

Building a civil justice evidence base: Equitable access to justice

Application for reduction of court fees in the Federal Court and Federal Magistrates Court

Initial data analysis study

1. Introduction

The purpose of this report is to describe the findings of the data analysis study using information from applications for reduction of court fees at the Federal Court and Federal Magistrates Court.

The data analysis study was undertaken primarily to explore data currently available in the applications and associated court files and to provide a tangible example of how data that already exists can be used to inform the evidence base. The data contained in the applications and the associated court files align with the equitable access to justice theme of investigations within the overarching civil justice evidence base project.

2. Background to the feasibility study

The Attorney-General's Department (the Department) has commenced a long-term project to develop the architecture necessary to underpin a strong, consistent evidence base across the civil justice system.

The Department employed a dual approach to progress work on the Civil Justice Evidence Base Project in 2011-12; a 'top-down' approach and a 'bottom-up' approach.

Top-down approach

The top-down approach fundamentally sought to answer the following question: If we were building a civil justice system today what would we expect of it, and how would we measure that? The aim of this work was to build a framework for civil justice data collection, research and evaluation that will encourage quality and consistency as it is adopted over time. The development of sub objectives and indicators for the equitable access to justice objective formed the main component of work adopting the top-down approach in the short term.

Bottom-up approach

The 'bottom-up' dimension of the project sought to achieve some shorter term outcomes. Five discrete areas of work were progressed:

- 1) A review of data available to assist to measure whether '*people have equitable access to the civil justice system*',

- 2) The current project: Feasibility Study into the use of data from applications for reduction of court fees in the Federal Court and Federal Magistrates Court
- 3) A review of current civil justice research and evaluation and
- 4) An assessment of data about self-represented litigants.
- 5) A time series analysis of existing datasets held by Social Inclusion Division of the department.

3. Methodology and scope

An initial feasibility study was conducted at the Federal Court Melbourne registry on Wednesday 18th April.

The purpose of the study was to test the data collection process and analyse a sample of data to assess the potential utility of a larger study. More broadly, the feasibility study provided an opportunity to gain intelligence about data collection, storage and use within the Federal Court and Federal Magistrates Court. The broad information contributed to both the feasibility study and the data scan project.

The feasibility study demonstrated that there was data available of sufficient quality for analysis purposes and that the data collection process, while manual, was reasonable for small to medium scale exercises. Upon the basis of these results, it was recommended that data extraction and analysis be extended to a more comprehensive study.

The Civil Evidence Base Governance Group endorsed the conduct and scope of the current study. It was proposed that the study initially be extended to include all relevant records from the Melbourne registry for the last 12 months, expected to be approximately 300 records. The Melbourne registry was selected as it contains a sufficient sample size to reveal any data issues that may be encountered if the study was to be extended to all registry sites.

All files that were associated with a court fee reduction form throughout the 2011 calendar year from the Federal Court and the Federal Magistrates Court were identified by Melbourne registry staff via an electronic report run in Casetrack. The files were then located by Melbourne registry staff. The extraction process returned:

- 113 Federal Magistrates Court Files identified – 80 fully surveyed – 34 limited details only (physical court files unavailable)
- 144 Federal Court Files – 67 fully surveyed – 77 limited details only (physical court files unavailable – this was particularly the case for the final quarter of data in 2011 – these cases are still underway or not yet re-filed centrally following finalisation of the case and therefore the court files were not available to be included in the study).

In total, there were 257 records in scope for the exercise, of which 147 could be fully examined, approximately 57% of the total records in scope (this sample loss is discussed further in the limitations section of this report).

The files were examined over a period of 5 days at the Melbourne registry, and data entered directly into standardised spreadsheet templates.

Editing and preparing the data for analysis was completed prior to the preparation of data tables and graphs.

4. Data Summary

The following points highlight the key findings from the study. It is important to note though that these findings should be interpreted with consideration of the factors outlined in the Detailed Data Analysis and the Limitation sections of the report.

