



FEDERAL MAGISTRATES COURT OF AUSTRALIA

INFORMATION ABOUT THE CONDUCT OF GENERAL FEDERAL LAW MATTERS

This information explains the procedure that will apply to applications commenced in the Federal Magistrates Court of Australia in relation to General Federal Law matters. The Court's jurisdiction includes: administrative law; admiralty; bankruptcy; trade practices; copyright; industrial law; migration; privacy; and unlawful discrimination. (*Information on the jurisdiction of the Court can be found on the Court's website at www.fmc.gov.au*).

Associated jurisdiction

The Court has jurisdiction in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Court is invoked: s 18 *Federal Magistrates Act 1999*.

Rules - Regulations

The rules for the conduct of proceedings (other than bankruptcy) can be found in the *Federal Magistrates Court Rules 2001*.

The rules for the conduct of proceedings in bankruptcy can be found in the *Federal Magistrates Court (Bankruptcy) Rules 2006*.

Fees payable are set out in the *Federal Magistrates Regulations 2000*. (*Details of the fees can be found at the Court's website www.fmc.gov.au*.)

Case allocation – panel arrangements – nationally

Cases are allocated randomly to Federal Magistrates and a docket management system is adopted. However specialists panels operate in relation to certain areas of the Court's jurisdiction, including industrial law. These specialist panels have been introduced in Sydney, Melbourne and Brisbane and have a nominated Convenor. Once an application which falls within a Panel jurisdiction is docketed to a Federal Magistrate on the panel, it will generally remain with that Federal Magistrate. Details of panel composition is set out on the on this website, at www.fmc.gov.au. Notices to practitioners in various areas of panel jurisdiction are also located on this website.

Role & Responsibilities of Convenors

1. The Convenor of a Panel is responsible for the allocation of applications to Panel members.
2. The Convenor of a Panel will be the first contact point for any urgent applications received in normal business hours.

Information for parties

Proceedings in the Federal Magistrates Court are commenced by application and usually supported by an affidavit. Rule 4.01 outlines the general requirements for commencing a proceeding. The person filing the application whether seeking final, interim or procedural orders must usually file an affidavit stating the facts relied on. Specific forms for commencing proceedings have been approved for bankruptcy, migration, industrial law and unlawful discrimination proceedings and are available on the website at www.fmc.gov.au.

Pleadings - points of claim

The grounds of an application must explain briefly the basis on which the orders are sought. In most instances the use of an application and affidavit will negate the need for pleadings but, where appropriate, pleadings will be ordered. This is particularly so in commercial litigation such as trade practices, copyright and industrial law applications, and in some complex unlawful discrimination applications. In such instance an applicant may attach a pleading by way of points of claim. Such a pleading should observe the requirements of *Federal Court Rules*, Orders 11 and 12. It should identify in summary form the material facts on which the applicant relies, but not the evidence by which those facts are to be proved. All necessary particulars must be given.

What happens on the first court date?

The Federal Magistrates Court operates what is known as a docket system which means that the application will usually remain before the same Federal Magistrate from first court date to final hearing. The conduct of proceedings on the first court date is fully detailed in Rules 10.01 to 10.03. Rule 44.11 sets out rules for the conduct of proceedings in migration matters on the first court date. These rules set out a non-exhaustive list of possible orders or directions (without limiting rule 10.01).

At the first court date the court may give directions, order the parties to mediation, fix a date of hearing, conduct an interim hearing or finally determine the application. Rule 10.01 details the manner in which the Court may conduct proceedings on the first court date. The parties and their legal representatives are required to attend court and must have a good knowledge of the case.

At the first court date, the Court will generally order mediation and fix a date for the final hearing of the application. The Federal Magistrates Court aims to list all cases for final hearing within six months of filing. Interim hearings will be listed with priority having regard to the degree of urgency.

Directions

The Court has the power to make directions or orders. These orders will guide the conduct of the application, by ensuring parties undertake certain tasks that will facilitate the finalisation of the matter. See Rule 10.01(3).

The Court may make orders about:

- **Filing of Additional Material**

It is expected that orders will be made dealing with the filing of any further affidavits, witness statements, witness summaries, outlines of evidence and/or lists

of authorities. Both the applicant and the respondent may, subject to the Court's discretion have an opportunity to file further relevant material.

- **Production of Documents**

Section 45 of the *Federal Magistrates Act 1999* provides for the Federal Magistrate to allow discovery and/or interrogatories only if it is appropriate in the interests of the administration of justice. If you want an order for discovery and/or interrogatories you may ask the Court for that order on the first court date. It is useful to specify the category of documents subject to be discovered and a draft of the interrogatories upon which you seek to interrogate.

- **Dispute Resolution**

The parties will be informed of the dispute resolution mechanisms that are available. One possible dispute resolution procedure that is available is **mediation**. Legally qualified registrars of the Court can conduct mediations.

The Court will usually fix a date by which the parties may attempt to resolve the dispute by using one of these procedures. This will always be prior to the hearing date.

