



FEDERAL MAGISTRATES COURT OF AUSTRALIA

CONDUCT OF ADMIRALTY AND MARITIME WORK IN THE FEDERAL MAGISTRATES COURT OF AUSTRALIA

NOTICE TO PRACTITIONERS IN ALL STATES AND TERRITORIES

Jurisdiction has been conferred upon The Federal Magistrates Court by the *Federal Magistrates Jurisdiction Amendment Act 2006*. It is expected that the Court will provide an alternative venue for the hearing of smaller cargo claims within the federal system. *In personam* jurisdiction has been conferred, not *in rem* jurisdiction.

The purpose of this notice is to set out the arrangements that the Court has put in place for the conduct of Admiralty matters. This notice deals with: the new national arrangement, the identification of Admiralty matters covered by the new arrangements, *in personam* proceedings, assisted or alternative dispute resolution, Court annexed arbitration, and the proper approach to Admiralty litigation.

National Arrangement

A national arrangement has been established whereby nominated Federal Magistrates will undertake the Admiralty work of the Court. They will be assisted in undertaking the work by nominated Registrars, and skilled Registry officers. These Registrars and skilled Registry Officers will be the same people who undertake this work in the conduct of admiralty and maritime jurisdiction by the Federal Court. The Court will seek to co-ordinate the work and harmonise practice and procedure in accordance with this notice to practitioners.

The Federal Magistrates involved and their contact details are as follows:

Western Australia, South Australia & Northern Territory	Raphael FM	Associate: Sharon Brant Tel: 02 9377 5576 Fax: 02 9230 8469 E-mail: sharon.brant@fmc.gov.au
Victoria & Tasmania	O'Dwyer FM Burchardt FM	Associate to FM O'Dwyer: Gail Car Tel: 03 8600 4010 Fax: 03 8600 4445 E-mail: gail.car@fmc.gov.au Associate to FM Burchardt: Brooke Evans Tel: 03 8600 4324 Fax: 03 8600 4493 E-mail: brooke.evans@fmc.gov.au
New South Wales & Australian Capital Territory	Raphael FM Emmett FM	Associate to FM Raphael: Sharon Brant Tel: 02 9377 5576 Fax: 02 9230 8469 E-mail: sharon.brant@fmc.gov.au Associate to FM Emmett: Serena Kwong Tel: 02 9377 5542 Fax: 02 9377 5543 E-mail: serena.kwong@fmc.gov.au
Queensland	Jarrett FM	Associate: Susan Haysom Tel: 07 3361 3084 Fax: 07 3361 1689 E-mail: susan.haysom@fmc.gov.au
Registrar	First point of contact should be District Registrar in each State	

Admiralty and maritime matters

The Admiralty and maritime work of the Court is limited to proceedings under ss.9, 27 and 28 of the *Admiralty Act 1988* (Cth) and any matters referred by the Federal Court.

When a matter falls within the Admiralty and maritime work, practitioners should ensure that the Registry staff are advised at the time of filing that the matter is of that nature so it can be allocated to one of the nominated Admiralty Federal Magistrates.

***In Personam* Proceedings and Nominated Federal Magistrates**

The nominated Federal Magistrates will attempt to harmonise procedure in *in personam* actions so that they are dealt with consistently by the Court nationally and as far as is relevant with the national Federal Court arrangements. But matters will be assigned directly to the docket(s) of the Admiralty Federal Magistrates in the Registry and that Federal Magistrate will conduct all interlocutory proceedings and act as trial judge of the action.

Urgent Admiralty or maritime applications should be made to the docket Admiralty Federal Magistrate or, if he or she is unavailable, to another Admiralty Federal Magistrate in the nearest Registry.

Forms

The *Admiralty Rules 1988* (the 'Admiralty Rules') do not provide for how an action *in personam* is to be commenced other than to state that such an action cannot be commenced by the same initiating process as the process initiating an action *in rem*. However, the Admiralty Rules prescribe the title of documents for use in proceedings under the *Admiralty Act 1988*.

In personam applications are to be commenced in the Court on the Application form approved for use for general federal law proceedings pursuant to the *Federal Magistrates Court Rules 2001*. Alternatively, Federal Court form 5 can be used in accordance with Subrule 2.04(2) of the *Federal Magistrates Court Rules 2001*. However, both forms require amendment to the header so as to comply with the title prescribed in the Admiralty Rules. An amended version of the header is attached.

If proceedings are transferred from the Federal Court to the Federal Magistrates Court and comply with the form requirements prescribed for use in the Federal Court, there will no need for new forms/pleadings to be prepared.

Pleadings - points of claim

The grounds of an application must explain briefly the basis on which the orders are sought. Where appropriate, pleadings will be ordered. In such instance an applicant may attach a pleading by way of points of claim. Such pleading should observe the

requirements of the *Federal Court Rules*. 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.

Assisted or Alternative Dispute Resolution (ADR)

Sections 34 and 35 of the *Federal Magistrates Act 1999* provide for Court ordered mediation and arbitration (the latter only with consent). Immunity is conferred on the mediator or arbitrator. The parties are expected to discuss the utility of any such ADR mechanism in their case. The Court has Registry officers shared with the Federal Court who are knowledgeable in maritime matters and cargo claims and who are trained mediators. Early mediation or early neutral evaluation by a Registrar or a third party will be encouraged and sometimes ordered. Mediation can also be used to help identify and reduce issues in dispute, or to eliminate procedural arguments, as well as for the purposes of resolving the whole matter.