Analysis of data extracted from the Melbourne registry showed that for persons who were granted a fee reduction between January and December 2011:

- 38% were aged between 35 and 44 years old at the Federal Magistrates Court (15 people) and 43% were aged between 35 and 44 in the Federal Court (7 people).
- Most were male- 84% of persons at the Federal Magistrates Court were male (62 persons) and 83% of persons at the Federal Court were male (49 persons).
- The majority of persons were unemployed - 50% of persons at the Federal Magistrates Court (17 persons) and 58% of persons at the Federal Court (18 persons).
- Use of an interpreter varied depending on the court - 40% used an interpreter (32 persons) at the Federal Magistrates Court and 7% used an interpreter at the Federal Court (4 persons).
- Migration was the most common matter type for both the Federal Court (34% or 23 cases) and the Federal Magistrates Court (60% or 49 cases).
- For both the Federal Court and the Federal Magistrates Court, the most common reason for persons applying for the fee reduction was due to financial hardship (53% and 43% respectively).
- Average personal fortnightly income was \$459 and average personal fortnightly expenses was \$586 for Federal Magistrates Court matters and average personal fortnightly income was \$514 for Federal Court matters and the average personal fortnightly expenses was \$671.

5. Detailed Data Analysis

Variables for analysis

Data was examined for both the Federal Court and Federal Magistrates Court records combined where possible. The following variables were included in this analysis:

- Reason for Fee Reduction
- Gender
- Age
- Use of an interpreter
- Occupation
- Assets, income, expenses, liabilities
- Outcome of case

Due to the variation in the range of case types between the Federal Court and the Federal Magistrates Court, matter type was presented separately.

In addition, all variables have been analysed separately at each court level.

Application for fee reductions - form types

There were three form types used for applying for fee reductions at the Melbourne registry in 2011:

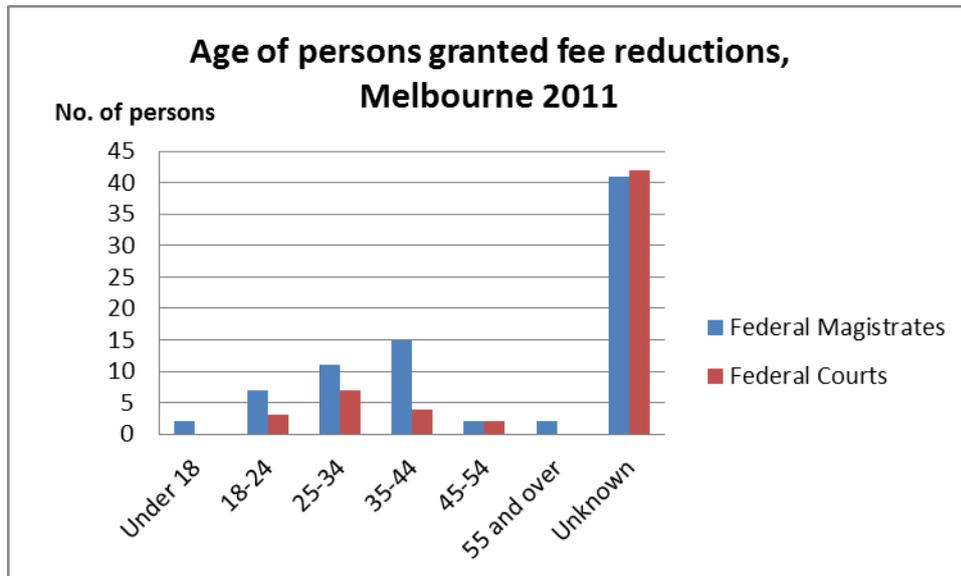
1. The General Form – for persons who were concession card holders, lawfully detained in a prison or detention centre, who were under the age of 18 years or who had been granted legal aid
2. The Financial Hardship Form – for persons who were claiming financial hardship as the key reason for seeking a fee reduction
3. Corporate Form – for businesses who were claiming financial hardship as the key reason for seeking a fee reduction

The financial hardship and corporate forms contained more detailed information than the general form such as assets, income, expenses and liabilities. For these variables, data can only be presented for persons who completed the financial hardship form.

The following section presents more detailed data analysis organised by research question.

