Self-Administration in the Federal Court of Australia

Warwick Soden, Registrar & Chief Executive Officer
Federal Court of Australia

JCA Colloquium 2014
Sheraton Noosa Resort, Hastings Street, Noosa Heads Qld
10-12 October 2014

The subject of court governance remains a topic of interest for the judiciary and that is a good thing. Judges should be concerned about court governance, particularly how improvements could be made that produced efficiencies and reforms that improved court performance.

Court governance also encompasses issues of judicial administration and court administration, if it is assumed that there are two different types of administration in relation to courts. Some may argue that it is not appropriate to make a distinction between judicial administration and court administration, and I would support that argument. The distinction seems to arise where there is a separation of responsibility for the performance of courts in what commentators over the years describe as the traditional model. In July 2000 Professor Peter Sallmann when describing the different models stated:

> *'The "traditional" model, in which a multi-disciplinary department of state (commonly a justice or attorney-general's department) provides services to*

the judiciary and the judiciary has no responsibility for, or formal power over, those providing the support'[1]

It is in this context that the responsibility for the administration of the court is referred to as "court administration" and the responsibility for the organisation of the judges and the allocation of work, including the practice of the court, is called "judicial administration"

It is hard to comprehend how the most efficient use of resources for the purpose of achieving optimum court performance could be successful by separating responsibility for management of the fundamental elements of a court.

That is not to say, however, that courts that do not have the benefit of self-administration are not well run. It is a question of how much better could they be?

More importantly, there is a relationship between judicial independence, the separation of powers and court governance.

'It has been argued by a number of influential commentators that courts' governance is a key component of both judicial independence and the constitutional doctrine of the separation of the various branches of government, both regarded as fundamental to the good health of our governmental system. The argument is that there are two main aspects of judicial independence – adjudicatory independence and the independence of the judiciary as an institution – and that these are intimately and integrally related. The provision of fair, competent, thorough and impartial judicial decision-making, it is said, depends heavily on the strength, financial security and organisational professionalism of the judiciary as an institution. This is the crux of the modern relationship between judicial independence and judicial administration.'[2]

[1] "*Governing Courts*" AIJA Conference, Darwin
[2] Professor Peter Sallmann ," *Governing the Courts*" AIJA Conference Darwin July, 2000 at p3 (also refers to the landmark essay by Russell Wheeler, *Judicial Administration: Its Relation to Judicial Independence*, National Centre for State Courts, USA 1988.

My emphasis in this paper will be on the term "organisational professionalism of the judiciary as an institution" and how the structure of self-administration in the Federal Court of Australia is directed, amongst other things, towards achieving this goal.

In 1990, following the earlier example of the High Court in 1979, the Federal Court of Australia and the Family Court of Australia were each given the responsibility for their own administration. A similar responsibility was also given to the Administrative Appeals Tribunal and subsequently the Federal Magistrates Service, as it was first called.

Key elements of the new responsibility are now included in s 18A and s 18B of the *Federal Court of Australia Act 1976*. Section 18A(1) provides that "the Chief Justice is responsible for managing the administrative affairs of the Court"; and s 18B provides that "in the management of the administrative affairs of the Court, the Chief Justice is assisted by the Registrar of the Court".

In February 2012, in a communication with the Attorney General's Department by the then Chief Justice Keane in the context of the Government's review of Courts and Tribunals by Mr Stephen Skehill, the Chief Justice stated;

> *'These provisions are, of course, the lynchpin of the independent administration of the Court including its status as a Court separate from the Family Court and the Federal Magistrates Court. They were introduced by the Hon Attorney-General Mr Lionel Bowen, in 1989. They were enacted with bi-partisan support.'*

In the same communication excerpts of Mr Bowen's Second Reading speech were included. They are lengthy but deserve to be cited:

> *'This Bill is a significant development in the Government's continued commitment to the financial and management independence of the Federal Court, the Family Court and the Administrative Appeals Tribunal. The Bill will ensure that the courts and the Tribunal are independent from day to day control by the Attorney-General's Department and will provide them with the*

capacity to make decisions which they believe will best enhance their efficient and effective operation.

