

Scarce Julius Uday Court family judgments by years

CHRIS MERRITT
LEGAL AFFAIRS EDITOR

SLOW judgments and under-resourcing have made the Brisbane registry of the Federal Magistrates Court the base of Queensland's family lawyers.

Although the court has just 11 magistrates, making it one of the state's smallest, it dominates a register of complaints about overdue judgments that is held by the Queensland Law Society.

Solicitors complained to the law society about 47 overdue judgments this year in matters before all state and federal courts and tribunals in Queensland. But 28 of those overdue judgments, 60 per cent of the total, concerned the Brisbane registry of the Federal Magistrates Court.

In some matters, solicitors have sought help from the Queensland Law Society after waiting two years for reserved judgments. In other cases, the delays have poisoned relations between family lawyers and their clients who have been left seething over the delays. All 28 overdue judgments from the Federal Magistrates Court had been reserved for at least three months before they were brought to the attention of the law society.

One family law practitioner in Brisbane told *The Australian* she had two matters concerning children that had been awaiting judgment for 18 months and two years respectively.

"Inappropriate people have entered the lives of these children and we are still waiting for judgment two years later," said solicitor, who asked not to be named.

Her assessment is in line with that of the Queensland Family Law Practitioners Association which said it was not uncommon for judgments to be delayed for up to a year because of serious under-resourcing in the Brisbane registry of the court.

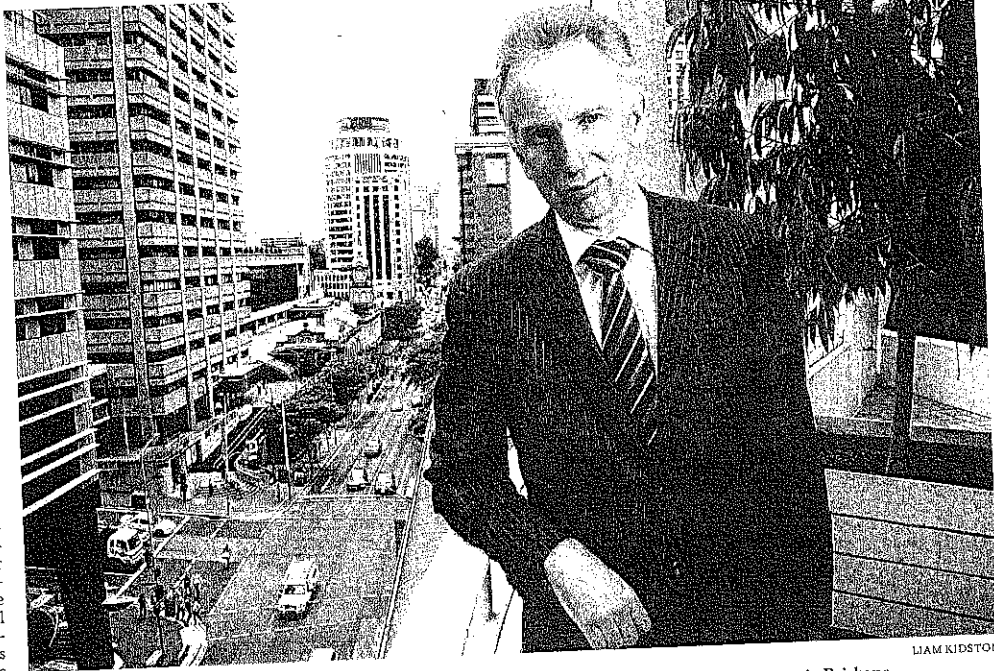
"This is really unacceptable," said the association's president Deborah Awyzio, who blamed the delays on a shortage of magistrates, not indecision.

"We don't see this as the magistrates not doing their job; they are all very hardworking. It is a matter of resources," she said.

"We have a particular problem in Brisbane in that one magistrate is very seriously ill and we just don't see any new resources being made available to address that."

Magistrate Keith Slack, who suffers from advanced cancer, has chosen not to retire despite the debilitating effect of his illness.