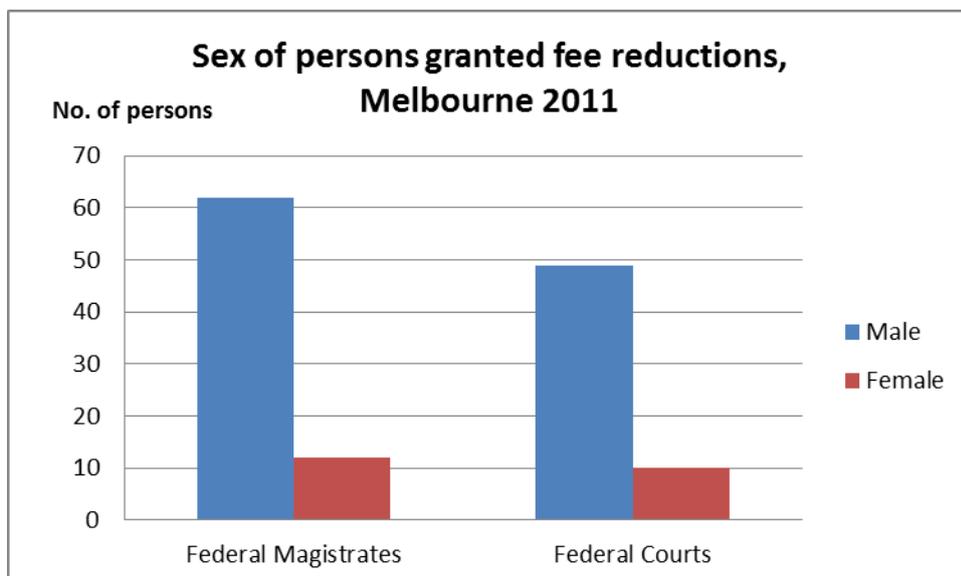
Who was seeking reductions in court fees?

Age



Age or date of birth information was not collected on the fee reduction forms and was not consistently recorded within the court files themselves. Therefore for 51% of persons who were granted fee reductions in the Federal Magistrates Court and for 72% persons who were granted fee reductions in the Federal Courts, age was unknown. As such the data that has been collected for age is not an accurate representation of the true age distribution of persons who received a fee reduction in the courts. The graph below illustrates this high proportion of unknown values.

Sex



Sex was not collected on the fee reduction application forms, instead this information was extracted from the court files themselves. This information was easier to extract compared to age, not because

it was collected systematically, but rather there were often references to ‘he’ and ‘she’ in correspondence or was noted in court documents, particularly in migration cases. There were 6 not stated values for sex, all from the Federal Magistrates Courts.

For both the Federal Court and the Federal Magistrates Court, the majority of persons granted a fee reduction in Melbourne in 2011 were male – 84% of persons at the Federal Magistrates Court (62 persons) and 83% of persons at the Federal Court (49 persons).

Occupation



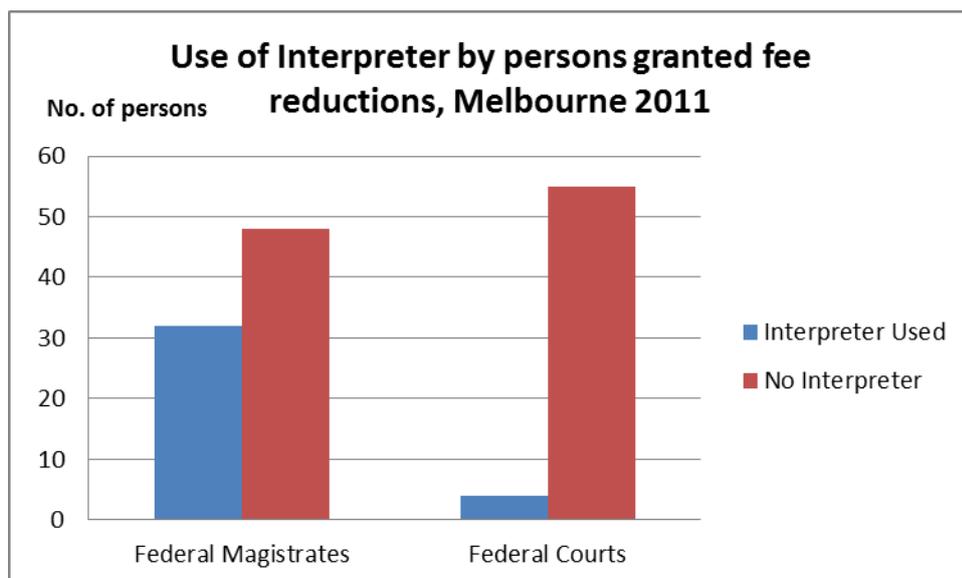
Occupation information was collected only for persons who had completed a financial hardship form, therefore this variable is not applicable for the 27 persons who were granted fee reductions via a general form in the Federal Court and 46 persons in the Federal Magistrates Court. Data was coded using the broadest level of the [Australian New Zealand Standard Classification of Occupations \(ANZSCO\)](#) (ABS cat. no. 1220.0).