…

Public accountability is essential, for without public confidence the judiciary may well come under threat. The provisions of this Bill will place with the courts and the Tribunal responsibility for their own administration and provide them with the capacity to operate as they see fit within the resources provided by the Parliament.

…

For some time the Government has been conscious of the need to move in the direction of enabling the Federal Court of Australia, the Family Court of Australia and the Administrative Appeals Tribunal to manage their own affairs. The High Court of Australia has enjoyed such administrative independence for some years. The situation with the other courts and the Tribunal is that they have operated under the administrative umbrella of the Attorney-Genera's Department with the Secretary of that Department exercising the powers of a departmental secretary of the Public Service in relation to the staff of those courts and the Tribunal.

As a first step towards self-management, from the beginning of this financial year the Federal Court, the Family Court and the Administrative Appeals Tribunal received separate appropriations in the Supply Bills. This placed them, in this respect, on an equal footing with the High Court. The purpose behind this move was to place the courts and the Tribunal in a position where their funding allocation would be controlled by themselves and they will now be able to negotiate direct with the Government concerning the appropriate level of future funding. As an additional step towards increased administrative independence, a number of the departmental secretary's powers were delegated to the chief administrative officer of each court and of the Tribunal.

This Bill now provides a statutory basis to fully implement the self-management of the courts and the Administrative Appeals Tribunal. The effect of this Bill is to transfer from the Attorney-General's Department to the courts and the Tribunal responsibility for the supervision of their own financial

management and practices and for the courts and the Tribunal to take control over the management of their other administrative affairs. Self-management will mean that the courts and the Administrative Appeals Tribunal will be free to make their own decisions in human and financial resource management. This will maximise the flexibility of the courts and the Tribunal to cope with changing pressures and priorities throughout each year. This move is welcomed by the chief justices of the Federal and Family courts and the President of the Tribunal. It is also consistent with initiatives they have taken, and no doubt will be taking, in relation to their case management procedures and in the reduction of delays.

The Bill will also mean that these bodies will be given an administrative independence similar to that enjoyed by the High Court.

…

To facilitate the proposed increased administrative responsibilities of the courts and the Administrative Appeals Tribunal, the Bill creates a new executive management position in each body to carry out the new management functions under the overall direction and control of the chief judge of each court and the President of the Tribunal.

…'

Mr Stephen Skehill was Deputy Secretary of the Attorney General's Department in 1990 and writing four years after the establishment of self-administration observed that the Federal Court, the Family Court and the Administrative Appeals Tribunal were "better managed, more efficient, and better able to meet the many demands of those having business before them" than was previously the case. Mr Skehill went on to state his belief that:

'(T)he independence of the judiciary has been enhanced, and that the effectiveness of the proper relationship between the federal judiciary and the federal Executive is now far healthier than it was before the change, and that that effectiveness is still increasing.'[3]

[3] Stephen Skehill, "Comment on Court Governance"(1994) 4 Journal of Judicial Administration 28 at 30

Attached to this paper is a copy of Part IIA – of the *Federal Court of Australia Act – Management of the Court*. A number of those provisions would benefit from an explanation of how they operate and how they contribute to the responsibility and accountability of self-administration.

Section 18BB – Application of the Finance Law – is the provision by which the Federal Court is treated an entity for the purposes of a separate budget allocation. It is interesting to note that the Registrar and not the Chief Justice is the accountable authority of the entity (see s18BB(c). The *Public Governance, Performance and Accountability Act 2013* (effective 1 July 2014) replaces the *Financial Management and Accountability Act.* Both pieces of legislation and related Regulations place the accountable authority subject to directions of the Minister for Finance. There has never been any suggestion that any person other than the Registrar should be the recipient of those directions. The directions could be described as routine requirements concerning the obligation of an "agency"[4] for financial management compliance and reporting. In my nearly 20 years performing the "accountable authority" like role in the Federal Court there has never been an occasion where the obligations of that authority have caused any difficulty for either a Chief Justice (in management of the administrative affairs of the Court) or myself.

