for people in family law disputes. This means that, where people involved in family law disputes have been unable to resolve them through other means and finally access the courts, court resources should be deployed to ensure that these disputes are resolved as quickly and efficiently as possible.

Both the Family Court and the FMC are properly focussed on delivering services with this objective. However, there is a widespread agreement that the current arrangement does not enable the most efficient utilisation of the resources provided to the family law system. Data collected by the Review supports this view. The Review concluded that there exists a significant level of duplication of administrative structures and corporate services across the Family Court and the FMC and that the existing and proposed duplication is not financially sustainable and utilises resources that could be directed more effectively to assisting litigants. The combined future levels of expenditure will, under current arrangements of the Family Court and FMC, significantly exceed their annual allocations and are unsustainable for future years.

In part, this problem is a result of the way in which the FMC was established; it was established as a separate court but without resources comparable to those of the other federal courts. This made it dependent on resources provided by the Federal Court and the Family Court. The growth of the FMC to become the largest federal court and substantial shifts of family law work from the Family Court to the FMC have compounded this problem; 79% of family law applications (excluding divorces and consent orders) are filed in the FMC. Allocation of judicial support resources, in particular Family Consultant services, has not

reflected fully the shift in workload and has been a source of tension between the Family Court and FMC.

At the time of establishing the FMC, the then Attorney-General announced that it would provide a ‘quicker, cheaper option for litigants’ in family law matters.<sup>1</sup> This is a comparative description of two courts that, in view of their concurrent jurisdiction, inevitably will result in competition for resources as each court endeavours to discharge the functions for which it was created. The ‘service culture’ of the FMC is, by design, different from that of the Family Court. While the FMC’s service culture has certainly been received positively by litigants and legal practitioners, it has also created significant friction and resentment between the two Courts in relation to resource allocation and, in particular, judicial support resources. While competition between courts can, as the outgoing Chief Justice of the High Court Murray Gleeson AC has noted,<sup>2</sup> be a source of ‘vitality and growth’, tension over resources has distracted the Family Court and FMC from their core responsibilities.

Having two independent courts handling largely the same work has created confusion for litigants and legal practitioners who need to choose where to file matters.<sup>3</sup> The confusion appears to be exacerbated by the different names of the Courts and the titles of their judicial officers. In summary, the current framework and arrangements affecting the delivery of family law services across the Courts do not satisfy accepted principles of effective corporate governance.

The Review focuses on proposals for improvements in the corporate governance, judicial case management and structure for the family court system. Existing resource levels will be required to deliver prompt and effective dispute resolution services. However, corporate governance and judicial case management need to be improved to ensure more effective outcomes for family law litigants within existing resource constraints. Timely access to judicial dispute resolution is particularly critical. The Review considers that the proposed improvements in dispute resolution, case management and corporate governance can be achieved within existing resource constraints.

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<sup>1</sup> Second Reading Speech for Federal Magistrates Bill 1999, the Hon Daryl Williams, 24 June 1999.

<sup>2</sup> *The National Judiciary*, Sydney Institute, 9 June 2004, viewed June 2008 at <[http://www.highcourt.gov.au/speeches/cj/cj\\_9june04.html](http://www.highcourt.gov.au/speeches/cj/cj_9june04.html)>.

<sup>3</sup> Submissions from Australian Institute of Family Studies, National Legal Aid, North Queensland Bar Association submission

Corporate governance deals with how organisations are governed to achieve required performance and to satisfy their stakeholders. In the Review context, it is about ensuring that appropriate structures and processes are in place that allow the courts to deliver high quality family law services to litigants in a timely manner. It is important that responsibility for outcomes is clearly identified and articulated and that the necessary resources are available to ensure outcomes are delivered. There must also be a real understanding and appreciation of the various relationships between the organisation's stakeholders (litigants, affected children and other family members, and legal representatives) and those who are entrusted to manage resources and deliver required outcomes (judges, federal magistrates and court staff).

The Review provides a new definition of 'judicial case management' and establishes a transparent budget structure and counting rules to ensure all case coordinator, court officer, registrar and family consultant services presently operating in both courts are included as resources available for assisting the judicial management of cases. A transparent and equitable resource allocation for judicial support is critical to maintaining existing separate case management design and delivery of services by different judicial levels, as required by the nature of the disputes dealt with by each level.

The Review proposes a single administrative and corporate service structure for the total federal family law system designed to meet the requirements of litigants and their families. It recommends that existing Federal Magistrates be offered commissions to the General Division of the Family Court which would become a lower tier of that Court. Existing Family Court Judges would constitute an upper tier of the Family Court. It will be important that new administrative and corporate structures be designed to be responsive to the separate requirements of both judicial levels, including their separate judicial case management processes.

The Review's terms of reference also require it to advise on the potential impact of changes on other administrative or judicial structures.

As most of the workload of the FMC is family law, most of the judicial and other resources of the FMC are allocated to family law. A General Division of family law judicial officers in the Family Court comprising existing family law Federal Magistrates would leave a small number of non-family law Federal Magistrates in the FMC. The Review recommends that a new

division be created in the Federal Court and non-family law Federal Magistrates be offered commissions to this division.

This restructure of the federal courts would ensure there was one specialist family law court and one federal court exercising all federal non-family law civil jurisdiction. Each court would be focussed on its own distinctive jurisdiction and be able to put in place the judicial support and administrative and corporative services required to support the exercise of that jurisdiction. The two courts would also be well placed to cooperate fully wherever there is a potential for services such as IT systems and libraries to be further shared. Likely retirements in the coming years of Family Court judges provide a further opportunity to Government to reshape the federal family courts.

All submissions praised the culture of the FMC and believed this should, and could, be preserved in a single court. The Review concludes that the FMC has proved very efficient at establishing a culture that deals with less complex cases in an effective and timely way. In making its recommendations the Review has been concerned to ensure that the existing service culture of the Federal Magistrates Court is maintained. If indeed a structural change would damage the highly effective culture of the Court and destroy morale, these would be powerful reasons against change. The Review considers that structural improvements can be made which will not imperil the success of the FMC.

The Review recommends the following structures be implemented:

### **Family Court**

- There would be a single family court, headed by the Chief Justice of the Family Court.
- Two separate judicial Divisions would operate, reporting to the Chief Justice;
  - existing Family Court justices would be members of the Superior and Appellate Division, and
  - existing Federal Magistrates handling family law work would be offered commissions in the General Division under a new title.

- The number of justices in the Superior and Appellate Division would be reduced over time as judges retire to around 25 based on current workloads. The reduction of the judge numbers provides an opportunity to create a greater distinction in the level of work being undertaken by the Superior and Appellate Division and the General Division. It is proposed that, following the reduction in the number of judges, they be appointed as judges of the Appeal Division as well as hearing the more complex first instance cases. This would be consistent with the way in which appeals are currently handled by judges in the Federal Court.
- The General Division of the Family Court would be headed by the existing Chief Federal Magistrate, who would be appointed with another title to that role. The Superior and Appellate Division would have a separate head.
  - the Chief Justice would manage across both Divisions and not be directly responsible for either. The head of the General Division would be required in particular to ensure the retention of the existing service culture and to enhance the expeditious handling of matters and effective case management procedures of the FMC.
- A single administration, including corporate and financial services, would be established under a Chief Executive Officer who would be responsible to the Chief Justice.
- The Chief Executive Officer's responsibilities would include, in consultation with the Chief Justice and heads of the two Divisions, putting in place a transparent and equitable mechanism for allocating judicial support resources to both Divisions based on the complexity and number of matters handled.

### **Federal Magistrates Court**

- Once this restructure was in place, no further appointments would be made to the FMC.
- The FMC would be abolished when no person held a commission as a Federal Magistrate and until this time:

- any Federal Magistrates who have not accepted commissions to the General Division of the Family Court or a new Division of the Federal Court (see below) would continue to handle family law work assigned to the FMC by the Family Court
- the Chief Federal Magistrate would continue to be responsible for judicial matters in relation to the FMC, and
- the CEO of the Family Court would be responsible for resourcing and administrative matters.

### **Federal Court**

- Existing Federal Magistrates exercising federal jurisdiction would be offered commissions to a new Division in the Federal Court.
- This Division would exercise the same non-family law jurisdiction as the Federal Magistrates Court, with that jurisdiction being expanded over time.

The Government might wish to offer some Federal Magistrates who are currently doing both family and general federal work dual appointments to the relevant Division of the Federal and Family Courts. This would provide both Courts with additional flexibility in the utilisation of judicial resources, particularly in family law work.

All public submissions to the Review support the establishment of a single family court, except for the FMC’s submission, which was concerned that a change to the current structure would ‘place at risk the very essence of the culture that has made it successful’.<sup>4</sup>

The Review has had careful regard to the FMC’s comments. However, it believes the proposed changes in structures and governance will allow the existing service culture to be retained while delivering a number of key benefits for the delivery of family law services in a single family court:

- improved judicial planning and coordination across all family law services to achieve a better balance of workloads between the two Divisions

- an improved management structure, with the Chief Justice responsible ultimately for both Divisions
- increased distinction in the level of work being undertaken between the Divisions
- retention of existing cultures and separate case management procedures for quick and efficient procedures for short and simple cases in the General Division and different procedures for the more complex and appeal cases in the Superior and Appellate Division
- all judicial officers appointed to the Family Court would have the expertise required to adjudicate on family law matters
- removal of confusion for litigants with one court responsible for all family law filings
- a single administration in the court with no duplication of management systems and administrative overheads
- administrative savings made over time to offset forecast budget deficits in future years
- necessary resources available for judicial support from other identified registry savings
- a transparent management process that allocates judicial support resources to both Divisions on the basis of workloads and outputs, and
- allow the existing informal specialisations in the FMC to become formal, overcoming problems of ‘family’ experts doing general family law work and vice versa.

These benefits are consistent with those identified in the public submissions received by the Review. The Review also considers that its recommendations will benefit users of the general federal law system. Essentially, there will exist a specialist federal family law court and a federal court with general jurisdiction, in each of which two divisions will ensure that disputes are dealt with by the level, and using the processes, appropriate for disputes of that kind.

It is important that the establishment of a single family law court with a single administration be undertaken as a ‘merger’ of the two courts. It is not planned as a ‘takeover’ of one court

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<sup>4</sup> Federal Magistrates Court submission to the Review, 5 June 2008.

by the other and should not be seen as such. The Review recommends establishing a management team with representatives from each court to oversee the roll out of the new administrative structures. The merger of two court administrations will involve sensitive rationalisation of staffing positions. The management team would have an important role in overseeing this process.

Much of the work in combining the administrations of the FMC and the Family Court could and should be done without legislation. The Review recommends that this process be commenced as soon as practicable.

## PART 1 INTRODUCTION

### *Objects of Review*

The Review's terms of reference are set out above.

2. The Attorney-General requested the Attorney-General's Department and Mr Des Sempé, in consultation with the federal courts and other stakeholders, to advise on structural and governance options to achieve a more integrated and efficient family law court system for the benefit of all users of the system.

3. The Government is seeking to secure better access to justice for litigants involved in family law disputes by putting in place mechanisms which will ensure that:

- a. resources to support judicial officers responsible for family law matters are allocated as effectively and efficiently as possible
- b. processes available for resolving family law disputes are appropriate for the nature of the disputes
- c. family law disputes are resolved in a timely manner
- d. self represented litigants and other litigants and their legal representatives know where to file particular kinds of matters, and
- e. the interface between the Courts and the range of associated services funded by government, including legal assistance and services provided by Family Relationship Centres, is as productive and seamless as possible.

