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Quote in reply: Access to Justice / Pro Bono Law Committee

23 December 2011

The Hon Nicola Roxon MP
Attorney-General of Australia
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

JUDICIAL RESOURCING OF FEDERAL MAGISTRATES COURT AT BRISBANE

I have written to your predecessor on 8 July 2011 and received response dated 19 August 2011, setting out my concerns about overdue reserved judgements in the Federal Magistrates Court at Brisbane.

I previously urged the appointment of more than one additional Federal Magistrate in Brisbane, and I now write to press this request with renewed urgency.

The Chief Federal Magistrate has done everything he could reasonably be expected to do within his resource constraints. All Brisbane Federal Magistrates are working hard and Federal Magistrates from other registries have provided additional assistance. However, I continue to receive new complaints from my members about overdue reserved judgements.

Assistance sought for overdue reserved judgments

This year, I have received 32 requests for assistance from my members about overdue reserved judgements in the Federal Magistrates Court Brisbane Registry. These reserved judgements have not been delivered by 3 months after the completion of the hearing. Some are still outstanding from 2010.

To place this figure in perspective, there are now 10 Federal Magistrates in the Brisbane Registry of the Federal Magistrates Court. There are more than 170 Judges, Federal Magistrates and Magistrates in Queensland. The Brisbane Registry of the Federal Magistrates Court accounts for approximately 60% of the overdue reserved judgements for courts located in Queensland where QLS assistance has been sought this year.

These figures only show the matters where solicitors have asked for our assistance. There will be other overdue reserved judgements of which we have not been advised.

Qualitative concerns

The figures detailing the numbers of overdue reserve judgements and the length of delays speak for themselves. However, I also take this opportunity of adding a qualitative element to these figures.

This is always a stressful time of the year in the family law jurisdiction. I am an Accredited Family Law Specialist and have practiced for 28 years. I am told by equally and more experienced colleagues that they have never seen it so bad.

I have the greatest respect for the quality of our Federal Magistrates. The community expects the highest levels of expertise, industry and compassion and our Federal Magistrates embody these qualities.

Brisbane Federal Magistrates are currently under unreasonable pressure to deal with overwhelming workloads. The only choice they face is whether they try to be superhuman or whether they pace themselves in the knowledge that hearings will be delayed.

Recently, one Brisbane Federal Magistrate advised that no trial dates were available in that Federal Magistrate's docket before 2013. Another example is where an urgent application to stay an order is not listed for hearing until after the order takes effect. I need hardly remind you that "justice delayed is justice denied".

Although the solution that some choose (of trying to be superhuman) may initially appear better for litigants, it is not. Those judicial officers may fall short of the very high standards that they set for themselves. One consequence may be additional appeals and matters that return to Court because the deeper issues were not dealt with. However, this failure is not a personal failure of Federal Magistrates. It is a failure of resources and structures that did not adequately support them.

Judicial Appointments and Delays

I was pleased to note your appointment of four new Commonwealth judicial officers on 8 December 2011. The appointment of a new judge and a new Federal Magistrate in each of Sydney and Melbourne will welcome.

I note that the two Federal Magistrates appointed this month were funded with a budgetary allocation made in the May 2011 Federal budget. This delay of almost seven months between the budgetary allocation and the appointment taking effect is unacceptable. I respectfully suggest that the judicial appointment process needs to be streamlined so that similar delays do not occur in future.

Conclusion

It is the responsibility of executive government to ensure that the judicial arm of government is adequately resourced and supported.

The Brisbane Registry of the Federal Magistrates Court has not received adequate resourcing and support for some time. It will not be sufficient to only replace Federal Magistrate Slack following his recent sad passing. At least one and possibly more additional appointments are also needed.

I urge you to ensure that these concerns about the Brisbane Registry of the Federal Magistrates Court are addressed and rectified as a matter of urgency.

Yours faithfully

Bruce Doyle
President

Cc Mr John Pascoe AO Chief Federal Magistrate
 Mr Roger Traves SC President Bar Association Queensland
 Mr Alex Ward President Law Council of Australia
 Mr Geoff Sinclair Chair Family Law Section of the Law Council of Australia