It is also interesting to note, following the removal of accountable authority ("agency") status of the National Native Title Tribunal, and the transfer of corporate responsibility for the Tribunal to the Federal Court, that s 18BB(e)(ii) provides that the entity (ie the Federal Court) includes the functions of the Registrar of the Federal Court to assist the President of the National Native Title Tribunal "in the management of the administrative affairs of the Tribunal" (see subsection 129(1) of the *Native Title Act 1993*.

[4] The term "agency" has often been used in finance law legislation to refer to the organisation treated as a separate body for the purposes of a Parliamentary budget appropriation. The new Public Governance Performance and Accountability Act uses the term "entity" instead of "agency". In the past, reference to the Federal Court as an "agency" of government, has, not surprisingly caused concern in comparison to how the term "arm" of government would be more appropriate. The new term "entity" is possibly not as bad as "agency", but concern is likely to continue. It is hard to imagine however that the use of "arm" or "some other" appropriate term is likely to find its way into legislation intended to cover many organisations of government.

The provisions reflect the decision of the Government in 2012 to merge the corporate functions of the NNTT into the Federal Court (on a shared services basis), to remove the "agency" status of the NNTT (while remaining a statutory body) and to provide in the budget allocation of the Federal Court a single line item for the budget of the NNTT (to reflect the intention that the NNTT would continue to manage its business within its appropriation, but with corporate services being provided by the Federal Court).

This arrangement commenced 1 July 2013, and is working well for the Tribunal and for the Court.

Section 18C provides that the Registrar of the Federal Court is appointed by the Governor General upon the nomination of the Chief Justice. This is an important element of self-administration. The assumption of the Chief Justice that the nomination will automatically produce the appropriate advice and recommendation to the Governor-General by the Executive has never been questioned by the Executive in my term(s) as Registrar. It is, however, possible to imagine a situation where the Executive may have justifiable concerns about the possibility of a person being nominated by a Chief Justice who was thought to not be appropriate for appointment. Discussions usually take place prior to a nomination being made and the experience so far is that there has been no surprise or concern about the nomination. That the nominee has, or could clearly demonstrate a capacity for creating effective external working relations with, in particular, the Executive, is also an important factor in the likely successful performance of the person appointed as Registrar in the Federal Court.

All the staff of the court (including staff working directly with judges) are employed under the *Public Service Act* and the Registrar is the Head of the Statutory Agency for the purposes of the *Public Service Act* (s18Q *Federal Court of Australia Act*). Being such a statutory "agency" delivers the comprehensive public service employment terms and conditions, but also gives to the Court the power and responsibility to enter into an Enterprise Bargain with its staff concerning many of the flexible terms and conditions, in particular wages. During the last 20 years of operation in this environment, it has been possible to secure an Enterprise Agreement with the

overwhelming support of staff that includes wage rises and other improved or varied conditions. Importantly, those wages have always been no more than the median movements for wages when compared to other federal agencies. In other words, self-administration delivers the flexibility to fix terms and conditions of staff, but within the limits of reasonableness and affordability. In the last 20 years there has never been any additional funding provided to the Court (other than the annual miniscule budget parameter adjustments) for wage increases. The annual application of an efficiency dividend on the whole appropriation makes the affordability of wage rises a continuing challenge. That situation is clearly not likely to change into the distant future.