4. The previous Government appointed judges to the Family Court of Australia and Federal Magistrates to the FMC without giving any clear indication of its vision for each Court. This caused problems over some years for both Courts, reflected in the following comments made by the Chief Justice of the Family Court, the Hon Diana Bryant, in her state of the nation address to the 13<sup>th</sup> National Family Law Conference on 6 April 2008:

[t]he Chief Federal Magistrate and I both expressed the view two years ago at this conference that it would be helpful for the Government to have a blueprint for the Courts. I think we both had in mind some idea of how the work was to be divided and what proportions it was expected that each court would do and also how they would be resourced. We have effectively struggled on during that period but I think both Courts are now looking forward to a thorough consideration of how the system can best operate for the benefits of the litigants and a hopeful end to the resourcing tensions inherent in the existing arrangements...the option to stay where we are is not viable; change is inevitable.

5. The Review's object is to provide a thorough consideration of how the federal family courts system can best operate for the benefit of litigants and to develop for the Government's consideration a blueprint for the Courts.

6. While the Review relates to the delivery of family law services, where the Family Court and FMC have concurrent jurisdiction, any changes to the governance arrangements for Federal Magistrates undertaking family law work will also have implications for Federal Magistrates undertaking general federal law work and the Federal Court, as the FMC's jurisdiction in general federal law matters is concurrent with the Federal Court's. The Review proposes changes to the Federal Court to address this issue.

### ***Consultations***

7. Mr Semple, alone or jointly with Mr Ian Govey, Deputy Secretary, Civil Justice and Legal Services Group, in the Attorney-General's Department, undertook extensive consultations over an eight-week period. Initial consultations were undertaken with Family Court judges and Federal Magistrates in April 2008. Subsequent consultations were held with the Chief Justice of the Family Court and the Chief Federal Magistrate and their respective senior administrative staff, and with Federal Magistrates at individual registries.

8. In view of the implications of the Review for the Federal Court, discussions were held with the Chief Justice and the Registrar of the Federal Court. Consultations were also held with the Family Law Council and the Family Law Section of the Law Council of Australia.

9. The Chief Justice of the Family Court and the Chief Federal Magistrate have welcomed the Review as timely and enabling the Government to consider changes to the current system

10. The Family Court and the FMC have willingly provided all information requested and have supported the Review. The views expressed by the Family Court, and the external views expressed through consultations and submissions were very consistent, but differed from those expressed by the FMC. An outline of the feedback received through submissions and consultations is provided in Part 6 of the report.

11. Written submissions were received from the following:

- Australian Institute of Family Studies
- Chief Federal Magistrate, on behalf of the FMC
- Chief Justice of the Family Court
- Clarence River and Coffs Harbour Law Society
- Family Law Section, Law Council of Australia
- Law Institute of Victoria
- Law Society of New South Wales (Family Issues Committee)
- National Legal Aid
- North Queensland Bar Association, and
- Law Institute of Victoria.

## **PART 2 OVERVIEW OF CURRENT SITUATION**

12. The family law system in Australia comprises not only courts but many other services, including on line advice services, all of which aim to assist families to build better relationships and to resolve their disputes. The principal family law courts in Australia see only a small proportion of separating families but their services are vital to those families who have been unable to resolve their disputes through other means. These courts comprise the Family Court, FMC and the Family Court of Western Australia (FCWA) and other State lower level courts which deal with urgent applications under the *Family Law Act 1975* and child support legislation.

13. The system as a whole has to be considered in recommending changes to any part, to ensure that solutions to problems at particular points in the system do not cause problems elsewhere. The Review is confident that its recommendations in relation to the delivery of family law services by the Family Court and FMC will promote the effectiveness of the system as a whole.

### ***Family Court of Australia***

14. The Family Court was established in 1976 as a specialist court under the Family Law Act. With the passage of the Act, family law jurisdiction shifted from State and Territory Supreme Courts to the newly created Family Court. There was an emphasis in the Court on conciliated outcomes, with counsellors and registrars being employed by the Court to offer an alternative to litigation, where appropriate. The Family Court's predominant workload is under the Family Law Act. It also has jurisdiction under the *Marriage Act 1961*, the *Child Support (Assessment) Act 1989*, *Child Support (Registration and Collection) Act 1988*, *Corporations Act 2001*, *Criminal Code Act 1995*, *Bankruptcy Act 1966* and the *Australian Passport Act 2005*.

15. The Family Court comprises a Chief Judge, Deputy Chief Judge, Appeal Division judges and other judges. As at 31 July 2008, there were 44 judges (5 of whom were members of the Family Court of Western Australia), 2 judicial registrars and 1 senior registrar.

16. The Family Law Act also allows federal family law jurisdiction to be vested in State family courts, by agreement between a State government and the Australian Government. Western Australia is the only State to have entered into such an agreement. The FCWA has 5 judges (a Chief Judge and 4 other judges) who are also judges of the Family Court. The Chief Judge of the FCWA is also a member of the Appeal Division of the Family Court and only the Chief Judge should be counted as a resource available to the Family Court, in relation to its appeal work. There are also 7.6 full time equivalent (FTE) Family Law Magistrates who are magistrates of the Magistrates Court of Western Australia and also hold office as either a Principal Registrar or Registrar of the FCWA, and 2 Registrars (who are not Family Law Magistrates).

### *The Federal Magistrates Court*

17. The Explanatory Memorandum to the Federal Magistrates Bill 1999 says that the FMC was established to provide a quicker, cheaper option for litigants and to ease the workload of the Federal Court and the Family Court, and to exercise jurisdiction in less complex matters than those that are dealt with by the Federal Court and the Family Court. The growth of the FMC from 14 Federal Magistrates in 2000 to 53 Federal Magistrates as at 26 May 2008 has resulted in substantial shifts of family law work from the Family Court to the FMC.

18. The bulk of the FMC's current workload comprises family law. The FMC estimated that, as at 26 May 2008, there were 36.15 FTE Federal Magistrates undertaking family law work and 14.85 FTE Federal Magistrates undertaking general federal law work.<sup>5</sup> These proportions can change with changing family and general federal law workloads and the allocation of judicial resources to them. New appointments to undertake family law work are expected to be made in the near future in Adelaide, Brisbane, Hobart, Melbourne and Sydney. Currently, about 79% of family law applications (excluding divorces and consent orders) are filed in the FMC. The FMC also deals with nearly all divorces.

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<sup>5</sup> These figures add up to 51 FTE Federal Magistrates, rather than 53. The time necessarily allocated by the Chief Federal Magistrate and other Federal Magistrates to court administration is recognised in the allocation of one FTE Federal Magistrate to this work. One Federal Magistrate was on long service leave as at 26 May 2008, pending his retirement and is therefore also not counted.

### *Family law jurisdiction*

19. The FMC was initially given jurisdiction to hear:

- applications for nullity and dissolution of marriage
- family law property disputes where the property in dispute was worth less than \$0.3m, or property disputes worth more than this if the parties consented
- parenting orders providing for matters such as contact, maintenance and specific issues, and
- where the parties consented to a Federal Magistrate hearing the matter, parenting orders providing for the residence of a child.

20. In December 2000, its jurisdiction was extended to encompass 'residence'. From that point, the FMC and the Family Court had almost concurrent jurisdiction except in high value property disputes. The FMC's monetary limit in property matters of \$0.3m was increased in January 2002 to \$0.7m and was abolished in July 2006.

### *General federal law jurisdiction*

21. When the FMC was first established, its general federal law jurisdiction was limited to:

- certain applications under the *Administrative Decisions (Judicial Review) Act 1977*
- matters arising under the *Bankruptcy Act 1966*
- unlawful discrimination matters under the *Human Rights and Equal Opportunity Commission Act 1986*
- unfair trade and product safety information matters arising under Pt V of the *Trade Practices Act 1974*, and
- on transfer from the Federal Court - appeals from decisions of the Administrative Appeals Tribunal.

22. Additional general federal law jurisdiction was gradually added.<sup>6</sup> In addition, in 2006 the FMC was given jurisdiction to hear any matter transferred from the Federal Court in which it would not otherwise have jurisdiction.

23. Excluding divorces in family law, filings in general federal law represented 17.6% of all filings in the FMC in 2007-08. Of the 7004 general federal law matters filed nationally, bankruptcy matters were 70.5%, migration matters 22.2%, industrial law 3.2%, human rights 1.4%, consumer protection 1.3%, intellectual property 0.7%, administrative law 0.5% and admiralty law 0.2%.

### ***Family Relationship Centres and other family dispute resolution services***

24. The family law reform package announced by the former Government in 2005 greatly increased resources in the community to help separated families reach agreement on parenting arrangements. This included an expansion of existing family dispute resolution services and the establishment of 65 Family Relationship Centres. The increase in community-based services was accompanied by legislative changes that introduced a requirement to attempt to resolve parenting disputes with the help of a family dispute resolution practitioner before an application for a parenting order could be filed in a court (with exceptions for cases involving violence, child abuse or urgency). The aim was to help families resolve parenting disputes outside the courts where possible. These changes were rolled out over 3 years and were fully in place by July 2008.

25. In addition to the 65 Family Relationship Centres and 40 other government funded family dispute resolution services, family dispute resolution can be obtained outside the courts through accredited dispute resolution practitioners, whether in private practice or in community based services. A web-based Family Dispute Resolution Register

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<sup>6</sup> Including: In 2001: judicial review of visa-related decisions made under the *Migration Act 1958*, and enforcement of decisions made under the *Privacy Act 1988*; in 2003: copyright matters arising under the *Copyright Act 1968*; in 2005: certain matters arising under the *Building and Construction Industry Improvement Act 2005* (including review of unfair contracts with independent contractors, and, unlawful industrial action) review of migration decisions made under the *Migration Act 1958*, and power to hear applications for anti-terrorism 'control orders' under the *Anti-Terrorism Act (No 2) 2005*; in 2006: concurrent jurisdiction with the Federal Court in matters arising under the *Workplace Relations Act 1996* (except for matters arising under Schedule 1 – registration and accountability of organisations) and the *Independent Contractors Act 2006*, in personam claims made under ss 9, 27 or 28 of the *Admiralty Act 1988*, and trade practice matters arising under Parts IVA (unconscionable conduct), IVB (breach of industry codes), V (consumer protection) and VA (manufacture and import of defective goods) of the Trade Practices Act.

(at <[www.familyrelationships.gov.au/fdr](http://www.familyrelationships.gov.au/fdr)>) enables the public to locate a registered service or practitioner.

### *Use of family dispute resolution by the courts*

26. The increase in family dispute resolution resources in the community and the introduction of a requirement to attempt dispute resolution before applying to the court for a parenting order<sup>7</sup> required a rethinking of the use of mediators within the court system.

27. The Family Court responded by redesigning its dispute resolution phase to better suit the difficult cases that do reach that Court. The changes were supported by the *Family Law (Shared Parenting) Amendment Act 2006*. Court mediators were renamed family consultants and their work is no longer privileged. Their initial role is to work with the family to assist the parents to focus on the impact their conflict is having on children with the aim of reaching a resolution without a hearing. However, where a case does proceed to a hearing, the family consultants are able to give evidence and assist the Court with their expert advice about the case.

28. Prior to the family law reforms, the FMC contracted community-based service providers to provide parties with mediation and similar services. Since the reforms, less use has been made of the contracted services for this purpose. Federal Magistrates rely on family consultants from the Family Court or externally contracted professionals to provide them with family reports. Neither the family consultants or contracted professionals now undertake privileged work for the FMC.

29. The FCWA has adopted a case management approach where the first court event is a case assessment conference conducted by a family consultant. Immediately following this conference, the matter comes before a judicial officer and the family consultant is available to give evidence and assist the Court to decide how best to proceed to resolve the matter. The FCWA also works closely with the community sector and is able to refer parents to a range of services and programs to assist them.

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<sup>7</sup> Subject to some exceptions

### **PART 3 THE NEED FOR CHANGE**

30. The Review was established in response to continuing difficulties in the administration of the delivery of family law services by the federal family law courts.

31. Very substantial public resources are devoted to the handling of family law disputes. The Attorney-General Department's appropriation in 2008-09 for family relationship services, including family dispute resolution outside the courts, is \$166.384m.<sup>8</sup> The total appropriations for the Family Court and FMC, excluding equity injections, are \$182.411m in 2008-09, being \$126.603m for the Family Court and \$55.808m for the FMC.<sup>9</sup> The FMC resources include resources required for its exercise of non-family law jurisdiction.