For both the Federal Court and the Federal Magistrates Court, of the persons who were granted a fee reduction due to financial hardship in Melbourne in 2011, the majority were unemployed – 50% of persons at the Federal Magistrates Court (17 persons) and 58% of persons at the Federal Court (18 persons).

Location

As expected, given the sample was taken from the Melbourne registry, most persons who were granted a fee reduction in the Federal Court and Federal Magistrates Court in 2011 resided in Victoria (71% of persons (57 persons) in the Federal Magistrates Court and 90% (52 persons) of persons in the Federal Court). There were eight persons who were granted fee reductions being held in the Scherger Immigration Detention Centre in Far North QLD.

Use of an interpreter

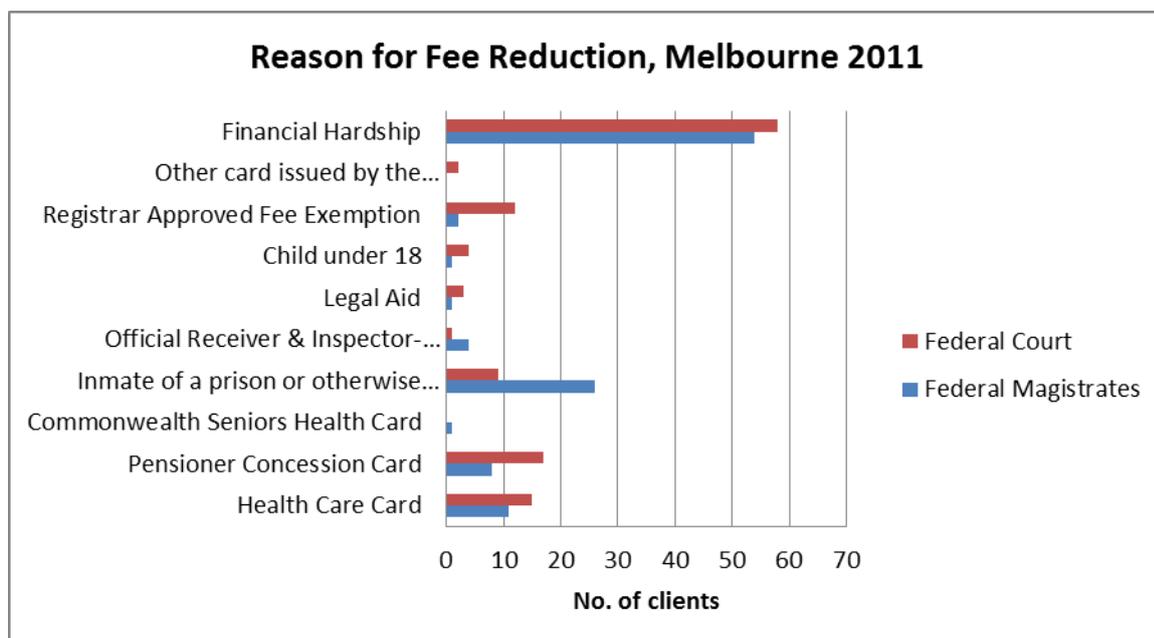


Interpreter information was extracted from the correspondence file of the physical court file. The information consisted of copies of interpreter requests or emails arranging the interpreter service.

For persons who were granted a fee reduction in the Federal Magistrates Court in Melbourne in 2011, 40% used an interpreter (32 persons). For persons who were granted a fee reduction in the Federal Court in Melbourne in 2011, 7% used an interpreter (4 persons).

On what grounds are people applying for reductions in court fees?

Reason for fee reduction



For both the Federal Court and the Federal Magistrates Court, the most common reason for persons applying for the fee reduction was due to financial hardship (53% and 43% respectively).

The next most common reason for persons applying for the fee reduction in the Federal Magistrates Court was on the grounds of being lawfully detained in a public institution, including Migration Detention Centres (25% or 20 persons). For the Federal Court, the next most common reason for persons applying for the fee reduction was on the grounds of holding a health care card (17% or 10 persons).