In the "early days" of self-administration, the judges of the Court took a very close interest in the bargaining process with court staff, taking, not surprisingly, a particularly close interest in the terms and conditions of staff who worked directly to judges. Those arrangements settled down many years ago, and the enterprise bargain process (every three years) has been very routine in recent times. At the present time, however, in the context of the present government's imposed limits and requirements to be met prior to agreeing on a bargain, the process is taking much longer than usual, and the outcome is uncertain. Importantly, the process is not about winding back the terms and conditions now well settled, particularly in relation to staff working with judges. I believe the present attitude is about limiting overall government expenditure in the present economic climate.

I also think it would be fair to say that judges of the Federal Court are very comfortable with the engagement arrangements concerning the people they consider to be "their staff". And so am I as their ultimate employer.

In summary, the self-administration provisions in the *Federal Court Act* give to the Court the responsibilities and accountabilities consistent with all other government "agencies", with the one important exception being the way in which the Head of Agency (the Registrar of the Court) is appointed.

Importantly, those provisions do not provide any special way in which the Federal Court is treated any differently from other agencies in the budget process. Public

sector imposed budget efficiency dividends, and extra efficiency dividends are almost always applied to the Court, even though we complain bitterly about the unfair treatment. Our argument is that about one half of the value of our appropriation is associated with the cost of judges, and we cannot apply the efficiency dividend to the cost of judges. Therefore, a "double" application of the ED must be applied to other areas of the court, including staff costs, library costs, travel costs etc. We have been completely unsuccessful in securing a change to the application of the ED (even after a Senate Committee looked at the possible unfair application of the efficiency dividend on small agencies), but have secured an agreement with Finance for extra funding to pay for the cost of judicial salary increases determined by the Remuneration Tribunal. Separate entity/agency status of the Federal Court enables the direct engagement with the Department of Finance in relation to all aspects of the Court's financial arrangement.

So, over the years, how have we survived? The simple answer is self-administration. By having the capacity and authority to make fundamental changes to the way the court operates and "does its business", savings and efficiencies have been achieved. Much of the in house corporate services that could be "outsourced" for less cost, are now delivered by contractors. One of the best examples of the benefit of a long term outsourcing project has been court reporting and transcript costs. These services were outsourced fifteen years ago, and cost to the court of reporting and of transcript has reduced each year during that period to the extent that we have produced savings of over $2M pa. And, even though workload has steadily increased, our staff numbers have steadily reduced, with the benefit of automation of some functions. The substantial benefits of our e Services strategy and developed applications (for which we did not secure any additional funding and undertook all the projects within our annual appropriations) produce savings. On 7 July 2014, in Adelaide, we commenced the rollout across Australia of our electronic court file. All new actions across the Court will, by the end of 2014, be created in the electronic court file system, removing the need to create and maintain a paper file. It is easy to imagine the savings this initiative will produce and also exciting to contemplate the efficiencies it will deliver for judges, their staff and the legal profession. This is probably one of the best examples of how a self-administering court can decide to develop and deliver an improvement for the purpose of increasing efficiency and performance while at the

same time enhancing its reputation (which is always important for central agencies of government to perceive an "agency" as modern and efficient).

We have also been successful in securing additional funds, from time to time. I believe important factors in achieving that success include our reputation for achieving efficiencies and being innovative, as well as the opportunity to argue our own case!

The Court also takes a very strategic approach to the requirement to produce an Annual Report.

Section 18S(1) provides;

> *'(1)As soon as practicable after 30 June in each year, the Chief Justice must prepare a report of the management of the administrative affairs of the Court during the year.'*

The Annual Report is also required (by the *Public Governance, Performance and Accountability Act 2013*) to include comprehensive and externally audited financial statements on an accrual basis. The audited financial statements report about the financial performance of the Court and other parts of the Annual Report include information about organisational performance, initiatives, and strategic plans. The Annual Report is a very important accountability mechanism usually attracting close parliamentary scrutiny. It is treated, by the Court, as a very important factor in contributing to perceptions about the performance of the Court. Careful attention is given to the "look and feel" of the Annual Report, to comply with the very modest requirements of the Parliament that prohibits the use of "glittering" like reports while at the same time conveying images of efficiency, accessibility and innovation through the use of a consistent and modern graphic treatments (including the use of a consistent colour brand).