32. As well as public funding, litigants involved in family law disputes pay legal and court fees. The cost of legal assistance in family law disputes provided by the Australian Government is substantial. Funding for the legal aid program, under which the Australian Government funds State and Territory Legal Aid Commissions to deliver legal aid in matters arising under Commonwealth law, including family law, is \$164.167m in 2008-09.<sup>10</sup> Data collected by the Attorney-General's Department suggests that 85% of Commonwealth expenditure by Legal Aid Commissions is on family law matters. This would equate to approximately \$140m in 2008-09. In addition, \$25.255m will be provided in 2008-09 for the Community Legal Services Program.<sup>11</sup> Under this Program the Australian Government funds 127 community legal centres across Australia to provide a range of legal and related services. Family law matters comprise about 35% of Program activities. This equates to \$8.839m in 2008-09.

33. The Australian Government also operates the family violence prevention legal services program which assists indigenous adults and children who are victims of family violence. The primary function of the program is the provision of legal assistance, casework, counselling

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<sup>8</sup> Portfolio Budget Statements 2008-2009, p 28.

<sup>9</sup> Portfolio Budget Statements 2008-2009, pp 237 (FcOA) and 266 (FMC)

<sup>10</sup> Figure derived from adding 'Payments for the provision of legal aid – Legal Aid Commissions' and 'Payments for the provision of legal aid – states and territories': Portfolio Budget Statement, p 29

<sup>11</sup> This figure is derived from the 'Payments for the provision of community legal services' at p 29 of the Portfolio Budget Statement, less some one-off funding received by the program specifically for the Northern Territory Emergency Response.

and court support. Funding for this program in 2008-09 is \$18.776m.<sup>12</sup> The legal aid for indigenous Australians program also provides legal assistance for family law related matters. Funding for this program for 2008-09 is \$51.889m.<sup>13</sup> Approximately 15% of services delivered under the program are family law related. The legal profession provides some pro bono assistance.

34. It is essential that resources for family dispute resolution, including resources provided to the family law courts, are utilised in a way that maximises the benefits to the people affected by family breakdown. These courts are vital to the well-being of the Australian community. Australians are more likely to have dealings with a federal court in connection with a family dispute than any other kind of dispute. In 2007-08, 44,362 divorce applications and 39,091 other applications<sup>14</sup> were filed in the federal family courts.

35. These courts are properly focussed on delivering services in a timely and efficient manner. The FMC was initially established as a separate court dependent on services provided by the Family Court. It was thought that, within a few years of its establishment, the range of services the FMC required and the cost of those services would be deducted from the Family Court's appropriation and provided to the FMC.<sup>15</sup> This did not occur and there is a widespread view that the current arrangement does not enable the most efficient utilisation of the resources provided to the family law system. Data collected by the Review supports this view. This is so despite the high regard in which the FMC is held. For example, the submission by the Family Law Section of the Law Council of Australia states:

the current arrangement in the family law area of separate Chapter III courts exercising largely identical jurisdictions, with separate administrations and competing for funds and resources, is wholly unacceptable... rationalisation and integration of the two federal courts exercising family law jurisdiction is urgently required.<sup>16</sup>

36. The existence of two courts with largely concurrent jurisdiction in family law matters has created a number of difficulties which are described below.

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<sup>12</sup> Portfolio Budget Statements 2008-2009, p 29

<sup>13</sup> Portfolio Budget Statements 2008-2009, p 29

<sup>14</sup> These are applications for final orders, applications for interim/procedural orders, and applications for maintenance, enforcement summons, contempt, contravention of an order, contravention of a child order and child support: sourced from Casetrack and provided by the Family Court, 16 July 2008

<sup>15</sup> See speech by Bryant CJ 'The autonomous model – not all beer and skittles', Judicial Conference of Australia Colloquium 2006, Canberra, 6-8 October 2006

<sup>16</sup> Family Law Section of the Law Council of Australia, submission to the Review. All other submissions to the review also supported the need for change.

### *Complexities in planning, finance and administration*

37. The Family Court and the FMC, like the High Court and the Federal Court, are each responsible for their own administration. The Chief Justice of the Family Court and Chief Federal Magistrate are the judicial and administrative heads of their Court. Both Courts receive an annual appropriation and make decisions about the application of the amount appropriated. This gives each Court, within the limits of the total appropriation, the power to set its own priorities for expenditure. This is also the case for the High Court and Federal Court.

38. However, while the FMC is responsible for its own administration, part of the funding that it requires for its operation is appropriated to the Family Court which uses this funding to provide services to the FMC. The Family Court funding is identified in budget statements as resources ‘provided free of charge’ to the FMC.

39. Until the 2008-09 budget the FMC also received resources ‘provided free of charge’ from the Federal Court. However, in the 2008-09 budget that funding was appropriated to the FMC which purchases back the services from the Federal Court.<sup>17</sup>

40. Overall planning for the family law system is complicated by the sharing of resources between the Family Court and FMC. Consultations identified the need for better coordinated planning of resources and facilities for the Family Court and FMC.

41. Also, as the FMC has an important general federal law jurisdiction, most of which it shares with the Federal Court, future planning by the Government must take into account the resourcing of all three Courts.

42. While there is close cooperation between all federal courts, it is not the role of any particular court to be responsible for the overall effectiveness of the system as a whole. While the Government has an overall responsibility to ensure the proper resourcing of the courts, it is not appropriate for it to be responsible for the day-to-day operations of the courts and management of the courts’ business.

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<sup>17</sup> Portfolio Budget Statements 2008-09 p 257 states that the Federal Court expects to receive \$9.565m from the FMC and Administrative Appeals Tribunal for registry and other services provided on their behalf by the Federal Court. The bulk of this amount is attributable to services provided to the FMC.

43. The current framework and arrangements affecting the delivery of family law services across the Courts do not satisfy accepted principles of effective corporate governance. In 1998, the Commonwealth Auditor-General described ‘corporate governance’ as: (B)asically concerned with structures and processes for decision-making and with controls and behaviour that support effective accountability for performance outcomes. Major elements are business planning, risk management, performance monitoring and accountability. The framework requires clear identification and articulation of responsibility and a real understanding and appreciation of the various relationships between the organisation's stakeholders and those who are entrusted to manage resources and deliver required outcomes.<sup>18</sup> The ways in which current arrangements fall short of these standards is considered later in this Report.

44. The combined future levels of expenditure will, under current arrangements of the Family Court and FMC, significantly exceed their annual allocations and are unsustainable for future years. The Family Court and FMC currently have a significant level of shared resources, most notably the shared registry that provides a common counter for all applications and enquiries for litigants.

45. There is, however, a significant level of duplication of administrative structures and corporate services across the Family Court and the FMC. Both Courts see the need for administration and judicial support structures that are specifically responsive to their judicial officers’ requirements, which in turn reflect the workload of each Court. At the time this Review commenced, there were also plans by the FMC to purchase separate new financial and human resource systems, separate from the systems that currently exist for the Family Court and the Federal Court.

46. The existing and proposed duplication of administrative and corporate services is not financially sustainable and utilises resources that could be directed more effectively to assisting litigants.

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<sup>18</sup> Barrett P, ‘Corporate Governance’, Address to the Defence Audit and Evaluation Program Evaluation Committee, 28 July 1998 - [http://www.anao.gov.au/uploads/documents/Corporate\\_Governance.pdf](http://www.anao.gov.au/uploads/documents/Corporate_Governance.pdf)

### ***Competition for general and judicial support resources***

47. As noted above, the FMC was established as a separate court but without resources comparable to those of the other federal courts. This made it dependent on resources provided by the Federal Court and the Family Court. There has been a high degree of cooperation between the superior courts and the FMC but with the expansion of the FMC to become the largest federal court, the problems associated with the Court not controlling all the resources it requires to discharge its responsibilities have grown.

48. The growth of the FMC has resulted in substantial shifts of family law work from the Family Court to the FMC. Allocation of judicial support resources, in particular Family Consultant services, has not reflected fully the shift in workload and has been a source of tension between the Family Court and FMC. Judicial case management and allocation of resources is discussed in detail in Part 5 of this Report.

49. During consultations a number of people expressed the view that the FMC was created as a competitor of the Family Court. At the time of establishing the FMC, the then Attorney-General announced that it would provide a ‘quicker, cheaper option for litigants’ in family law matters.<sup>19</sup> This is a comparative description of two courts that, in view of their concurrent jurisdiction, inevitably will result in competition for resources as each court endeavours to discharge the functions for which it was created. The ‘service culture’ of the FMC is, by design, different from that of the Family Court. While the FMC’s service culture has certainly been received positively by litigants and legal practitioners, it has also created significant friction and resentment between the two Courts in relation to resource allocation and, in particular, judicial support resources. While competition between courts can, as the outgoing Chief Justice of the High Court Murray Gleeson AC has noted,<sup>20</sup> be a source of ‘vitality and growth’, tension over resources has distracted the Family Court and FMC from their core responsibilities.

### ***Confusion among litigants regarding the appropriate court to handle their matters***

50. As discussed above, while there is a distinction in the workload and processes of the Family Court and FMC, they have largely concurrent jurisdiction. Having two independent

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<sup>19</sup> Second Reading Speech for Federal Magistrates Bill 1999, the Hon Daryl Williams, 24 June 1999.

courts handling largely the same work has created confusion for litigants and legal practitioners who need to choose where to file matters.<sup>21</sup> The confusion appears to be exacerbated by the different names of the Courts and the titles of their judicial officers.

### *Submissions to the Review*

51. All submissions to the Review, except for the FMC's submission, considered that the most effective model for the delivery by the Courts of family law services would be a single family court, with two separate judicial divisions serviced by a single administration. Submissions saw this as the most effective mechanism for overcoming the difficulties outlined above.

52. In essence, as stated in the submission from the Family Law Section of the Law Council, 'vertical integration of the two family courts into a single, coherent structure with a common pool of resources delivering family law services at the appropriate level' would be more readily accessible, efficient and cost effective.

53. All submissions praised the culture of the FMC and believed this should, and could, be preserved in a single court. The FMC has proved very efficient at establishing a culture that deals with less complex cases in an effective and timely way. The submissions considered the current Federal Magistrates should be titled judges consistent with their appointments as Chapter III judges.

54. The FMC's submission opposed change to the current structure. Its submission states that 'Federal Magistrates believe that to change the current structure is to place at risk the very essence of the culture that has made it successful. The morale of the court would be destroyed.'

55. The Review has had careful regard to the comments made by the FMC in its submission. If indeed a structural change would damage the highly effective culture of the Court and destroy morale, these would be powerful reasons against change. The Review

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<sup>20</sup> *The National Judiciary*, Sydney Institute, 9 June 2004, viewed June 2008 at [http://www.highcourt.gov.au/speeches/cj/cj\\_9june04.html](http://www.highcourt.gov.au/speeches/cj/cj_9june04.html).

<sup>21</sup> Submissions from Australian Institute of Family Studies, National Legal Aid, North Queensland Bar Association submission

considers that structural improvements can be made which will not imperil the success of the FMC.

56. The FMC submission also commented that

‘[t]he Court accepts that a joint administration is an alternative way to manage the allocation of resources and achieve the efficiencies needed to ensure future resourcing needs. It is axiomatic that a joint administration would have to be just that, and not a de facto administration by the Family Court. Moreover, it is fundamental that the Court must run its administration and not the other way round.’

57. The Review considers that a governance structure, as outlined in this report, will allow the FMC to retain the characteristics that have made it successful and involve a genuine joint administration that will be responsive to the two Divisions of the proposed new structure, while ensuring a more appropriate distribution of resources across the two Divisions.

