

NORTH QUEENSLAND BAR ASSOCIATION

P.O. Box 1755
Townsville Q. 4810

President: J.R. Baulch S.C.
Telephone: (07) 47 210 233
Facsimile: (07) 47 240 533

Vice President: Wendy Pack S. C.
Telephone: (07) 47 716 847
Facsimile: (07) 47 211 149

Treasurer: Wayne Pennell
Telephone: (07) 47 714 109
Facsimile: (07) 47 211 149

Hon. Secretary: Tony Collins
Telephone: (07) 47 810 100
Facsimile: (07) 47 211 147

SUBMISSION

as to

THE DELIVERY OF FAMILY LAW SERVICES BY THE FAMILY AND FEDERAL MAGISTRATES COURTS

1.0 Introduction

1.1 This submission is made on behalf of the members of the North Queensland Bar Association, particularly those practicing in the family law jurisdiction.

1.2 This submission, unless otherwise particularised, refers to operations of the Family Court and Federal Magistrates Court in the area from Rockhampton north to Cape York (including the Torres Strait) and west from the coast to the Northern Territory border.

2.0 Overview of North Queensland

2.1 North Queensland has experienced sustained economic and population growth over many years brought about as a result of many factors including:

- [a] The presence of significant mineral resources and worldwide demand for export of raw materials;
- [b] The existence and growth of Copper, Zinc, and Nickel refineries at Townsville and the Alumina refinery operations at Gladstone;
- [c] The continued strength of the cattle industry;
- [d] The renewed emphasis on defence activity and the transfer of 'southern' defence commands to Townsville (and to Darwin);
- [e] More recently, the presence of assured water supplies.

2.2 More relevantly for the provision of family law services, the growth mentioned above is serviced, generally speaking, by younger men and women. North Queensland is not the home of a disproportionate numbers of retirees as may be the observation for a place such as the Gold Coast. The point here is that, however sadly, the 'client base' for family law services is predominantly made up of younger couples and there are substantial numbers of them moving to and living in North Queensland.

2.3 The Family Court and Federal Magistrates Court are busy courts in North Queensland. The current structure is as follows:

Cairns

Judges of the Family Court visit regularly

There is a resident Magistrate

Townsville

There is a resident Judge

There is a resident Magistrate

Mackay

The magistrate from Cairns visits Mackay regularly

Rockhampton

The magistrate from Townsville visits Rockhampton regularly

- 2.4 A review by the Hon Neil Buckley was undertaken in 2007 and a case was established for the continued operation and existence of the Family Court and a resident Family Court judge in Townsville. This Association supports the conclusion reached in that review.
- 2.5 It can be expected that the demand for family law services in North Queensland will increase.
- 2.6 This Association is conscious of the fact that Federal Magistrates have responsibilities in other jurisdictions such as the Commonwealth's laws concerning immigrations, bankruptcy and trade practices. To date, the magistrates in North Queensland have not had any significant workload in these other fields. It can be expected that this will remain the case in the immediate future.
- 2.7 Queensland judicial officers in the area under consideration include three (3) resident Supreme Court justices, five (5) resident District Court judges, twenty (20) resident Magistrates and various Tribunals. The Queensland Court of Appeal sits annually in North Queensland.
- 2.8 The tyranny of distance is a significant problem in regional Queensland. Townsville is as far from Brisbane as Brisbane is from Melbourne. The eight Supreme and District Court judges mentioned in para 2.7 have been supported by combined Registry services in Rockhampton, Mackay, Townsville and Cairns which were established before the creation of the Family Court of Australia and those Registries continue to serve those regional communities.

2.9 Registries of the Family Court of Australia have been established since 1978 (Townsville) and the early 1990's (Rockhampton and Cairns). They were established when one northern judge (Justice Barry) serviced the area under consideration. The appointment of two Federal Magistrates (Townsville and Cairns) since 2000 supports the need for more, not less, Registry and support staff.

2.10 The current situation where Judges travel from Hobart and Sydney to hear the Cairns list is, in the view of this Association, scandalous.

2.11 This Association believes that regional Queensland should be served by Justices stationed in the regions with appropriate administrative and support staff. Administration from Brisbane or more remote locations will not promote the efficient dispensation of justice in regional Queensland. The manner in which the State courts have operated for more than 30 years demonstrates the efficiency of regional management.

3.0 Sufficient and efficient resources

3.1 This Association's primary view is that any court system must have both sufficient and efficient resources. Access to justice is one of the hallmarks of a civilised society. That is particularly the case where families are in dispute as to their children or their property. Family violence and disputation is a feature of modern life – prompt and efficient service from welfare and counselling agencies, the legal profession and from the courts is essential.

3.2 This view guides the recommendations made in this submission.

4.0 Confusion

4.1 It is noted that the preamble to the terms of reference refers to “having regard to ... continuing confusion amongst litigants over the appropriate Court to handle their matters”.

4.2 This Association strongly supports that statement. Some reasons for the ‘confusion’ are as follows:

- [a] though the Family Court and Federal Magistrates Court have virtually identical jurisdiction they have different rules of court and approaches. For example, the Family Court operates a ‘less adversarial’ model for the conduct of childrens cases; whereas the Federal Magistrates Court uses the traditional trial;
- [b] 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 (whateve that may mean) ‘should’ be in the Family Court but that will depend upon the choices individual lawyers and judges make.

Case study No 1

The Cairns Magistrate operates a ‘running list’ when visiting Mackay. About 5 - 7 cases have to be ready for trial on the first day of the sittings (which are only for 5 days) – there is no assurance cases will come on and difficulty arises; cases are adjourned. By contrast the Townsville Magistrate offers fixed dates for hearing when he visits Rockhampton.