The Court Excellence Framework, in relation to the criteria concerning achieving public trust and confidence, includes:[5]

> *'7.1 Court publicly accounts for its role and performance,*
> *… and,*
> *7.5 Court conducts regular independent audits on expenditure.'*

I believe that the publication of independently audited fully accrued annual financial statements of the Federal Court is a most important contribution to transparency and accountability which goes towards achieving public trust and confidence. The financial statements comply with all accounting standards, which is why they look very similar to financial statements published by a publicly listed company.[6]

On the subject of the Court's financial position, a recent story in *The Australian* newspaper (Legal Affairs p 27 on 20 August, 2014) regarding a report by KPMG commissioned by the Attorney General's Department stated that the Federal Court, the Family Court and the Federal Circuit Court were in a "dire financial position". This is not the position of the Federal Court. As a result of cost saving initiatives implemented during 2013/2014 financial year we achieved a surplus end of year result. A further small surplus is budgeted for the 2014/2015 financial year and a balanced budget is predicted for the following two financial years.

Excellent self-administration is not just about the legislative framework. It is much more about how the court is actually managed.

In most organisations, the performance of the chief executive officer makes an important contribution to the performance of the organisation. So it is with a Court, or an organisation of courts.

While there is no specific reference in the *Federal Court Act* to the position of Chief Executive Officer, the term, as a long standing convention, is added to the title of

[5] *International Framework for Court Excellence*, Second Edition (March 2013) by International Consortium for Court Excellence.
[6] See Appendix I *Federal Court of Australia Annual Report* 2013-2014) for the most recent audited financial statements.

Registrar. This makes it clear that the position includes the traditional "registrar" role and responsibilities, including delegated judicial functions, as well as the broad organisational responsibilities flowing with the position of Chief Executive Officer.[7]

The managerial structures within any court are complex. It is necessary for the role of a Chief Justice to include responsibility for management of the business of the Court. Section 15 of the *Federal Court of Australia Act* – Arrangement of business of Court – Responsibility of Chief Justice at subs (1) provides:

> *'(1) The Chief Justice is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Court.'*

And, more extensively s 15 (1AA) provides:

> *'(1AA) In discharging his or her responsibility under subsection (1) (and without limiting the generality of that subsection) the Chief Justice:*
>
> *(a) may, subject to this Act and to such consultation with Judges as is appropriate and practicable, do all or any of the following:*
>
> *(i) arrangements as to the Judge or Judges who is or are to constitute the Court in particular matters or classes of matters;*
>
> *(ii) without limiting the generality of subparagraph (i)— assign particular caseloads, classes of cases or functions to particular Judges;*
>
> *(iii) temporarily restrict a Judge to non‑sitting duties; and*

[7] By comparison see Part IVA – Management of the Court in the *Family Law Act, 1975* which provides for a separate Chief Executive Officer and a separate Principal Registrar

(b) must ensure that arrangements are in place to provide Judges with appropriate access to (or reimbursement for the cost of):

(i) annual health assessments; and

(ii) short‑term counselling services; and

(iii) judicial education; and

(c) may deal, as set out in subsection (1AAA), with a complaint about the performance by another Judge of his or her judicial or official duties; and

(d) may take any measures that the Chief Justice believes are reasonably necessary to maintain public confidence in the Court, including, but not limited to, temporarily restricting another Judge to non‑sitting duties.'

Clearly, these responsibilities in addition to the responsibility for managing the administrative affairs of the court could not be undertaken without help. Here insert a person who is a Registrar and a Chief Executive Officer (with a business or corporate like collection of resources including Registry resources) to assist the Chief Justice, in addition to the judges that would ordinarily assist the Chief Justice in managing the arrangement of the business of the Court, such as list judges.