## PART 4 RESOURCES MANAGEMENT AND ALLOCATION

58. Details of financial and other resources set out in this Part have been discussed with and provided by the Chief Financial Officers of both the FMC and Family Court, who have undertaken considerable work to reformat the budget by functions to align with one of the Review's major emphasis - ensuring adequate and effective judicial case management support. This new category captures all expenditure by both courts for registrar, family consultant, case coordinator and court officer services.

### *Family Court Budget*

59. The Family Court is a prescribed agency under the *Financial Management and Accountability Act 1997*. The Portfolio Budget Statement for the Attorney-General's Department indicates that the Family Court's budgeted income for 2008-09 is \$137.022m.<sup>22</sup> This includes \$8.419m in Gains.<sup>23</sup> The Family Court's actual 2008-09 resourcing is therefore \$128.603m.<sup>24</sup> Included within this budget is the provision by the Family Court of resources to the FMC free of charge, in accordance with sections 90, 92 and 99 of the Federal Magistrates Act. These resources comprise, but are not limited to, the work of Registry staff for the FMC and provision of accommodation, including access to courtrooms. The Family Court estimates that the cost of resources provided free of charge to the FMC during 2008-09 is \$18.181m.<sup>25</sup>

60. The Family Court also provides further shared services, including information technology services, accommodation, the work of some registry staff (including family consultants and registrars) and related depreciation and amortisation.

61. The Family Court's financial forecasting indicates that the current level of the Court's expenditure is not sustainable. The Family Court has forecast that its operating losses for the next three years will be as follows, unless significant recurrent savings can be identified:

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<sup>22</sup> Portfolio Budget Statements, p 244

<sup>23</sup> Portfolio Budget Statements, p 244. These Gains comprise liabilities assumed by the Attorney-General's Department for Judicial Pension scheme contributions of \$8.349m and ANAO audit services of \$0.07m provided free of charge.

<sup>24</sup> As shown in chart 1, less an amount of \$1.007m for Defacto Property matters – funding is subject to the passage of legislation.

<sup>25</sup> Portfolio Budget Statements, p 249

- 2008-2009: \$5,019,840
- 2009-2010: \$8,090,634, and
- 2010-2011: \$10,721,516

62. Pie Chart 1 (**Attachment A**) provides a breakdown of the budget by function that indicates that the Family Court has a significant component of fixed costs (56.1%) relating to property (\$39.185m or 30.71%) judicial officers and support (\$23.437m or 18.37%<sup>26</sup>) and depreciation (\$8.971m or 7.03%).

63. The Family Court resources which the Review identifies at Attachment A as available for future allocation to all judicial officers to support case management are substantially increased by including case coordinator and court officer resources from the ‘shared client service/registry services’ to the ‘judicial support category’.<sup>27</sup> These resources, combined with Family Consultant and Registrar allocations, account for \$19,832,490 or 15.54% of existing Family Court resources available for future allocation for judicial support. FMC Budget.

### ***FMC Budget***

64. The FMC is also a prescribed agency under the Financial Management and Accountability Act. The Portfolio Budget Statement for the Attorney- General’s Department indicates that the FMC’s budgeted income for 2008-09 is \$74.246m. However, \$18.216m of this amount relates to resources received free of charge. This includes \$18.181m from the Family Court. The FMC also receives Administered Funding of \$0.843m for primary dispute resolution services. Actual 2008-09 income is, therefore, \$56.873m.<sup>28</sup>

65. The FMC currently uses a MYOB financial system that is not sufficiently sophisticated to provide entirely accurate future year forecasts. The FMC’s Chief Financial Officer has estimated there will be in excess of \$1,000,000 deficit 2008-09. The FMC had indicated that

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<sup>26</sup> This comprises judges and support (17.4%) and judicial registrars and support (0.97%)

<sup>27</sup> See Part 5 of this report – the management of cases pre-trial, trial and post trial relies on the different roles and responsibilities of Registrars, Family Consultants, Case Coordinators and court officers as determined by the case management pathway and/or under the direction of the judicial officer.

<sup>28</sup> As shown in chart 2 less an amount of \$1.535m for Defacto Property matters – funding subject to the passage of legislation and less \$0.222m in s 31 revenue, giving \$55.116m.

they wished to commit additional expenditure on new financial and human resource systems that are different from those currently used for the Family Court and the Federal Court, but has agreed not to do so pending the outcome of the Review. Pie Chart 2 (**Attachment B**) provides a broad calculation that divides the FMC budget between family law and general federal law, as estimated by the FMC at the time of the Review.

66. Pie Chart 3 (**Attachment C**) provides a breakdown of the FMC's budget of \$32.361m for family law expenditure only. This direct allocation figure, when compared to the estimated \$18.181m 'value of services provided' free of charge by the Family Court, highlights the FMC's high level of reliance on the Family Court. In addition, \$8.018m worth of services are provided by the Federal Court. This amount is appropriated to the FMC budget and purchased from the Federal Court.<sup>29</sup>

67. The budget details provided by the FMC (distinct from the appropriations outlined in the portfolio budget statements) are estimates only, as their financial software cannot easily break down expenditure details by categories. The figures do, however, provide an adequate basis for estimating the forecast operating losses and combined capacity of the two Courts to meet additional judicial support expenditure. The FMC breakdown of the budget by function is outlined in **Attachment C**.

### ***Combined Family Law Courts Budgets***

68. Pie Chart 4 (**Attachment D**) outlines the estimated consolidated family law resources of the FMC and Family Court. It indicates that \$23,036,490 or 14.40% would be the combined amount available for future judicial support for all family law judiciary.

69. The amalgamation of the administration and corporate services in the family law area would provide economies of scale and avoid the current duplication of administrative and corporate services of both Courts.

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<sup>29</sup> At page 257 of the Portfolio Budget Statement, the Federal Court estimates that it expects to receive \$9.565m from the FMC and the AAT for registry and other services provided on their behalf by the Federal Court. The FMC has indicated that \$8.018m of that amount relates to services provided to the FMC.

70. A single administration would also:

- avoid substantial increasing costs that could be expected to occur in the future as the two administrations became more independent and further separated and duplicated corporate services
- realise savings in corporate systems, annual reporting, financial statements, portfolio budgets, all processing functions (including creditors and staff payments), internal management reports, procurement and other contracts and leases
- realise savings in the human resource area, through single reporting, policies, delegations and economies of scale for staff training and development, and
- enhance co-ordination of property and manage any future rebalancing of positions between different judicial levels, and the reallocation of chambers and courtrooms.

71. The projected savings, combined with the proposed reformatted budget incorporating judicial support, would provide capacity within existing resources to deliver prompt and effective dispute resolution services, and:

- meet the current forecast budget deficits of both Courts
- significantly increase the allocation and coordination of judicial support resources for judicial case management as outlined below, and
- increase the output of services for litigants.

### ***Meaning of judicial case management***

72. For the purpose of this report, ‘Judicial Case Management’ is used to describe the management of cases listed with the court by the judiciary and other court officers who are directly involved in the management of those cases during pre-trial, trial and post trial processes (for example, registrars, family consultants and case coordinators). Judicial case management is an important aspect of the culture of any court.

73. The Australian Law Reform Commission has described the fundamental objectives of case management as being to encourage the early resolution of disputes, reduce trial time and

make more effective use of judicial resources.<sup>30</sup> To achieve these objectives, case management processes rely on the different roles and responsibilities of registrars, family consultants, case coordinators and court officers as determined by the case management pathway and/or under the direction of the judicial officer. The outgoing Chief Justice the Hon Murray Gleeson AC has observed that '[j]udges now take charge of cases from their inception, and actively participate in the progress of the queue... [e]verywhere, this new responsibility is accepted'<sup>31</sup> and that '...a productive judge was one who ran his or her list so as to facilitate settlement, not one who forced litigants to run their cases to finality'.<sup>32</sup>

### ***Current situation***

74. At 30 June 2000, the Family Court had a total of 6 appeal judges (excluding the Chief Judge of the FCWA), 42 other judges (excluding FCWA judges) and 7 judicial registrars. There were also 20 SES Band 2 Registrars on 3-year contracts and one on a one-year contract, who were appointed to the Family Court in 1999. The Court appointed SES Band 2 Registrars on the understanding that the positions were established in a manner which would support the FMC, with resources for those positions to be transferred over time to the FMC as the number of Band 2 registrar positions gradually reduced.

75. As at 26 May 2008, 34.5 (FTE) judges<sup>33</sup> and 36.15 (FTE) Federal Magistrates were available to handle first instance family law matters (there were also 7 Appeal Division judges at this time excluding the Chief Judge of the FCWA). The Family Court also has 2 Judicial Registrars and one SES Band 2 registrar.

76. Judicial resources available to undertake first instance family law work have increased very substantially since the creation of the FMC.

77. Currently, the Family Court and FMC are responsible for the design of their own judicial case management practices which are intended to meet the distinctive nature of the cases they deal with. These differences in case management design can lead to significant

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<sup>30</sup> ALRC IP 20: *Review of the adversarial system of litigation - Rethinking the federal civil litigation system*, Issues Paper 20, 1997, para 6.3

<sup>31</sup> The Hon Chief Justice Murray Gleeson AC, 'The State of the Judicature', speech delivered 14 October 2001.

<sup>32</sup> The Hon Chief Justice Murray Gleeson AC 'Some legal Scenery' *The High Court Quarterly Review* 4(1) 2008: 1-11

<sup>33</sup> A further two judges retired on 8 and 18 July 2008.

variation in practices. Analysis of the data on cases finalised during the 3-month period from 1 July to 30 September 2007 indicates that the FMC, per judicial position, finalised a little less than twice the number of cases per annum compared to the Family Court, which is responsible for managing the more complex matters.

*Existing Family Court Case Management Model*

78. The Family Court has recently revised its case management model for parenting matters to provide for a docket system and a less adversarial trial. The new model reduces the number of required events that the parties must complete and provides a more flexible approach to each case. At the same time, the Child Dispute Resolution Section of the Family Court (formerly the Counselling Section) provides a complementary pre-trial process, the first day of the less adversarial trial and an optional post-trial conference to support the judicial management. As Bryant CJ has observed, ‘[i]n essence, the new case management system is a move away from a prescriptive, event-based model to one that accommodates the needs of individual cases.’<sup>34</sup> Whilst the model is to be used differentially according to the specific requirements of each case, for costing purposes, it has a defined structure from which the Family Court can estimate how much time is available to support families who file with the Court.

79. The resources have been bundled around groups of potential case management activities to avoid a rote ‘event management’ approach and to favour a ‘differential case management approach’. The features of the new model include assumptions about the number of cases listed with the Family Court and an estimated percentage of case attrition through the case management cycle. The model is, therefore, built on case output assumptions. An outline of the Family Court’s case management model for parenting matters is in **Attachment E**.

80. The Family Court has calculated that they require the following level of judicial support in order to maintain existing service levels:

- 60 Family Consultant positions @ \$123,271                      \$7,396,260
- 21 Registrar positions @ \$151,571                                \$3,182,991

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<sup>34</sup> ‘State of the Nation Address’ delivered at the 13th National Family Law Conference Adelaide, South Australia, 6-11 April 2008.

• 37 Court Officers @ \$64,961	\$2,403,566
Total	\$12,982,817

81. There are also 21.6 Case Coordinator equivalent positions at a combined value of \$1,721, 849 located in registries that are available for judicial support responsibilities. The Family Court’s calculation of what they require to maintain existing service levels is less than the current Family Court budget allocation for Family Consultants and Registrars.

*FMC Case Management Model*

82. The FMC uses a model that emphasises the case being listed before a Federal Magistrate as soon as practicable. The FMC also adopts a flexible approach that encourages Federal Magistrates to use their individual discretion and accommodates significant regional variations. The model for parenting matters relies on a ‘Case Management Menu of Services’ that provides a range of flexible services that can be drawn upon where appropriate while a case progresses. This can include use of a family consultant to give evidence in court, provide a family consultant report, a specific issues report, a child and parents’ report, or a full family report. An example of the FMC Case Management Process for parenting matters is in **Attachment F**.