Income and Expenses

Average Income (\$ per fortnight)		
	Federal Courts	Federal Magistrates
Income	459.42	514.64
Financial Support	132.02	146.40
Total Income	730.15	676.86

Average Expenses (\$ per fortnight)		
	Federal Courts	Federal Magistrates
Total	585.83	671.17

Information about income and expenses was only collected on the financial hardship forms. Personal fortnightly income information was collected as well as fortnightly financial support provided by others. For persons who were granted a fee reduction in the Federal Magistrates Court for financial hardship in Melbourne in 2011, average personal fortnightly income was \$514 and the average personal fortnightly expenses was \$671. For persons who were granted a fee reduction in the Federal Court, average personal fortnightly income was \$459 and average personal fortnightly expenses were \$586. In summary, for persons who were granted fee reductions from both the Federal Court and the Federal Magistrates Court, reported personal fortnightly income was less than personal fortnightly expenses.

Assets and Liabilities

Average (\$)		
Assets	Federal Courts	Federal Magistrates
Personal	92,480	51,804

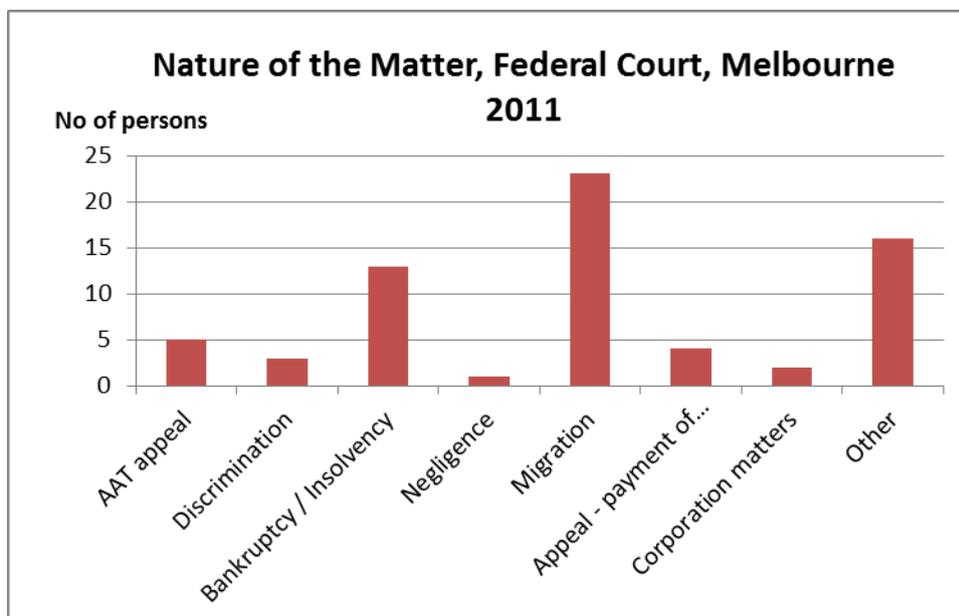
Average Liabilities (\$)		
	Federal Courts	Federal Magistrates
Average Total	45,569.37	34,709.50

Information about assets and liabilities were only collected on the financial hardship forms. Assets reported commonly included motor vehicles, house / land, cash and value of furniture / electrical goods. For persons who were granted a fee reduction in the Federal Magistrates Court for financial hardship in Melbourne in 2011, the average value of personal assets was \$51,804 and the average value of personal liabilities was \$34,710. For persons who were granted a fee reduction in the Federal Court, the average value of personal assets was \$92,480 and the average value of personal liabilities was \$45,569. Overall, persons who were granted fee reductions from the Federal Magistrates Court had lower average values for both assets and liabilities in comparison to persons who were granted fee reductions from the Federal Court.

For what matters are people applying for reduction in court fees?