Self-administration in the Federal Court empowers the Registrar and CEO to contribute to the overarching performance of the Court, not simply its administration. The management of any organisation will be concerned about the efficiency and quality of the business of the organisation, as opposed to only being concerned about the management of the administration of the organisation itself. It appears to me that too often people responsible for "court administration" in other governance models see their responsibilities as being limited to their area of responsibility or control and

take no accountability for the performance of a court in relation to the business of the court. This is not surprising when these people are not ultimately responsible to the Chief Justice or Chief Judge for management of the administrative affairs of the Court.

On the other hand, how is it possible for a head of jurisdiction to most effectively manage the business of the organisation without effective control over the resources available to that business? I do not mean by this that the head of jurisdiction must have head of "agency" like statutory responsibilities. But, the head of jurisdiction must be supported by an arrangement that enables deployment of resources in the most effective and efficient manner to deliver the business of the Court "to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible".[8] The treatment of the Court as an "agency or authority" with the full delivery of all human and financial resources of an "agency" through an individual appropriation, with 4 year forward estimates , enables organisational business planning in a very effective way and provides deployable resources to a head of jurisdiction.

The Courts electronic court file project is a good example of how there is an efficient interaction between judges and the managers in the Court in the design and deployment of resources between the business needs, the judicial requirements and the organisational support arrangements (such as registries). The electronic court file is not designed primarily for "registry" purposes or court administration purposes. It is designed to support judges and the way in which judges work in the management of their cases. It is also designed having regard to the business interaction with members of the legal profession. It produces efficiencies for the Court, for the Registries, for judges and their staff and for the "customers" or their legal representatives. And, it was achieved without additional funding through a process where the Court could plan, over a number of years, to allocate to the ECF project some of its capital funding included in its annual total appropriation. The point here is that the court made

[8] See 37M of the *Federal Court of Australia Act* – The overarching purpose of civil practice and procedure provisions.

decisions about what capital projects would receive priority to achieve an enhanced business performance objective, which would also deliver a return on investment.[9]

I should also make it clear that many judges are closely involved in the business related organisational committees (eg Finance, Audit, Technology) and practice committees (eg Rules). The management of the Court is not conducted in isolation of the judges. Moreover, the corporate area specialist people resources (such as a CFO or a CIO) are relied upon by the judges for the management of the issues that are considered by the Court's committees. The Registrar and CEO participates on many of those committees and also participates (usually, in close consultation with the Chief Justice in compiling the agenda) in formal meetings of all the judges.

I believe each of the Chief Justices with whom I have had the privilege of working and other judges of the Federal Court would confirm the substantial and necessary contribution performed by the Registrar and CEO role in the management of the Court as an institution and in the development and execution of the organisational and practice and procedure reforms implemented by the Court. The self-administration framework is important and enabling in that regard.

[9] The reason for the implementation of the ECF was not to make savings and not to reduce staff. The ECF project focussed upon procedural improvement for judges and the legal profession. Nevertheless, a capital investment should assure a return on that investment, even if not delivering a cost saving immediately it should create productivity improvements for the near future (i.e more with less)

Part IIA—Management of the Court

Division 1—Management responsibilities of Chief Justice and Registrar

18A Management of administrative affairs of Court

(1) The Chief Justice is responsible for managing the administrative affairs of the Court.

(2) For that purpose, the Chief Justice has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

(a) entering into contracts; and

(b) acquiring or disposing of personal property.

(3) The powers given to the Chief Justice by subsection (2) are in addition to any powers given to the Chief Justice by any other provision of this Act or by any other Act.

(4) Subsection (2) does not authorise the Chief Justice to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding $250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-Gener.

18B Registrar

In the management of the administrative affairs of the Court, the Chief Justice is assisted by the Registrar of the Court.