83. Federal Magistrates indicate that they wish to continue using a highly regionalised approach to case management and to continue to monitor and evaluate its effectiveness. They wish to continue to use a discretionary case management approach on a case-by-case basis and rely on a mix of outsourced and internal Family Consultant and Registrar services.

***Total required***

84. During the review consultation, the FMC Registries were requested and provided a list of the judicial support resources which they require, as follows:

• 28 Family Consultant positions @ \$123,271	\$3,451,588
• Outsourced Family Consultant services	\$2,840,400
• 22 Registrar positions @ \$151,571	\$3,334,553

• Sessional Registrar services	\$284,482
• 6 Court Officer/Chamber Assistants positions	\$389,766
• Sessional Court Officer services	\$175,220
<b>Total</b>	<b>\$10,476,009</b>

85. The nature and quantity of resources requested varies across Registries in accordance with different regional circumstances. All Registries have requested Family Consultant services to assist at an early stage to manage cases, and access to a range of internal and out-sourced family consultant and registrar services. The emphasis on early judicial case management support is consistent with other family law jurisdictions managing a high-volume workload.

86. The Review does not consider that there is any scope to reduce the resourcing presently provided to the Family Court and FMC.

87. The anticipated combined judicial support requirements of both Courts (see paras 80 and 84) total \$23,458,826. The combined family law budget requires a total amount of \$23,036,490 to be determined for future allocation for judicial support. To achieve these requirements will take time to make the necessary adjustments to the current workforce, in addition to extra financial resources. These resources will need to be found from savings in the rationalisation of the current two administrations into a single administration and directed to corporate governance and judicial case management improvements to ensure more effective outcomes for family law litigants and timely access to judicial dispute resolution.

### ***Judicial Case Management Principles***

88. Resources available for judicial case management need to be considered in their entirety and made available equitably and as required by the two Divisions of judicial officers responsible for resolving family disputes. This is so whether the two Divisions constitute two courts, as at present, or a single court. The following guiding principles for considering and allocating judicial case management resources were arrived at in close consultation with the Courts:

- each level is to be separately responsible for its own judicial case management practices consistent with the nature of the cases it deals with
- all existing Case Coordinator, Court Officer, Family Consultant and Registrar resources are to be jointly considered as judicial support resources available for assisting all judiciary
- both levels must have regard to the overall family law system (ie one judicial level cannot determine its resource level without regard for the other)
- the criteria for resource distribution relating to first instance cases are to be based on the complexity and volume of case outputs, and
- existing judicial support positions or structures are not to be the determinant of future resource allocations.

### ***Standardised Counting Rules***

89. Judicial support resources must be allocated according to ‘work effort’ or the number of cases that are managed and finalised. Therefore, resources must be allocated according to outputs and not inputs.

90. Standardised counting rules for both levels of the judiciary to calculate first instance disposals/finalisations (ie ‘outputs’) are necessary to ensure that judicial support resources available for first instance work are allocated equitably. To achieve consistency across divisions, it will be important that counting occurs at the same point in the case management process and pathway at either level.

91. The FMC and the Family Court have agreed that future counting rules on first instance disposals/finalisations should include the following:

- A disposal/finalisation is to be counted only once for a case during the time it is listed before the Courts. Therefore, transfers out from one court or division to the other are not counted as a disposal/finalisation. This will ensure that disposals/finalisations are not counted twice for a single case and resources are allocated where the work was undertaken. This will provide a greater incentive to transfer cases quickly to the appropriate court or division and reduce potential case ‘churn’.

- A case is only to be counted as new if there is a subsequent application after an earlier finalisation.
- Consent orders pursuant to Rule 10.4 of the *Family Law Rules 2004*, divorces, interim matters are not to be counted.<sup>35</sup>

92. Separate case management processes with common standardised ‘outputs’ can allow for regular resource adjustments to be made. Case management data can be collected individually by each division to assist in ongoing analysis, evaluation and review of their own case management practices.

93. The Family Court judges currently have a chamber establishment comprising one Associate and 0.5 of a Legal Associate. The Federal Magistrates have a chamber establishment of two Associates. It is proposed that these and the judicial positions be retained and treated separately from the combined pooling of all other judicial support positions. This also recognises resources which assist in managing the appeal work of the Family Court.

94. It is proposed that the future level of resource allocations for the Judicial Case Management Models used by both Courts be determined by adopting the proposed standardised counting rules over a set period of time that commence counting the case at the same time and are finalised according to the earlier definitions. The standardised counting rules would apply to the following three primary factors:

- the volume of finalised first instance cases<sup>36</sup>
- the number of judicial officers, and
- the weighting for complexity of cases.

95. These three factors would be applied to the total value of the pooled Judicial Case Management support resources available (the costs of all Registrars, Sessional Registrars, Family Consultants, outsourced Family Consultant services, Case Coordinators currently in Registries, and the Court Officers), less resources required for appellate work.

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<sup>35</sup> Of course divorce and interim applications and appeals require resources and will need to be considered in the total court allocation.

<sup>36</sup> See section ‘Standardised Counting Rules and Resource Allocation’ above for discussion of what is included in definition of finalised cases.

96. Allocating resources available for first instance work proportionately to outputs would provide a more equitable basis for distributing resources according to need. It would also allow individual judicial officers to choose the judicial support they require, and to select judicial support for each case according to its specific requirements.

## PART 5 CONCURRENT FAMILY LAW JURISDICTION

97. The confusion caused for clients by the sharing of family law jurisdiction by the FMC and Family Court has been noted in a number of reports over several years, including the Australian National Audit Report, *Client Service in the Family Court of Australia and the Federal Magistrates Court* and the 2003 report by the House Standing Committee on Family and Community affairs, *Every Picture Tells a Story: Report on the inquiry into child custody arrangements in the event of family separation*.

98. The two Courts have endeavoured to overcome this confusion, in particular, by establishing a single Family Law Courts registry in which all proceedings for the Family Court and FMC are filed. However, submissions indicate that there continues to be confusion about the court in which proceedings should be commenced.

99. The North Queensland Bar Association submission describes the current situation as follows:

there is no rule in place governing the choice of court – the most complex matter can be commenced in the Federal Magistrates Court; the simplest of matters in the Family Court. Whether the matter will then be transferred to the appropriate court is a matter for the individual initiative and discretion of judges, magistrates and registrars. A vague ‘complexity rule’ applies – complex cases (whatever that may mean) ‘should’ be in the Family Court but that will depend upon the choices individual lawyers and judges make.

100. The Review agrees with comments in the submission by the Chief Justice of the Family Court that there needs to be a ‘more effective capacity to distribute work equitably between courts having regard to changing numbers’ as well as ‘greater certainty for the litigants about what is the appropriate court and what are the appropriate criteria’.

101. As well as the issue of the shared jurisdiction of the Family Court and FMC, another reason for confusion is the fact that the previous Government established the FMC without knowing the proportion of work suitable to be dealt with by Federal Magistrates. It simply established a court to which 13 Federal Magistrates and a Chief Federal Magistrate had been appointed by the end of 2000. Magistrates were allocated as follows: one in Adelaide, one in Brisbane, one in Canberra, one in Hobart /Launceston, four in Melbourne (including the Chief

Federal Magistrate), two in Sydney (both of whom were expected to do general federal law work), two in Parramatta, one in Newcastle and one in Townsville.

102. In practice, matters have generally been filed in the court where judicial resources have been available. The FMC also undertakes virtually all of the circuit work that is performed in the family law courts. This has meant that there are significant differences in the relative percentages of filings across registries. So for the 2007-08 financial year, 3% of matters were filed in the Family Court in Dandenong but 49% were filed in that Court in Tasmania (where there is one judge in Hobart and one Federal Court in Launceston). This is against an overall percentage of 21% of filings in the Family Court across Australia.

103. Likely retirements in the coming years of Family Court judges provide a further opportunity to Government to shape the federal family courts to reflect the nature of the federal workload, rather than maintaining a situation where the workload goes where the resources exist, whether or not the workload requires resources at that level.

#### *Complexity*

104. Very little family law jurisdiction is exclusive to the Family Court. The assessment about complexity of a matter (and whether to refer a matter to the Family Court) is generally one for the discretion of a Federal Magistrate. Despite the best attempts by the two Courts, no agreement has been reached on how complexity might be defined.

105. The Family Court has attempted to formulate a system for determining what matters should be filed in the Family Court. The Court's draft Practice Direction No.2 of 2007 states that parenting cases that involve investigations by child welfare agencies, allegations of sexual or serious physical abuse, mental health issues or multiple parties should be filed in the Family Court. The Practice Direction also outlines other matters that should be listed with the Family Court, including Hague parental child abduction matters and international adoption matters. In property matters, cases involving multiple parties, complex valuations, complex questions of law and/or jurisdictional matters (amongst others) ought to be filed in the Family Court.

106. The draft Practice Direction may have been a reasonable means of considering the division of work between the two Courts if they essentially remained with similar judicial

resources as they have now. However, it may not be appropriate if greater numbers of resources are concentrated on the General Division of a single court and if the number of Family Court judges is reduced over time to around 25 judges, as the Review recommends.

107. A single family court would have the power to make rules to guide the exercise of the discretion as to whether the matter should be handled in the General Division or the Superior and Appellate Division, should that prove necessary.

## **PART 6 BLUEPRINT FOR GOVERNANCE AND STRUCTURAL CHANGE**

108. The Terms of Reference focus on the importance of achieving an efficient, effective and more integrated family law system, with improved case management practices, while retaining the existing practices of less formal and quicker procedures for shorter and simpler matters than for longer and more complex cases.

109. Feedback received through submissions and consultation has indicated general support for change, focusing on the following:

- **The desirability of having a single family court:** general support for one court with one administration and separate divisions, where the Superior and Appellate Division would comprise existing Family Court Judges and handle appeals and the most complex cases.
- **The desirability of establishing a single administration:** the legal profession has emphasised that litigants would be served better by one administration with a single point of entry and one set of forms.
- **The role and status of Federal Magistrates:** general support for the Federal Magistrates to continue to hear less complex matters and a desire for them to develop expertise in either family law or general federal law and to be recognised as Chapter III judges. (Several Federal Magistrates also commented on the desirability of their role not being confused with that of State Magistrates.)
- **The importance of retaining the FMC's existing culture:** widespread recognition of the current level of service provided by the FMC and a desire to ensure that the FMC culture, which delivers less formal and quicker procedures for shorter and simpler matters, be retained.
- **The need to eliminate unhealthy competition between the courts for resources and filings:** recognition that two courts exercising largely identical jurisdictions, with separate administrations and competing for funds and resources, is inefficient and unacceptable.

110. To address the key issues identified in the Report and through submissions and consultations, the Review considers that any proposal to change the structure and administration of the Family Court and the FMC should achieve the following:

- an integrated system which ensures that cost-effective, quick and efficient procedures are retained for shorter and simpler matters
- increased efficiency in the allocation of resources across the family law system and therefore better use of those resources
- a single court with family law specialists, and
- removing confusion among litigants in relation to the appropriate judicial level to handle their matters.

### *New governance structure*

111. The Review recommends that there should be a single family court, with two separate judicial divisions serviced by a single administration. **Attachment G** is a diagram of the model.

112. The Superior and Appellate Division of the Court would hear the most complex and lengthy cases, as well as appeals. The number of justices in the Superior and Appellate Division would be reduced over time as judges retire to around 25, based on current family law workloads in the Family court and FMC. This reduction provides opportunity to create greater distinction in the level of work being undertaken by the two Divisions. The appointment of all justices in the Superior and Appellate Division as appellate justices is consistent with the current appeal arrangements in the Federal Court. The General Division would hear most first instance matters. The Chief Justice would manage across both Divisions and not be directly responsible for either. The head of the General Division would be responsible for ensuring that the existing service culture, expeditious handling of matters, and effective case management procedures of the FMC be maintained and enhanced.