The result is that Mackay practitioners, in some cases, have an incentive to commence their cases in the Family Court at Townsville irrespective of the ‘complexity rule’ and trade off the higher cost of litigating in that court against the inefficiency and uncertainty of the practice of running lists.

5.0 Preliminary observation on terms of reference

- 5.1 It must be said that, generally speaking, the profession in North Queensland, is happy with the services provided by the two courts. These small registries have considerable advantages that derive from the personal relationships that have built up between the profession, the courts and the court staff. We have not observed the petty rivalries and differences which are alleged to exist in the larger registries.
- 5.2 However there are recent signs that these cooperative arrangements and relationships will break down.
- 5.3 Registrar Boyd, for example, (based in Townsville) though employed by the Family Court holds office as both a Registrar of the Family Court and the Federal Magistrates Court and so is able to give a more seamless attention to matters than in those places where there are separate registrars for each court. However even these 'small town' advantages are now at risk:

Case study No 2

Registrar Boyd was recently advised that his position was to be made redundant and that, in due course, it would be a matter for the Federal Magistrates Court to appoint a Registrar. However the new Federal Magistrate's Court Registrar would not have the dual commission referred to above and North Queensland would be reliant upon Brisbane based registrars of the Family Court.

If true, the view of this Association is that such a situation is most unfortunate.

Case study No 3

The Family Court has been steadily reducing the number of Family Consultants that it employs as a portion of the 'workload' shifts to the Federal

Magistrates Court. The consultants play a pivotal role in assisting with the negotiated resolution of cases and in preparing reports for the assistance of the parties and the court at trial.

The current situation in North Queensland is that the consultants at Cairns are employed by the Federal Magistrates Court; the consultants in Townsville by the Family Court.

There is no overall coordination. Recently, for example, the only means by which a visiting Family Court judge in Cairns could organise for a couple to have some counselling assistance was to transfer the file to the Federal Magistrates Court for a couple of days and then organise to transfer it back again.

Case study No 4

There are significant numbers of aboriginal and islander peoples in North Queensland. The Family Court registry at Cairns once employed aboriginal and islander consultants who could assist with the management of such cases and the preparation of reports. The Family Court circuted to Thursday Island, especially for the conduct of cases involving the traditional adoption practices of the islander peoples.

There are no longer any aboriginal or islander consultants employed at Cairns and circuits to Thursday Island are few and far between (and possibly unlikely to recur).

6.0 Submission concerning the terms of reference

- 6.1 Having two court systems, two administrative structures, and two sets of rules may be appropriate where courts have different jurisdictions (or different responsibilities within the same jurisdiction) but it makes no sense where the jurisdiction and responsibilities are essentially the same.
- 6.2 In any event, even in places where jurisdictions may be different - such as the the situation which applies between the Queensland Supreme, District and Magistrates Court - it is possible to devise uniform rules for the conduct of cases. See the Queensland *Uniform Civil Procedure Rules*.
- 6.3 Families needing court intervention (and their lawyers) ought not be subject to the uncertainty and inefficiency which currently exists.
- 6.4 This Association does not have access to the financial and other data held at governmental levels so as enable this submission to properly argue the case, but human experience would tell us that it would be remarkable if there were not considerable duplication of effort and wastage of resources within the current dual structures.
- 6.5 As a matter of principle this Association takes the view that the best course is:
- [a] Federal Magistrates on appointment are appointed to either the Family Law Division or the Federal Law Division;
 - [b] In either case, those Magistrates then serve as part of the Family Court or the Federal Court;
 - [c] Though there would need to be a small 'head office' for the Chief Federal Magistrate so far as the litigants are concerned there should be one administrative structure encompassing the counter-staff, consultants, registrars and so on. A Registrar, for example, would be a registrar for all purposes – a distinction between one court or the

other should have no meaning. The Queensland State courts establishment provides a useful model.

Similar comments apply to the necessary arrangements for the Federal Court.

[d] There should be uniform rules and practices with clear guidance as to the circumstances in which a litigant's case will be conducted before a magistrate or a judge.

6.6 This Association acknowledges that change of this magnitude may be resisted or that it may take time to implement. If not achievable then the minimum change required is:

[a] in smaller registries such as those in North Queensland no distinction should be made between important personnel such as registrars and consultants. Irrespective of the 'paymaster' such persons must be able to operate freely for both courts so that effective, coordinated and seamless services are provided;

[b] there should be uniform rules and practices with clear guidance as to the circumstances in which a litigant's case will be conducted before a magistrate or a judge;

6.7 Coordinated and seamless services could be provided through the Family Court or the Federal Magistrates Court, however the most logical coordinator in many instances would be the Registrar.

7.0 Conclusion

7.1 The case for a Family Court judge resident in North Queensland has previously been made (*the Buckley Review*). The need for Family (and Federal Magistrates) Court resources in North Queensland is likely to increase by reason of the growth of the population and continued economic prosperity,

and more likely to continue to increase at a rate greater than most urban areas in the country.

- 7.2 Regional Registries and regional administration will best serve the people of regional Queensland.
- 7.3 Litigants seeking assistance with their family breakdown through the *Family Law Act 1975* ought not be subjected to arbitrary, administrative procedures when dealing with that Act. Though this Association is unable to quantify savings, human experience tells us that the duplication in registries, paperwork, forms and Courts cannot be providing an efficient and effective service to families. This Association would support a more fundamental recasting of the Family Law system, a “One Act - One Process” approach which allows for the effective use of Registrars, Judicial officers and Consultants within the family law stream of the federal court system.
- 7.4 Recognising the enormity of what is proposed, this Association would support, as a minimum, registrars and counsellors in smaller registries to operate freely for both Courts and for uniform rules and practices.

John Baulch S.C.

President

North Queensland Bar Association

Monday, 21 April 2008