18BA Arrangements with agencies or organisations

(1) The Chief Justice may arrange with the chief executive officer (however described) of:

(a) an agency of the Commonwealth, a State or a Territory; or

(b) another organisation;

for an employee or employees of the agency or organisation to:

(c) receive, on behalf of the Court, documents to be lodged with or filed in the Court; or

(d) perform, on behalf of the Court, other non-judicial functions of the Court.

(2) If an arrangement under subsection (1) is in force in relation to the performance by an employee of an agency or organisation of a function on behalf of the Court, the employee may perform that function despite any other provision of this Act or any other law of the Commonwealth.

(3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.

(4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

Division 1A—Application of the finance law

18BB Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

(a) the following group of persons is a listed entity:
  (i) the Registrar;
  (ii) the officers of the Court referred to in subsection 18N(1);
  (iii) the staff of the Registries referred to in subsection 18N(7);
  (iv) the Registrar of the National Native Title Tribunal;
  (v) the Deputy Registrars of the National Native Title Tribunal;
  (vi) the staff assisting the National Native Title Tribunal referred to in subsection 130(1) of the *Native Title Act 1993*;
  (vii) consultants engaged under section 132 of that Act; and
(b) the listed entity is to be known as the Federal Court of Australia; and
(c) the Registrar is the accountable authority of the listed entity; and
(d) the persons referred to in paragraph (a) are officials of the listed entity; and
(e) the purposes of the listed entity include the functions of the Registrar:
  (i) to assist the Chief Justice in the management of the administrative affairs of the Court (see section 18B of this Act); and
  (ii) to assist the President of the National Native Title Tribunal in the management of the administrative affairs of the Tribunal (see subsection 129(1) of the *Native Title Act 1993*).

Division 2—Appointment, powers etc. of Registrar

18C Appointment of Registrar

The Registrar is appointed by the Governor-General on the nomination of the Chief Justice.

18D Powers of Registrar

(1) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Justice under section 18B.

(2) In particular, the Registrar may act on behalf of the Chief Justice in relation to the administrative affairs of the Court.

(3) The Chief Justice may give the Registrar directions regarding the exercise of his or her powers under this Part.

18E Remuneration of Registrar

(1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

(2) If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.

(3) The Registrar is to be paid such other allowances as are prescribed.

(4) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

18F Terms and conditions of appointment of Registrar

(1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.

(4) The Registrar holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Justice.

18G Leave of absence

(1) The Registrar has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Chief Justice may grant the Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Justice, with the approval of the Attorney-General, determines.

18H Resignation

The Registrar may resign by giving a signed notice of resignation to the Governor-General.

18J Outside employment of Registrar

(1) Except with the consent of the Chief Justice, the Registrar must not engage in paid employment outside the duties of his or her office.

(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

18K Termination of appointment

(1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.

(2) The Governor-General is required to terminate the appointment of the Registrar if the Registrar:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) engages in paid employment contrary to section 18J; or

(d) fails, without reasonable excuse, to comply with section 18L.

(3) The Governor-General may, with the consent of a Registrar who is:

(a) an eligible employee for the purposes of the *Superannuation Act 1976*; or

(b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or

(c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

retire the Registrar from office on the ground of incapacity.

(4) In spite of anything contained in this section, if the Registrar:

(a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and

(b) has not reached his or her maximum retiring age (within the meaning of that Act);

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

(5) In spite of anything contained in this section, if the Registrar:

(a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(b) is under 60 years of age;

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

(6) In spite of anything contained in this section, if the Registrar:

(a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and

(b) is under 60 years of age;

he or she is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

18L Disclosure of interests by Registrar

(1) The Registrar must give written notice to the Chief Justice of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

(2) The Registrar must give written notice to the Chief Justice of all material personal interests that the Registrar has that relate to the affairs of the Court.

(3) Section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply to the Registrar.