113. The Court would be serviced by a single administration, including corporate and financial services, headed by a CEO. All administrative staff would report to the CEO, who would assist the Chief Justice to manage the Court and allocate resources across Divisions in

consultation with the division heads. The CEO's responsibilities would include, in consultation with the heads of the two Divisions, putting in place a transparent and equitable mechanism for allocating judicial support resources to both Divisions based on the complexity and number of matters handled.

114. Before considering which Division should deal with a matter, there is a threshold question about whether the matter should be before the Court at all. Litigation should be the option of last resort for people in family law disputes. There needs to be a consistent approach to assessing whether cases should be sent back out to dispute resolution outside the Court. Where cases are assessed as suitable for dispute resolution (for example when genuine effort has not been made prior to filing), a consistent process is essential to ensure court resources are not wasted on cases which have potential to be resolved outside the courts. Use of family consultants to assess cases for suitability for family dispute resolution and referring them to outside services (or recommending to the Federal Magistrates or Registrars that such an order be made) would be one approach.

#### *Implementation*

115. Existing Family Court judges would constitute the Superior and Appellate Division. Federal Magistrates with family law expertise would be offered appointment under a different title in the Family Court General Division. All public submissions considered the current Federal Magistrates should be titled Judges consistent with their appointment as Chapter III judges. During consultations, some individuals expressed reservations about this proposal on the basis that it may detract from the current service culture of providing quick and efficient procedures for shorter and simpler matters. A new title would move away from the designation of Magistrate which has caused confusion, but would need to maintain a distinction from the judges of the Superior and Appellate Division. Appointment of Federal Magistrates to a judicial position in the Family Court, under whatever title, could be made without conferring an entitlement to the pension provided to existing judges.

116. Federal Magistrates with non-family law expertise would be appointed on the same basis to a newly created Division of the Federal Court. The existing general federal law jurisdiction of judicial officers appointed to this Division would be expanded over time. This would have the advantage of enabling more matters to be dealt with in federal courts at an

appropriate judicial level. This restructure would ensure that there was a specialist family law court and one federal court exercising all federal non-family law civil jurisdiction. Each court would be focussed on its own distinctive jurisdiction and be able to put in place the judicial support and administrative and corporate services required to support the exercise of that jurisdiction. The two courts would also be well placed to co-operate fully wherever there is a potential for services such as IT systems and libraries to be further shared.

117. The Government may wish to offer some Federal Magistrates who are currently doing both family and general federal work a dual appointment to the Federal and Family Courts. This would provide both Courts with additional flexibility in the utilisation of judicial resources, particularly in addressing the need for handling of existing family law work.

118. It is recommended that there be no further appointments to the FMC following the restructure of the two Courts. It is also recommended that the FMC be abolished once no commissions are held as Federal Magistrates. Prior to the abolition of the FMC, it is recommended that Federal Magistrates continue to handle family law work assigned to the FMC by the Family Court, and the Chief Federal Magistrate continue to be responsible for judicial matters in relation to the FMC. The CEO of the Family Court would be responsible for resourcing and administrative matters.

119. It is important that the establishment of a single court with a single administration be undertaken as a ‘merger’ of the two Courts. It is not planned as a ‘takeover’ of one court by the other and should not be seen as such. The Review recommends establishing a management team with representatives from each Court to oversee the roll out of the new administrative structures. The merger of two court administrations will involve sensitive rationalisation of staffing positions. The management team would have an important role in overseeing this process.

### ***Assessment of proposed structure against criteria***

*An integrated system which ensures that cost effective, quick and efficient procedures are retained for shorter and simpler matters*

120. The proposed structure would improve judicial planning and coordination across all family law services and enable each division to achieve a better balance of workloads, as well

as to retain and, where necessary, develop, procedures that are best suited to the type of matters it is designed to hear. In particular, the General Division would substantially maintain the FMC's current practice directions and rules to be able to ensure that it maintains a culture of providing quick and efficient procedures for short and simple matters. The General Division would, like the FMC, be subject to a requirement to 'proceed without undue formality and endeavour to ensure that the proceedings are not protracted'.<sup>37</sup> The Superior and Appellate Division would be able to retain the procedures appropriate for dealing with complex and appellate matters.

121. It is also anticipated that, by giving the Chief Justice overall responsibility for the whole Court (not just one Division) and administrative staff with a clear line of responsibility and accountability for the effective operation of the whole system, cohesiveness and co-operation across the Court will be greatly enhanced.

122. Furthermore, it is expected that the proposed structure will ensure inconsistent practices do not develop unnecessarily or unjustifiably between the Divisions, so as to create difficulties for litigants.

123. During parliamentary debate on the Federal Magistrates Bill 1999, the then government suggested that appointing magistrates to the Family Court would result in magistrates being 'absorbed by the inflexible, formal approach of the existing Family Court'.<sup>38</sup> The Review does not consider that this will be a problem under the current proposal. The FMC has firmly established its separate culture over the past 8 years and the Review proposes arrangements that will allow this culture to continue.

*Removing confusion among litigants in relation to the appropriate court to handle their matters*

124. A single specialist family law court and a framework for determining which Division hears particular matters would remove the confusion currently experienced by litigants who can choose to file a matter in either court. Irrespective of which Division ultimately decided a matter, a litigant would file in the one court and all relevant material would be issued by the one court. Overarching management of the system would also help to ensure that matters are

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<sup>37</sup> *Federal Magistrates Act 1999*, s 42

<sup>38</sup> See second reading speech by Tony Lawler MP on 19 October 1999 –@@ further refs to be provided next week

assigned to the correct Division and transferred between Divisions where necessary. Greater consistency in the transfer and assignment of cases would provide more certainty for court users.

*Increased efficiency in the allocation of resources across the family law system*

125. By removing the existing administrative overlap and duplication, there would be greater efficiency in the use of the current pool of resources and resources would be allocated fairly between the Divisions in accordance with volume and complexity. This should provide individual judicial officers from each Division with improved access to judicial support services, necessary to support their respective case management process.

126. The proposed model would also allow greater flexibility for the ongoing adjustment to the allocation of resources in response to changing needs. This should help avoid any competition between the two Divisions for work and resources. Any savings achieved through the rationalisation of administration should be used to purchase additional judicial support services.

*A single court with family law specialists*

127. Candidates for positions of Federal Magistrates have in practice generally had a background in either family law *or* general law and necessarily they have come to the bench without specialist expertise across the range of work handled by the Court. Some practitioners have been critical of the lack of expertise of some Federal Magistrates who sit on matters outside their specialist area.

128. The Australian Institute of Family Studies questions the extent of specialist family law capacity available in the FMC, given the Court must manage a broader sweep of matters. In relation to bankruptcy, the submission from the Law Institute Victoria stated that ‘there is anecdotal evidence of a preference amongst practitioners to litigate such matters in the [Federal Court]’. The Law Institute states that the reasons advanced for this include:

[a] perception that there is a significant risk that commercial bankruptcy matters having no issue under the [Family Law Act] are being heard and considered by Federal Magistrates appointed for their specific family law (or other non-bankruptcy) expertise and having little or no experience in bankruptcy matters.

129. The Law Council of Australia said in its submission that any restructure of the family law courts should include

[a] greater focus on specialist knowledge, experience and expertise in making judicial appointments. In the Family Law arena this should lead to appointees being equipped to deal with the complex legal and other issues which arise on family breakdown.

130. The heads of jurisdiction have indicated that the creation of separate specialist divisions would maintain efficiencies in the distinctive areas and attract judicial appointments on the basis of either family law or general federal law expertise.<sup>39</sup>

131. The proposed structure would allow the existing informal specialisations in the FMC to become formal, overcoming problems of ‘family’ experts doing general family law work and vice versa. Consultations with the Chiefs of all three Courts have indicated that the current arrangement in the FMC has not been entirely successful. Their views are not a reflection on the calibre of those carrying out the work. Rather they reflect that not everybody has the capacity or wish to preside effectively over both areas. The higher volume of family law to general federal law work has resulted in some difficulties and tensions in particular locations.

***Preference for proposed model over separate family courts with a single administration***

132. As noted above, the model proposed by the Review would lead to a single Court with a single administration, equally responsive to the needs of both Divisions of the Court.

133. An alternative model would be to maintain two separate family courts with a single administration.

134. The Chief Justice of the Family Court in her submission observes that:

The administrative structure must be one that transparently operates for the benefit of both Courts. I have not been able to satisfy myself that one administration could function effectively with the responsibility for two separate courts whose governance gave them independence.

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<sup>39</sup> The Chief Justice of the Family Court said: ‘The relevant matters in my view that suggest the appropriate model of one court containing separate divisions include the ability to appoint those with the appropriate expertise to different levels of one court concentrating on family law. The Chief Federal Magistrate, on behalf of the FMC said (in relation to maintenance of FMC as is): ‘there is increasing specialisation which has led to the Court considering the establishment of two separate divisions, namely family law and general federal law.’

Despite the best efforts of the two heads of jurisdiction and Chief Executive Officers in establishing the Family Law Courts Board it was of only limited success because the two courts remained independent of each other. I do not see an easy way to resolve this with one administration serving two entirely independent courts.

135. The Review agrees that two separate courts with one administration would be problematic.

136. This is effectively the framework within which the FMC was expected to operate - the Family Court being responsible for providing services to the FMC's family law jurisdiction and the Federal Court providing services in relation to the FMC's general federal law jurisdiction. This model has not worked and the Review considers that it would not resolve the clarity of authority necessary to provide sound governance over ongoing resource allocation decisions.

137. A single administration for the two family courts would not provide clear responsibility and accountability for determining priorities and resource allocations between them, and would make it difficult for any CEO, who would be required to support both independent Courts. The current self administration model for the federal courts and the South Australian Courts Administration model both rely on the heads of jurisdiction being responsible for determining priorities and resource allocations. Additionally, this model would not eliminate the current competition over resources and would not provide the necessary flexibility to allocate resources according to volumes and complexity. Finally, under this model both Courts would be less accountable than they presently are because neither could be held responsible for the effective delivery of services within their resources where they did not control those resources.

***Preference for proposed model over alternative models including a Courts Administration Authority***

138. The Review considered a number of possible governance models from Australia and overseas, including a Courts Administration Authority which is the model currently operating in South Australia.<sup>40</sup>

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<sup>40</sup> In South Australia the judiciary controls court administration, through a State Courts Administrative Council, comprising the Chief Justice, the Chief Judge and the Chief Federal Magistrate, together with associate members from each of the three courts. This council oversees a Courts Administration Authority which is autonomous from the public service and provides administrative service to all three courts.

139. One of the primary advantages of a Courts Administration Authority is said to be to promote judicial independence including the ability to manage resources and operations independently from the executive. However, each of the federal courts enjoys institutional independence of the executive Government. Another advantage is with an Authority being jointly responsible for the staff and infrastructure of several courts, there is the potential to better optimise economies of scale or scope and to establish clear guidelines in determining future resource distribution. This model also has the potential to provide ease of access and procedures for litigants in navigating the family law system through having a combined registry, with a common entry point. (As noted in Part 5 of this report, a single Family Law Courts registry in which all proceedings for the Family Court and FMC can be filed, already exists.)

140. A Courts Administration Authority received negligible support in the judicial and external consultation process and is opposed by the Chief Justices of the Family Court and the Federal Court and the Chief Federal Magistrate. The Courts Administration Authority also has some deficiencies when applied in the Commonwealth context. In particular, when measured against the Review's objectives and criteria, this model does not address some of the key concerns that currently exist.