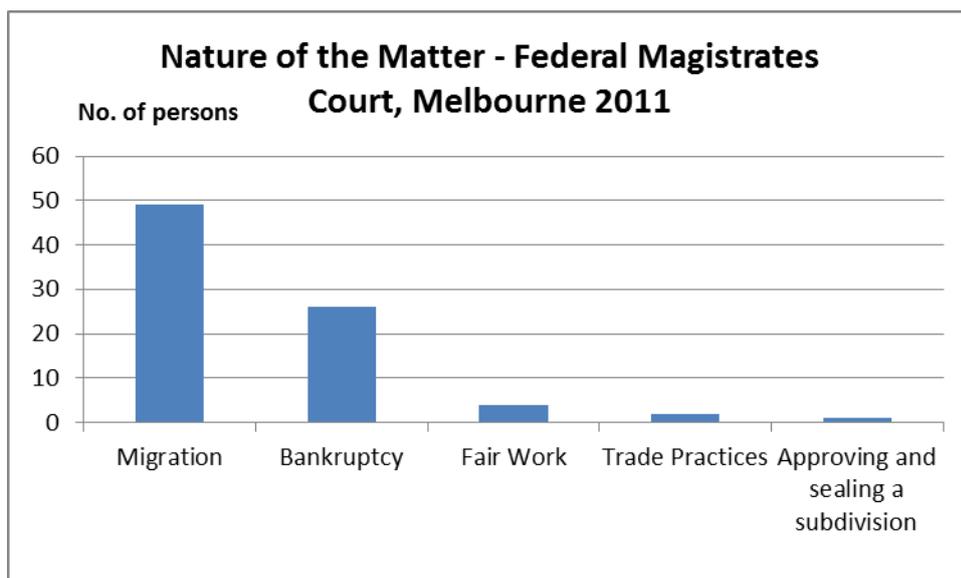
Nature of the matter – Federal Court

Nature of the matter was extracted from information presented in the court file. For the Federal Court files, this generally involved trawling through the legal papers in the case and determining a broad category fit.



For persons who were granted a fee reduction in the Federal Court in Melbourne in 2011, Migration was the most common matter type (34% or 23 cases).

Nature of the matter – Federal Magistrates Court

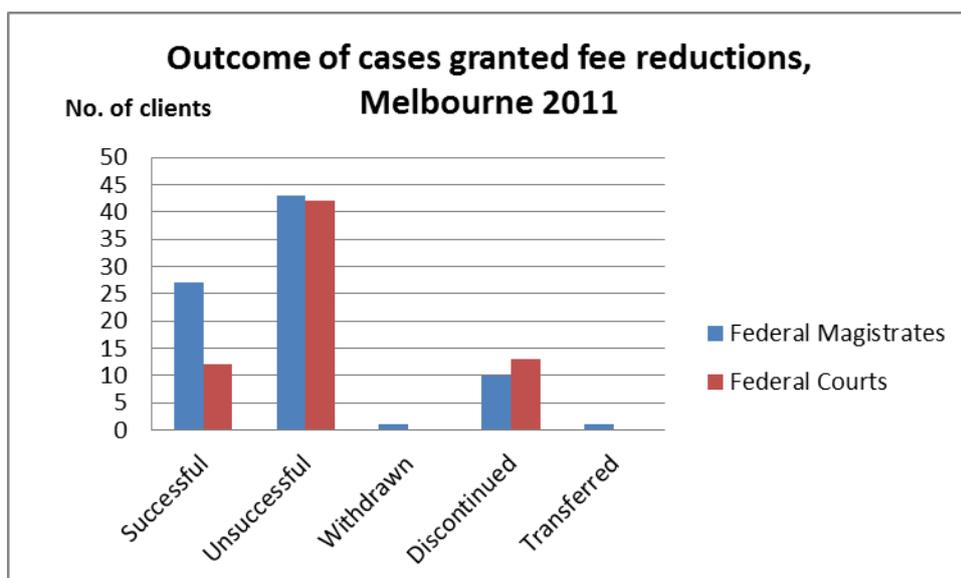


The nature of the matter was noted on the front cover of the case file within the Federal Magistrates court, which made it comparatively easy to determine than the nature of the matter within the Federal Court.

Similar to the Federal Court, for persons who were granted a fee reduction in the Federal Magistrates Court in Melbourne in 2011, migration was the most common matter type (60% or 49 cases).

What are the outcomes of cases where people have applied for a reduction in court fees?

Outcomes



Generally, the outcomes of the cases was summarised in the court files, although there were some cases where it was difficult to determine the precise outcome.

For the Federal Court and the Federal Magistrates Court, most cases were not successful for the person who was granted a fee reduction, whether they be the respondent or the applicant (63% or 42 persons were unsuccessful for the Federal Court and 52% or 43 persons for the Federal Magistrates Court).

Cases were successful in the Federal Court for 18% of persons who were granted fee reductions in the sample (12 persons) and for 33% of persons who were granted fee reductions at the Federal Magistrates Court (27 persons).

6. Limitations of the study

It is important to acknowledge that there were a number of limitations to the current study that impact on the quality of the data collected.