18M Acting Registrar

The Chief Justice may, in writing, appoint a person to act in the office of Registrar:

(a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Division 3—Other officers and staff of Registries

18N Personnel other than the Registrar

(1) In addition to the Registrar, there are the following officers of the Court:
  (a) a District Registrar of the Court for each District Registry;
  (b) such Deputy Registrars and Deputy District Registrars as are necessary;
  (c) the Sheriff of the Court;
  (d) such Deputy Sheriffs as are necessary;
  (e) such Marshals for the purposes of the *Admiralty Act 1988* as are necessary.

(2) The officers of the Court, other than the Registrar, have such duties, powers and functions as are given to them by this Act or by the Chief Justice.

(3) The officers of the Court are appointed by the Registrar.

(4) The officers of the Court (other than the Registrar, the Deputy Sheriffs and the Marshals) are to be persons engaged under the *Public Service Act 1999*.

(5) The Deputy Sheriffs and the Marshals may be persons engaged under the *Public Service Act 1999*.

(6) The Registrar may, on behalf of the Chief Justice, arrange with an Agency Head within the meaning of the *Public Service Act 1999*, or with an authority of the Commonwealth, for the services of officers or employees of the Agency or authority to be made available for the purposes of the Court.

(7) There are to be such staff of the Registries as are necessary.

(8) The staff of the Registries is to consist of persons engaged under the *Public Service Act 1999*.

18P Sheriff

(1) The Sheriff of the Court is responsible for the service and execution of all process of the Court (including warrants) directed to the Sheriff.

(2) The Sheriff is also responsible for:
  (a) taking, receiving and detaining all persons committed to his or her custody by the Court; and
  (b) discharging such persons when so directed by the Court or otherwise required by law.

(2A) The Sheriff is also responsible for matters under Division 1A of Part III directed to the Sheriff.

Note: These provisions of Part III are mainly about juries in criminal proceedings.

(3) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

(4) The Sheriff or a Deputy Sheriff may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

18Q Statutory Agency etc. for purposes of Public Service Act

For the purposes of the *Public Service Act 1999*:

(a) the Registrar and the APS employees assisting the Registrar together constitute a Statutory Agency; and

(b) the Registrar is the Head of that Statutory Agency.

18R Engagement of consultants etc.

(1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.

(2) An engagement under subsection (1) is to be made:

(a) on behalf of the Commonwealth; and

(b) by written agreement.

Division 4—Miscellaneous administrative matters

18S Annual report

(1) As soon as practicable after 30 June in each year, the Chief Justice must prepare a report of the management of the administrative affairs of the Court during the year.

Note: The report prepared by the Registrar and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* may be included in the report prepared under this section.

(2) A report prepared after 30 June in a year must be given to the Attorney-General by 15 October of that year.

(3) The Attorney-General must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

18W Delegation of administrative powers of Chief Justice

The Chief Justice may, in writing, delegate all or any of his or her powers under section 18A to any one or more of the Judges.

18X Proceedings arising out of administration of Court

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.

18XA Protection of persons involved in handling etc. complaints

(1) In exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA), or assisting in exercising those powers or performing those functions, a complaint handler has the same protection and immunity as a Justice of the High Court.

(2) In authorising a person or body under subsection 15(1AAB), the Chief Justice has the same protection and immunity as a Justice of the High Court.

(3) A witness requested to attend, or appearing, before a complaint handler handling a complaint has the same protection, and is subject to the same liabilities in a proceeding, as a witness in a case tried by the High Court.

(4) A lawyer assisting, or appearing on behalf of a person before, a complaint handler handling a complaint has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

18Y Oath or affirmation of office

The Registrar, a District Registrar, a Deputy Registrar or a Deputy District Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Justice or a Judge of the Court, an oath or affirmation in the following form:

"I, , do swear that I will well and truly serve in the office of (*Registrar, District Registrar, Deputy Registrar or Deputy District Registrar*, as the case may be) of the Federal Court of Australia and that I will do right to all manner of people according to law, without fear or favour, affection or illwill, So help me God."

or

"I, , do solemnly and sincerely promise and declare that" (*as above, omitting the words 'So help me G*