Unlike judges in other federal courts, federal magistrates are not covered by the federal judicial pension, which provides widows of judges with a non-contributory lifetime pension. Federal magistrates have access to a contributory super scheme but have lodged a constitutional challenge aimed at overturning their exclusion from the pension.



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Since June, QLS president Bruce Doyle and Bar Association president Richard Douglas SC have called for more federal magistrates in Brisbane.

Despite temporary transfers to the Brisbane registry, Mr Doyle said there were still insufficient magistrates to cope with the court's complex workload. This is in line with similar concerns about resources outlined by Chief Federal Magistrate John Pascoe in the court's annual report.

Without singling out any registry, Mr Pascoe writes in the report that there is "a significant possibility that innovation in case management and the energy of members of the court will not provide a sustainable solution to the issue of the court's workload, and that its ability to meet existing protocols will diminish unless additional resources are provided". (See accompanying report.)

The resources available to Brisbane were temporarily increased after discussions in June between Mr Pascoe, Mr Doyle and Mr Douglas. Magistrates were reallocated to Brisbane from Townsville and interstate. Those talks took place after solicitors asked the QLS for assistance over 15 Federal Magistrates Court judgments that had been reserved for more than three months.

Mr Doyle said the temporary appointments had been intended to permit all overdue judgments in the Brisbane registry to be delivered by the end of last month.

Mr Doyle also wrote to federal Attorney-General Robert McClelland expressing concern

about the resourcing of the Federal Magistrates Court in Brisbane and seeking the appointment of more magistrates.

He had a brief meeting with Mr McClelland in July, when he again raised the subject of the resourcing of the Brisbane registry.

On October 3, seven of those original 15 judgments had been delivered, with eight outstanding.

But more delays emerged in August after Mr Doyle briefly mentioned the delays at the Magistrates Court in his regular column in the law society journal, *Proctor*.

"By October 3, we had received 13 further requests for assistance with overdue reserved judgments in the FMC in Brisbane," he said.

That brought the total to 28 delayed judgments. Of those, 15 were still outstanding at October 3, Mr Doyle said.

Of the others, 11 have been delivered, one matter was settled before judgment was delivered and one matter was reopened with an additional interim application.

On October 6, Mr Doyle wrote to Mr Pascoe and supplied him with the QLS's updated figures.

"I asked him to take additional action to relieve federal magistrates with overdue reserved judgments," he said.

"I suggested they they should not be allocated new matters until they had produced their overdue reserved judgments"

"I acknowledged that this is a last resort. However, in making this suggestion I was following the example of last year's president Peter Eardley."

Federal magistrates stressed by workload

CHRIS MERRITT

CONCERN over delayed judgments in the Brisbane registry of the Federal Magistrates Court coincides with a surge in the court's workload and uncertainty about its future.

The federal government has indicated that the Magistrates Court will eventually be responsible only for general federal law matters and will cede its family law responsibilities to the Family Court.

But the Magistrates Court — not the Family Court — is the dominant court for family law.

The annual report of the Magistrates Court shows the percentage of federal family law filings handled by the Magistrates Court increased last financial year from 83 per cent to 86 per cent.

"The court therefore continues to deal with the vast majority of matters filed in the family law courts," writes Chief Federal Magistrate John Pascoe in the annual report.

And while the shortage of magistrates in Brisbane has led to extensive delays, the annual report shows strong growth in the number of final orders issued by the Magistrates Court in family law matters.

Divorces dipped by 2 per cent, but final orders in other areas of family law grew by 7 per cent and interim orders grew by 3 per cent.

At the end of the financial year, the court had 62 magistrates. It finalised a total of 89,344 matters and 82,770 of those matters concerned divorce and other areas of family law.

That is equivalent to each magistrate finalising 1441 matters, or 120 matters every month.

Deborah Awyzio, who is president of the Queensland Family Law Practitioners Association, said she believed the uncertainty over the future of the court and its heavy workload was impeding its ability to recruit family law specialists.

"My peers often talk about how they would never take a position as a federal magistrate even if it



Deborah Awyzio

was handed to them on a silver platter. It's just not worthwhile," Ms Awyzio said.