141. First, it keeps in existence separate courts with their own judicial support staff so that the potential for duplication continues to exist. It also requires some mechanism for deciding on the allocation of resources between the courts serviced by the administrative body. The model operating in South Australia involves a Judicial Council, chaired by the Chief Justice, and comprises the heads of the other two State courts with the Chief Justice, if required, exercising a power of veto. This model could not be applied to the Family Court and FMC. Were the Chief Justice of the Family Court to have the power to determine resource allocations across both the Family Court and the FMC while having direct responsibility for

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This is not the only possible structure for a Courts Administration authority. Others, such as the Canadian federal courts model implemented in 2003 entails an arrangement where administrative support for all the federal courts of Canada (other than the Supreme Court) is provided by a Courts Administration Service, headed by a Chief Administrator. This service is independent from the Executive. The Service does not have a direct role in the judicial operations, which are explicitly the responsibility of 'judicial administrators' under the Chief Justices of the courts. The Chief Justices remain responsible for the judicial functions of their courts. The Chief Justices also retain the power to issue binding directions in writing to the Chief Administrator on any matter within the authority of the Administrator.

[Source: *the Governance of Australia's Courts: a Managerial Perspective*, the Australian Institute of Judicial Administration Incorporated, 2004].

only the Family Court, it would have the potential to even further exacerbate the current arrangements, as the Chief Justice would not be seen to be impartial by either Court.

*Possible future options*

142. There was some discussion during consultations proposing a single Federal Court that would incorporate the Federal Court, Family Court and FMC. This matter has not been addressed as it is outside the terms of reference of this review. The proposed merger of the Family Court and FMC provides significant rationalisation of two court administrations and is not inconsistent with the future consideration of a single court combining the Federal Court and Family Court should the Government wish to consider this option in the future. This consideration would, however, give rise to different issues from those examined in this Review in light of the very different jurisdictions exercised by the Federal and Family Courts.

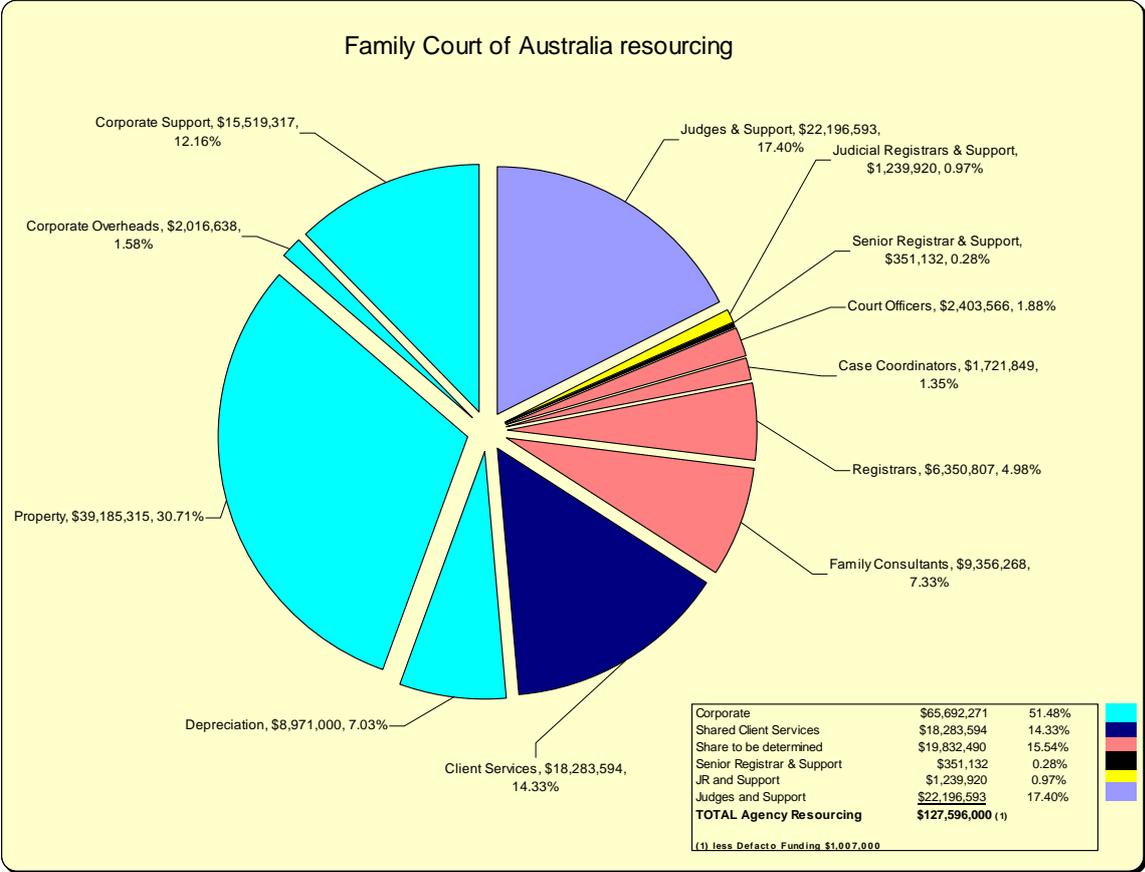
## PART 7 CONCLUSION

143. It is important that the Australian Government provide clarity to overcome the current confusion, tension and overlap in resourcing and jurisdiction of Family Court and the FMC. A Government vision on the future of the family law system will require a rebalancing of the current roles and responsibilities of the judiciary to clearly differentiate between the two judicial levels. Achieving the right balance of workloads for each level will require coordination, planning and leadership by the Chief Justice as the head of the jurisdiction. The number of existing Family Court judges will need to be reduced by attrition, in order to reflect the clearance rates and the reduction in filings of more complex matters. It will be necessary to plan carefully the future locations and number of other judicial officers in the General Division to compensate for the reduction of the number of Family Court judges.

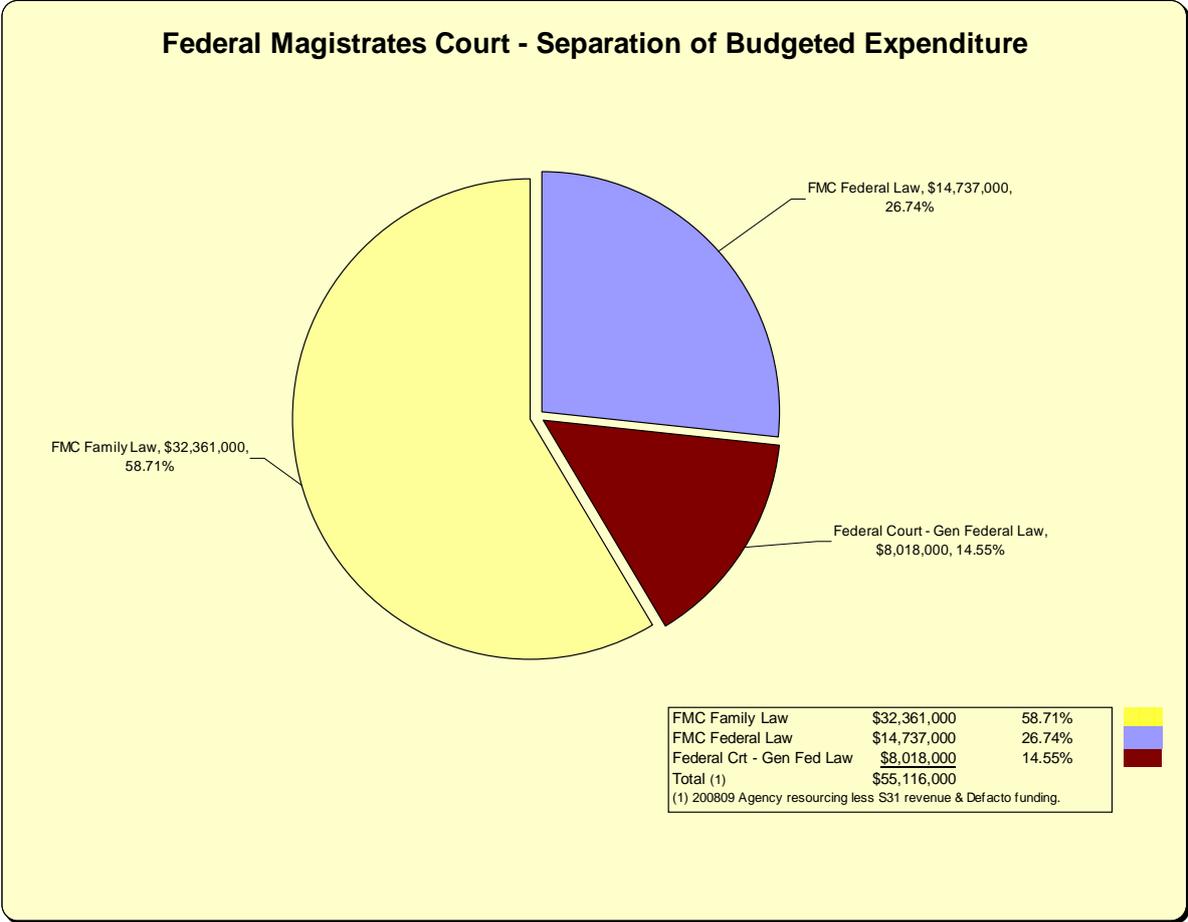
144. The current significant change in filings and workloads between both Courts requires an ongoing redistribution of resources. A single administration provides greater economies of scale and flexibility to make adjustments, during this period of significant change in the shift of workload and on an ongoing basis. Judicial support resources require ongoing adjustments without the administrative rigidity of formally transferring positions and resources from one administration to the other. The flexibility in resource management and economies of scale are also important in servicing litigants on circuit throughout Australia.

145. While the proposed changes in judicial governance would require legislation, it is highly desirable, if the Government adopts the recommendations made by the Review, that implementation of a single administration for the delivery of family law services is undertaken quickly. Much could be done by the Courts themselves without waiting for legislative change. This will require clear transition strategies that ensure ongoing continuity of services in moving to new management arrangements. Separate case management practices for both proposed Divisions will involve the utilisation of similar professional support including Family Consultant / Registrar/Legal support staff. The extent to which these positions should be shared or separately allocated to either Division, would be a matter for further consideration by the Courts. Implementation timetables should be developed and communicated to staff and judicial officers of the Courts to ensure a coordinated approach for the smooth transition to new governance structures without disruption to existing services.