Unavailability of records

There were a notable proportion of records not available for the current analysis. This may have been, for example, because that they were still in use and not yet returned to records. Information from Casetrack (such as the reason for fee reduction) allowed for partial analysis of these files, but the majority of the data items relevant to this study (eg age, sex, interpreter use) were not available for these files. The unavailability of files was particularly an issue for the Federal Court records from the December 2011 quarter. Given the often complex nature of Federal Court cases, it is to be expected that there may be significant time lags before the data is available for analysis.

Missing data values

Much of the data presented in this report was not collected systematically, but rather it was discovered through manual searching through legal documents within the court files. This resulted in large proportions of missing data for some items, for example, for 51% of persons who were granted fee reductions in the Federal Magistrates Court and for 72% of persons who were granted fee reductions in the Federal Courts, age was unknown as it was not noted anywhere in the legal documentation. Substantial proportions of unknown values for data items significantly reduce the utility and reliability of the data. This in turn, impacts on the ability of the data to answer research and policy questions.

Translation of information into quantitative data

As some data items were extracted from information within the physical court file, there was an element of interpretation required to translate that information into quantitative data. For example, where some cases contained multiple but related matters, a judgement had to be made by the data collector as to which matter was the principal matter for the purposes of recording. Fundamentally this means that the data may be less reliable than if the data was collected in a standardised manner by the court.

Inconsistency of data across matter types

There was inconsistency of data recorded within the court files across matter types. For some matters, for example migration matters, concise summaries of the case and the client were documented in the file, which made data extraction easier. For other matter types, such as insolvency, documents were often long and technical and did not contain client demographic information such as age and sex. As such, it is likely that the data for matters in which clear

summaries were provided are more complete and accurate than data for matters where the information was difficult to find and extract.

Unavailability of general court data

There are also limits to the context within which the data can be interpreted. Data for the general population of clients at the Federal Court and Federal Magistrates Court are not available. As such, statements about the relative disadvantage of clients applying for fee reductions in comparison to the general court population cannot be made. For example, while this study has shown that 40% of persons who were granted a fee reduction in the Federal Magistrates Court required the use of an interpreter, this figure cannot be compared with the use of an interpreter in the general court population. As such, we cannot say whether 40% is higher or lower than the general court population.

Unavailability of data for persons who were not granted fee reductions

Finally, it is important to note that all of the clients included in this study were successful in receiving fee reductions. Application forms for persons who are not successful are often not retained by the court. While discussions at the Melbourne registry indicated that it is only on very rare occasions that persons are not granted fee reductions after filling in an application, the study is missing data from persons who did fill in a form but were not successful. As such, the findings cannot be generalised as representing all persons who applied for court fee reductions.

7. Conclusion and Recommendations

The current study demonstrated the potential utility of the data held within the application forms for court fee reductions and in the physical court files at the Federal Court and the Federal Magistrates court.

There is scope to extend the data study further. A dataset could be created using data from the remaining state and territory registries for the Federal Court, the Federal Magistrates Court and potentially the Family Court. However, further extensions to this study would be subject to the same limitations that have been highlighted in this report assuming that the Melbourne registry is representative of other sites. The key issue with this study; impacting on the quality of the data and the subsequent interpretation of the data, is that variables such as age, sex, interpreter use, nature of the matter and outcomes had to be extracted manually from the legal documents contained within the physical court file. Data variables of interest are generally not recorded in a quantitative or easily retrievable manner by the Courts.

For this data to be collected in a robust, consistent and efficient manner, changes to the data collection practices of the court would need to occur so that data is recorded purposefully and systematically across all relevant records, for example, using a standardised recording form. While manually searching through existing information was possible for this initial exploration of the data, this practice would not be feasible for a larger scale study, nor sustainable for ongoing production of this information. Not only would such an exercise require significantly more resources compared to mining data that is recorded uniformly, the data may contain high missing values or other quality issues as the recording of demographic data is currently arbitrary.

As such, it is recommended that as part of the broader civil justice evidence base project, the department liaise with the Federal Court and the Federal Magistrates Court to encourage the development of uniform data collection to support the ongoing availability of key variables to support decision and policy-making. With the development of the electronic recording system in the Federal Court, it is the opportune time to influence the content of the system. The findings of this report can be used to demonstrate the issues with extracting information from the legal files rather than collecting data systematically.

In the meantime, additional small scale data studies in other registries may be undertaken to ensure that the findings of this analysis is representative of all registries. These studies may also provide further impetus for improvement of data recording practices across the courts through provision of additional evaluation of the status of current statistical information, as well as providing an indication of information that could be utilised if data holdings were improved.