"You see top practitioners who have been recruited as federal magistrates and you can see the effect of the stress on them."

"You appear in front of them and you can see they have become different people because of the stress. There are physical effects we see every day."

"In Brisbane, there are days when you turn up and a magistrate has 30 matters listed in their duty list."

"They don't reach all of them and some are then delayed. It's a snowball effect."

Ms Awyzio said the biggest problem associated with the delays in Brisbane was that parties awaiting judgment "essentially have to put their lives on hold".

"It's one of the hardest things to explain to a client who has just paid \$30,000 to get a decision that they just have to dangle for a bit longer until the court makes up its mind," she said.

"We then have to deal with clients asking when they can get a judgment and there is literally not one thing we can do about it."

Ms Awyzio said she knew that magistrates "feel physically sick" about the delays and the amount of work they should be doing.

She said the court had originally been intended to provide quick results in simple matters.

"But the reality, in Brisbane at least, is that the Federal Magistrates Court is doing the majority of the work," she said.

"The Family Court is not as busy as the Magistrates Court."

However, she supported the federal government's plan to have all family law matters eventually dealt with by the Family Court.

NSW tribunals overhaul

NICOLA BERKOVIC

THE head of NSW's largest tribunal, the Consumer, Trade and Tenancy Tribunal, believes taxpayer dollars could be saved if the government proceeds with plans to consolidate many of the state's tribunals.

But doctors are likely to resist a move to scrap individual professional disciplinary tribunals for doctors, nurses, chiropractors, podiatrists and other health professionals.

The O'Farrell government is considering a shake-up of the NSW tribunal system, including the possibility of a new super-tribunal that would subsume bodies such as the CTTT, Medical Tribunal and Nursing and Midwifery Tribunal.

NSW has more than 20 tribunals, which cost about \$200 million a year to run, although many are not directly funded by taxpayers.

CTTT chairwoman Kay Ransome told *The Australian* she believed there was clear scope for administrative savings if tribunals in NSW were consolidated. "It's certainly been supportive of any efforts that are taken to reduce costs," she said.

Ms Ransome said she believed savings could be achieved by rationalising the services infrastructure that support the decision-making functions of tribunals, such as IT services rather than the decision-making functions themselves.

"The decision-making function is governed by particular legislation and there is no reason why those functions should lose their character in an amalgamated body," she said.

An issues paper released Friday says at times there have been considerable concerns regarding the quality of decision-making in the CTTT, which handles disputes relating to rental accommodation, schemes, motor vehicles consumer issues.

But Ms Ransome said CTTT dealt with 60,000 matters a year involving about 130 people, so it was inevitable some would be unhappy with the outcome of their dispute. She said it did not want to see CTTT's character as a quick low-cost dispute-resolution forum lost in any new structure.

Ms Ransome said the tribunal had members all over the state from Bourke to Bega and if super-tribunal were created, should remain accessible to those in regional areas.

Consumer Credit Centre co-ordinator Kara said she was not opposed to new super-tribunal but the CTTT had agreed a body needed to be widely accessible, including through phone hearings.

The state's peak body, the Australian Medical Society (NSW) questioned the need to overhaul the tribunal system. AMA NSW director medicolegal and employment relations Sarah Dahlenb said the existing system for serious medical misconduct issues worked effectively.

"At this point in time, it would be saying, if it's particularly broken you do it to fix it," she said.

Dr Dahlenb said she had yet to consult its members but believed specialists equipped to adjudicate misconduct issues were their profession.

"The issues that doctors face, and the nurses face, are different to others'," she said.

Dr Dahlenb said her profession would not

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Principal Legal Policy Advisor
Ministry of Justice and Legal Affairs, Solomon Islands

- Location: Primarily based in Honiara, but travel to the provinces may be required.
- Duration of Engagement: Until 31 December, 2012, with the probability of extension up to June 2013.
- Remuneration: AusAID Remuneration Framework Classification: C3

Background
The Regional Assistance Mission to Solomon Islands (RAMSI) is a partnership
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