Short proposed minute of orders to be provided

Where at least one party is represented by lawyers the Court will be assisted if a short minute of orders – providing a timetable dealing with the matters referred to above – has been prepared for consideration by the Court.

Consent Orders

The Court may receive consent orders in respect to applications filed in the Federal Magistrates Court. Proposed consent orders can be filed with the Court on or prior to the first court date, or at any time leading up to the final hearing. It is useful if proposed orders are sent by e-mail to the Federal Magistrate's associate.

Subpoenas

Part 15A of the Rules deals with subpoenas. A subpoena is not effective until issued by the Court. A subpoena issued should be in the approved form as set out on the Court's website.

A subpoena requiring the production of documents only can be made returnable at any time fixed by the Court, although it will usually be 14 days. Rule 15A.04.

Documents subpoenaed under a subpoena requiring the production of documents only, in circumstances where there is no objection to those documents being inspected or copied, can be made available for inspection and, with the exception of child welfare records, criminal records, medical records, and police records, copying, after the date for production has passed, without an order. Rule 15A.13.

Where a notice of objection to production, inspection and/or copying of documents is filed, the matter will be listed for hearing on a date fixed by the Court. Rule 15.14A(4).

A subpoena requiring the attendance of a person must be made returnable on a day the proceeding is listed for hearing. Rule 15.14(2).

At least seven days notice of the return day of a subpoena must be given when attendance is required. A subpoena requiring production of documents is required to be served at least 10 days before production under the subpoena is required. Rule 15A.04(3).

Subpoenas must be served in accordance with Part 6 of the Rules. Subpoenas requiring attendance must be served by hand. Subpoenas requiring production of documents only may be served by ordinary service. Copies of the subpoena must be served by ordinary service on other parties, interested persons and the independent children's lawyer (if appointed). Rule 15A.06.

A party is limited to issuing 5 subpoenas in a proceeding unless the Court directs otherwise. Rule 15A.05.

Part 15A outlines further detail in respect to subpoenas.

Urgent applications

Part 5, Rules 5.01 to 5.03 deal with urgent applications and the manner in which they can be brought before the Court.

An application to deal with an urgent matter is to be accompanied by a draft of the order sought and can be made on the initiating application or any form approved for use in the Court.

In an urgent case where service on the respondent is not possible, on application the Court may make an order until a specified time or until further order.

Evidence on urgent applications shall be by way of affidavit or orally with the leave of the Court. Rule 5.03 details the information that is required by the Court in dealing with urgent applications.

How to end a proceeding early

Pursuant to Rule 13.01 a party may discontinue an application or a response by filing a notice of discontinuance in accordance with the approved form.

A party discontinuing an application or part of an application may be liable for costs. Rule 13.02. Subrule 44.15 (2) sets out costs for discontinuance in migration matters.

What happens if Court directions are not complied with?

It will always be possible for a party to bring a matter back to the Court after the first court date if there is non compliance with procedural matters or court directions. Parties are encouraged to ensure that compliance occurs to minimise the number of times that the parties need to attend court. There are costs or other penalties that can be applied by the Court when necessary.

Can I get assistance from the Court?

The Federal Magistrates Court will provide practical assistance about court procedures to litigants, so that cases can be resolved as speedily as possible. The Court cannot give legal advice.

The Court may refer parties for legal assistance pursuant to Part 12 Rules 12.01 to 12.07. The legal assistance is not a substitute for legal aid nor is it an indication that the Court has formed an opinion on the merits of the case. The Principal Registrar in Melbourne maintains a list of lawyers who will assist in the provision of this assistance. The list may be maintained for each particular registry. Currently, the only list relates to the Sydney registry where a pilot scheme is in operation. A separate information sheet is available from the Sydney registry about that scheme.

Parties are encouraged to attempt to resolve their disputes informally or to use the dispute resolution services that are available.

Costs

The rules in relation to costs can be found in Part 21 of the *Federal Magistrates Court Rules 2001*.

There are some significant features of these cost rules:

- Unless the Court otherwise orders, the appropriate scale for a party-party costs order (other than for bankruptcy proceedings) is the event-based scale as set out in Schedule 1 (see rule 21.10). There is a specific schedule of costs in relation to migration matters (see Rule 44.15).
- The Court has a general discretion in relation to costs and can depart from the fixed, event-based scale. It can award costs according to the scale set by the Federal Court of Australia, or otherwise set an amount it considers appropriate in the circumstances.
- There is no provision for taxation of costs if an order is made in accordance with Schedule 1. Taxation of costs is only possible when costs are assessed according to the Federal Court scale.
- There are no rules regulating the fees to be charged between lawyers and clients in relation to proceedings in the Court (see rule 21.09). Disputes in relation to lawyers fees should be directed to the relevant state/territory regulatory authorities.

Costs in bankruptcy proceedings

Unless the court otherwise orders, a party entitled to costs in bankruptcy proceedings in the Federal Magistrates Court is entitled to costs in accordance with the Federal Court Rules (see Part 13 *Federal Magistrates Court (Bankruptcy) Rules 2006*).