



FEDERAL MAGISTRATES COURT OF AUSTRALIA

NOTICE TO LITIGANTS & PRACTITIONERS (VICTORIA 2005/01)

MIGRATION MATTERS

With the introduction of the *Migration Litigation Reform Act 2005* and consequent amendments to the Federal Magistrates Court Rules (see *Federal Magistrates Court Amendment Rules 2005 (No 1)*) this Notice sets out administrative information on the conduct of migration matters by the Federal Magistrates Court in Victoria.

Migration matters filed in the Federal Magistrates Court in Victoria or remitted from the High Court for filing in the Victorian Registry will be randomly allocated to the dockets of relevant Federal Magistrates. The aim of Federal Magistrates Court is to develop best practice for the most efficient disposal of all matters and the Federal Magistrates Court Rules. Rule 44.11 gives the Court a wide discretion as to how to deal with Migration matters. With these considerations and the overall caseload of each Federal Magistrate in mind, individual Federal Magistrates may adopt different approaches to the management of the matters in their dockets.

First Court date

New rule 44.11 sets out rules for the conduct of the proceedings at the first court date (without limiting rule 10.01). Paragraphs (a)–(j) inclusive set out a non-exhaustive list of possible orders or directions that can be made at the first court date.

Federal Magistrates Hartnett, Connolly, O'Dwyer, Phipps and Riethmuller will conduct their own first court dates. Matters in the docket of Federal Magistrate McInnis will be given a First Court date before a Registrar.

At the First Court date a further listing in the matter will usually be appointed and its

purpose will be designated, for example, a further directions hearing, a hearing under Rule 44.12 or a final hearing on the merits of the relief sought in the application. However, in particular cases, Federal Magistrates may expect parties at the First Court date to address whether the application raises an arguable case if this issue can be dealt with briefly. For example, where the absence of jurisdiction appears on the face of the application, or if the applicant cannot dispute an ‘actual notification’ date outside the time limit under s 477, or if the challenged decision is a ‘primary decision’ excluded by s 476. A respondent who seeks such an order should, if possible, give prior notice to the applicant by service of a Response and affidavit.

Service of Applications

To ensure that the Minister will have early notification of an application, the Registry will continue to forward a copy of a filed application and supporting affidavit (but without any annexures) to a dedicated email address at the Department of Immigration and Multicultural and Indigenous Affairs (“the Department”) in Canberra.

The forwarding of the copy of the application and affidavit to the Department by the Registry will not, however, constitute service on the Minister. Applicants will need to comply with Rule 6.03 of the Federal Magistrates Court Rules. They can do so by serving a sealed copy of the application and affidavit (with all annexures) on a departmental employee at Ground Floor Casselden Place, 2 Lonsdale Street Melbourne 3000.

The application must be served on each Respondent, and where required this will include service on the relevant Tribunal. In relation to the relevant Tribunal service can be effected by delivering the application to the Department at Ground Floor Casselden Place, 2 Lonsdale Street Melbourne 3000 who will make arrangements for service on the relevant Tribunal.

Service of notice for matters remitted from the High Court

As provided in Part 44 of the FMC Rules, the Registrar will serve a copy of the notice

advising of the FMC file numbers and first court date on the parties identified in the proceedings as remitted from the High Court.

Bundle of Documents

If so directed at the first court date, the Minister will, through his or her solicitors, prepare a Court Book which will comprise a bound or stapled bundle of documents relevant to the application (usually referred to as the “Court Book”). The bundle of documents will consist of legible photocopies of the documents in the possession or power of the Minister including the decision under review which, from the application and any particulars provided, appear to be relevant to the review subject to any order of the Court. It will not, however, include a copy of any transcript of proceedings before the Migration Review Tribunal or Refugee Review Tribunal.

The Court Book will:

- be arranged as near as practicable in chronological order from the earliest to the latest;
- have each page numbered consecutively;
- have an index attached to its front containing a brief description of each document; and
- be filed in the Registry with a copy served on the applicant as soon as possible after the Department receives a copy of the application and supporting affidavit.

At the first court date or any subsequent directions hearing in the proceedings, the Court may give directions with respect to the filing of any further documents.

Responses

Each Respondent who intends to oppose an application must file and serve a response: see Rule 44.06. It will not be necessary to specify an alternative order if the opposition merely raises grounds for the dismissal of the application.

Parties in Detention or Custody

Where a party is in immigration detention at a detention centre including a detention facility outside of Victoria, eg. Baxter Immigration Detention Centre, or otherwise held at a remand centre, the Registry does not make arrangements to have that party brought to Court. The Minister's solicitors will make arrangements with the detention or remand centre for the party's attendance at Court, or seek to have the matter proceed by way of video link facilities where applicants are held in detention in a remote location.

Where the party in detention is represented, in the absence of agreement between the parties' representatives or an order or direction of the Court to the contrary, the party will not be brought to the Court as a matter of course.

Where a party is in custody serving a custodial sentence the Minister's solicitors will notify the Registry that the party is in custody, any reference used by the custodial authority to identify the party and the name of the custodial institution. Notification should usually be by letter marked to the attention of Duty Registrar and faxed to the Registry.

Adequate time should be allowed to enable the Registry to refer the request to a Federal Magistrate to consider the making of an order that the party in custody be brought to Court; to give notification of that order, if made, to the relevant institution; and for that institution to make the necessary arrangements.

Where a party in custody is represented, the party will not as a matter of course be brought to Court. Parties may, however, always apply to the Court for an order in appropriate circumstances.

The Court gives priority to listing cases for final hearing where the applicant is in detention. The legal representative for the Minister will be expected to inform the Court if an applicant in detention is released prior to a final hearing date.

Interpreters

Where a party requires the services of an interpreter the existing practice in relation to the provision of interpreters remains unchanged. Where a party is unrepresented and indicates a need for an interpreter the legal representative for the Minister will be expected to notify the Court as to particular interpreter requirements. Where a party is represented and an interpreter is required, their legal representative must make arrangements for an interpreter.

Costs

In relation to costs parties should be aware of Rule 44.15 and Schedule 1 of the Federal Magistrates Court Rules which sets out a standard scale where proceedings are concluded and automatic costs where proceedings are discontinued.