Pie Chart 1 - Family Court

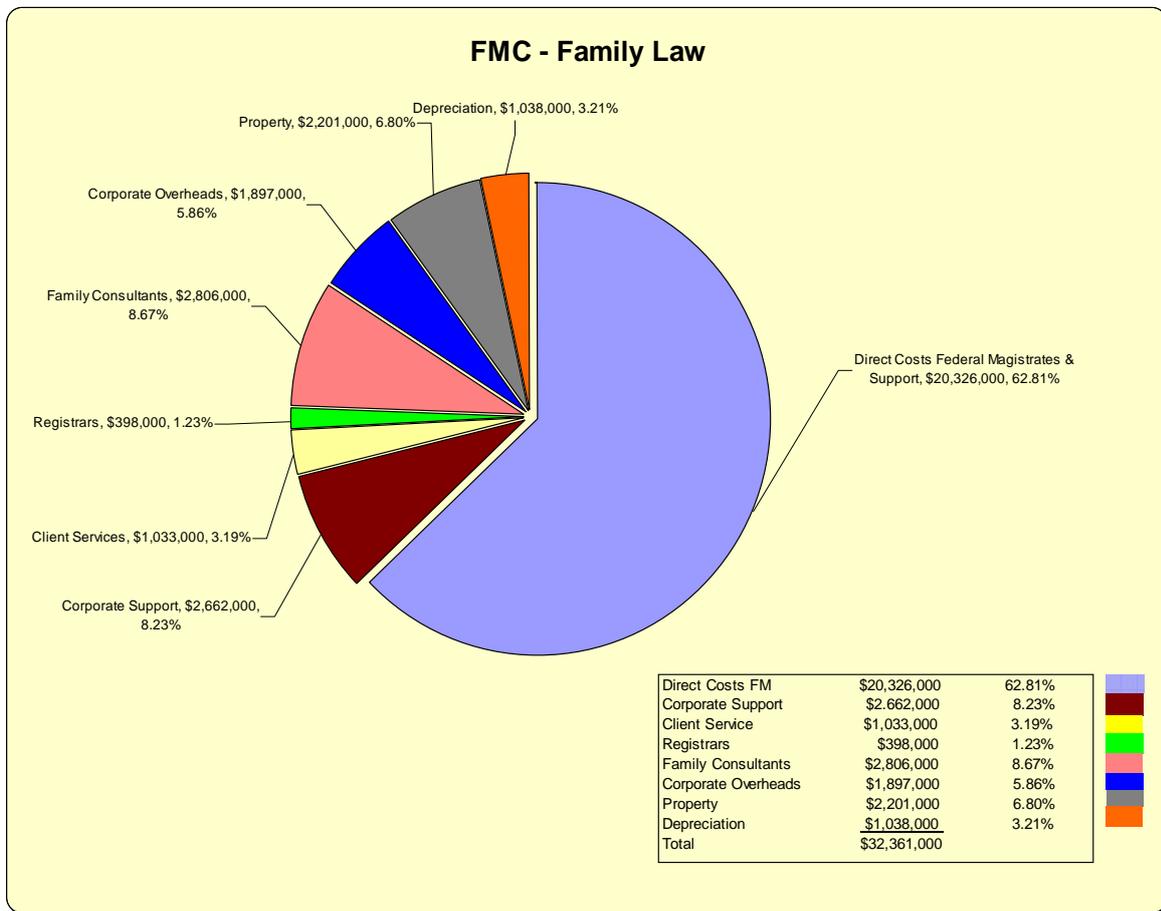


Pie Chart 2 - FMC



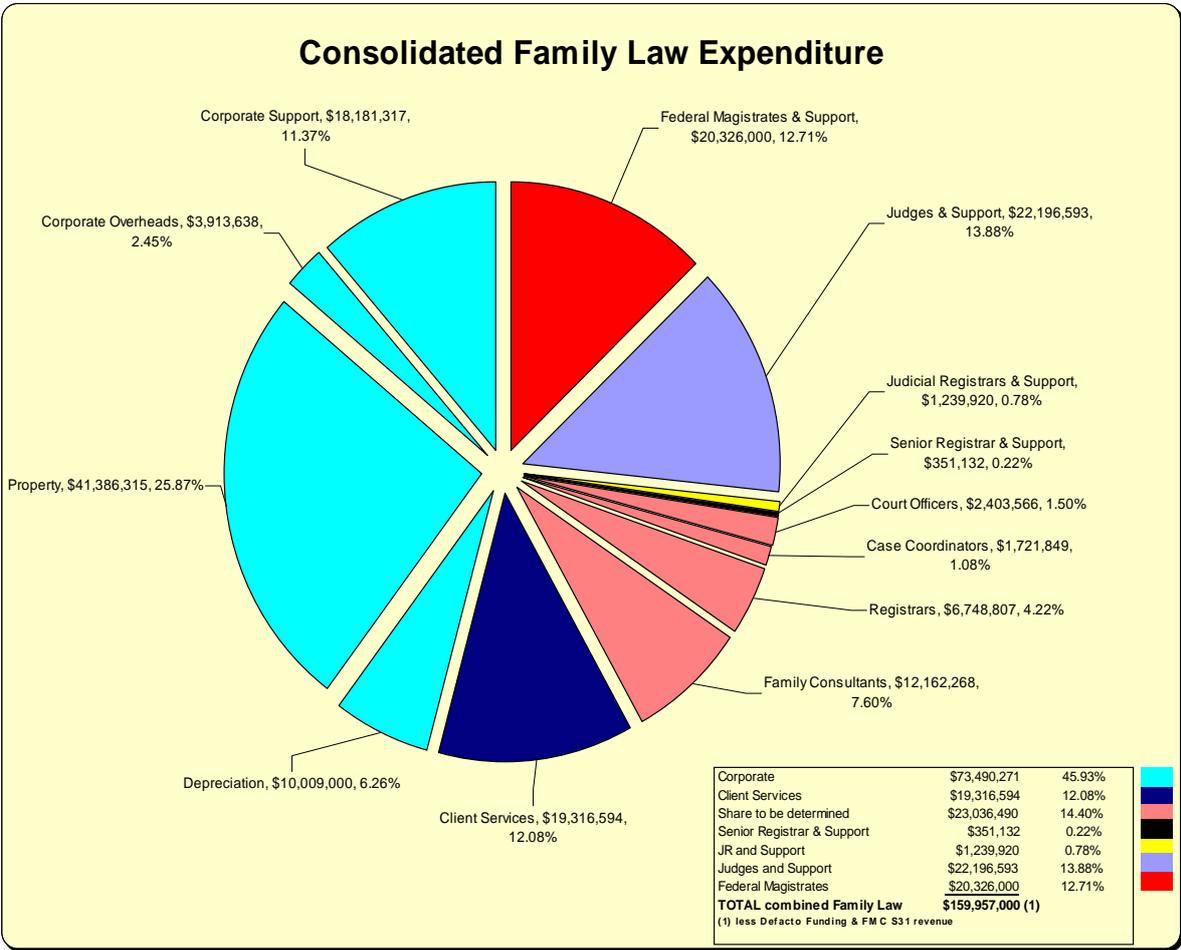
<b>LEGEND</b>	<b>Separation between Federal Law &amp; Family Law - Assumptions</b>
Direct FM	Split by actual costs between federal law and family law based on estimates provided by the FMC at the time of the Review.
Property	Actual rent & outgoings for JMT - balance to Family Law
Corporate Support	Estimate based on number of staff multiplied by no. of staff supported in JMT - including Information Technology
Family Consultants	All directed to Family Law
Client Services	Actual Cost of Court Officers at JMT - balance to Family Law
Registrars	All to Family Law
Corporate Overhead	Per head amount calculated - applied on 228.9 FTE/30 JMT staff

Pie Chart 3

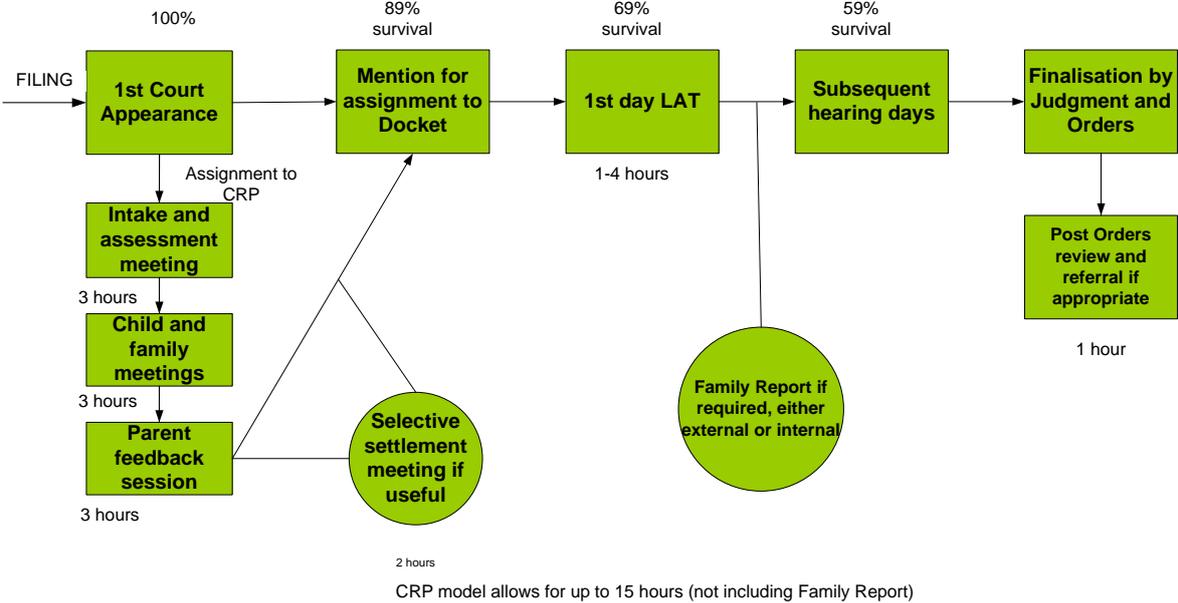


<b>LEGEND</b>	<b>Separation between Federal Law &amp; Family Law - Assumptions</b>
Direct FM	This includes direct salaries and superannuation for FM's and their staff (2), court reporting, interpreter costs and judicial education.
Property	Actual rent & outgoings for JMT - balance to Family Law
Corporate Support	Direct salaries for Finance, HR, Property, CEO and direct travel costs for national staff ( note travel costs will also include travel for Registrars &
Family Consultants	Direct salaries and superannuation plus actual travel costs for 2007-08 & family reports.
Client Services	Direct salary costs- supplier expenses included in corporate overheads.
Registrars	Direct salary costs- other expenses included in corporate overheads.
Corporate Overhead	Note- this is overstated due to the difficulty in dissecting costs - eg all staff training costs and other similar items that could be dissected if the necessary data existed.

Pie Chart 4



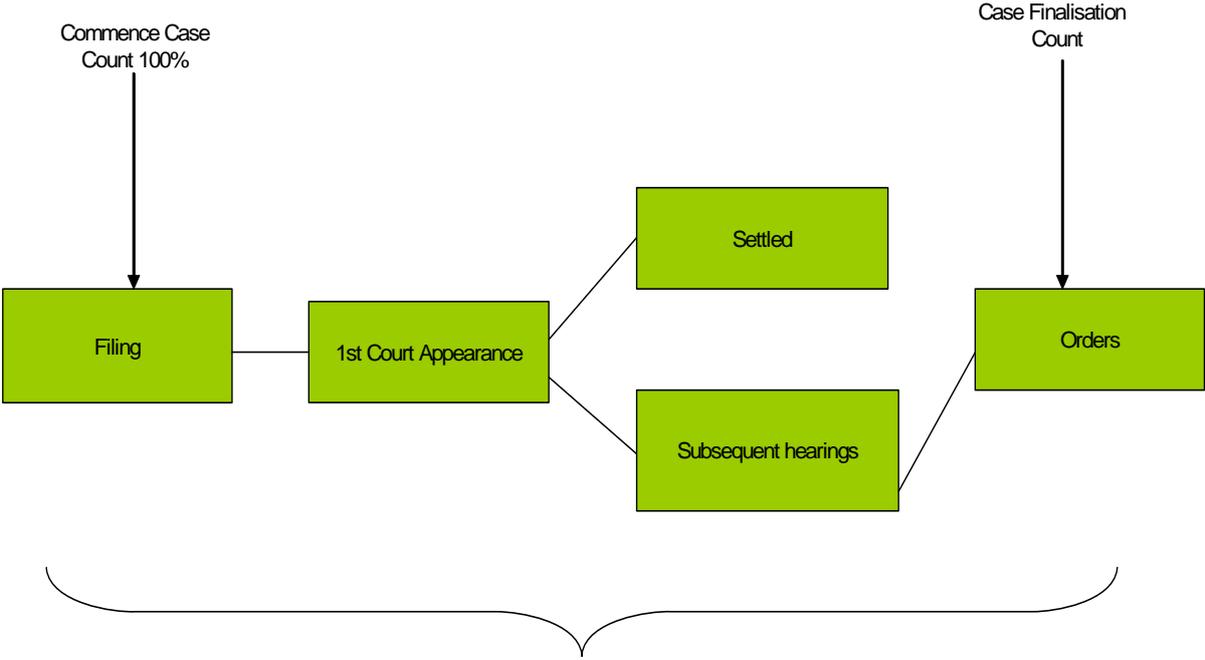
Family Court case management pathway for parenting cases



\* Percentage figures shown are based on the number of cases that have a '1<sup>st</sup> Court Appearance'.

Conclusion  
 CRP

### FMC Case Management



**Menu of Services Applied**

An example of the range Family Consultant services that may be differentially applied:

- Verbal report in Court*
- Brief report to Court*
- Specific Issues report*
- Child/Parent report*
- Full Family report*

**PROPOSED FUTURE STRUCTURE FOR THE FEDERAL FAMILY LAW COURTS**

**ATTACHMENT G**