It is expected that parties will always seek an early resolution of matters and that they will consider Court annexed mediation or early neutral evaluation. This is especially so for the resolution of small cargo claims in a speedy and inexpensive manner.

In appropriate cases directions will be made on the first return date, or shortly thereafter, for a case management conference to be held before a Registrar or the Federal Magistrate as soon as possible. At this conference the Federal Magistrate or Registrar will seek to identify whether the matter is appropriate for an early mediation (perhaps undertaken on the basis of the parties' instructions, as opposed to statements), what issues are involved and the most timely and efficient method of disposing of the matter.

As well as its Registrars, the Court has the use of other staff from the Federal Court with skills and expertise in maritime matters, some of whom are Marshals. These members of the Court staff will be available as required in any Registry to conduct or assist in the conduct of mediations carried out by Registrars. By way of example, Registry staff include persons who have expertise in cargo claim handling, loss adjusting and navigation.

***Ad Hoc* retained expertise and ADR**

In appropriate cases the Court is prepared to make available outside persons with relevant skills retained by the Court on an *ad hoc* basis. They would assist in the resolution of matters using mediation or early neutral evaluation. The engagement of such persons would generally be through the offices of professional or industry associations.

Court annexed arbitration

The Court has power to refer matters to arbitration under s.35 of the *Federal Magistrates Act 1999*. If parties desire a Registrar to act as an arbitrator, this can be arranged. Speedy procedure using procedures akin to those used in the London Maritime Arbitration Association Small Claims Procedures can be used. This may be particularly suitable in small cargo claims. If this course were taken, parties could agree to deal with the matter on the papers, or with minimal oral evidence, waiving rules of evidence, if they so wished. If a Registrar acted as arbitrator, fees (hearing and room) would be eliminated. Sections 36 and 37 of the *Federal Magistrates Act 1999* provide for referral of questions of law and review on a question of law to the Court. By this mechanism, if the parties wish it, appeals on factual questions can be eliminated.

Approach of Practitioners and Litigants to Admiralty and Maritime litigation

There will always be a hearing on the first court date at which a final hearing date will generally be fixed or the proceeding referred to mediation or arbitration. Parties are encouraged to agree upon draft short minutes of orders and send them by email to the Federal Magistrate's associate prior to any scheduled directions hearing. In some instances, **apart from the first court date**, the need for a hearing may be avoided should the parties agree on minutes of orders and the Federal Magistrate approves of them in chambers.

At the first court date the court will explore the nature of the dispute and the issues raised, whether technical or evidentiary – including any difficulties in obtaining instructions and the availability of witnesses. The parties should attend the first court date prepared and fully informed in order to partake in a vigorous exploration of the proceeding and its management in the court. The court adopts the view expressed by the Federal Court that it is not an acceptable way of conducting litigation to “put the

other side to proof” on all issues. It is the duty of the parties and their legal representatives promptly to ascertain, as far as reasonably possible the nature and extent of the facts which pertain to any particular case. This is not limited to the particular points which the party wants to prove. The parties are expected to identify the real and genuine issues in dispute, whether of fact or of law after due investigation.

It is the duty of the profession to assist the Court in the performance of its duty to resolve disputes by reference to what truly is, or should be, in dispute: see generally *Ashmore v Corporation of Lloyds* [1992] 1 WLR 446, 453, and see the speech by Hayne J 'Judicial Case Management and the Duties of Counsel', Wednesday 24 February 1999 to the Readers of the Bar Practice Course, Brisbane, contained on the High Court Website under the link 'publications'. In this context, parties should expect that the Court will be ready to use s.190(3) of the *Evidence Act 1995* (Cth) in appropriate circumstances to lessen the cost of proving matters not bona fide in dispute.

How the parties co-operate to identify the issues in dispute, and to agree on facts that are not truly in dispute is a matter for the profession and their commercial clients. An aspect of this co-operation between the parties’ representatives that the Court expects, however, is the provision of information and documentation in a prompt and timely fashion. Where legal practitioners make reasonable requests for documents or information (whether strictly 'particulars' or not) those requests should generally be met without the delay. In some cases, for various reasons, the formality (and cost) of a verified list of documents is necessary.


It is inappropriate for one party to send submissions, letters and partisan documents to the Federal Magistrate. The facsimile machine and the email system are not to be used for private or unilateral filings of submissions or complaints without the leave of the court. But if all parties agree on a communication being sent to a Federal Magistrate it may be forwarded, without leave, to the associate.

These matters should be made plain to clients. This could be achieved by providing this Notice to Practitioners to them. In dealing with questions of costs the Court will presume that clients have been made aware of the general approach and the expectations of the Court reflected in this Notice to Practitioners.

Aim of the new arrangements

The underlying idea of this new arrangement is the provision by the Court of the full range of its facilities, including mediation, early neutral evaluation, arbitration and judicial hearing to bring matters flexibly, cheaply and speedily to resolution. The Court encourages the use of external mediation and arbitration. Equally it is able, should parties and the profession desire it, to provide specialised, skilled Federal Magistrates and Registrars who can deal with matters in a variety of ways best suited to the particular maritime dispute. The work of the court in this area in conjunction with the work of the Federal Court in this area sharing as they do, the skilled Registrars and other court officers, will create an integrated Federal Admiralty and Maritime Jurisdiction for matters of all types and sizes.

This notice to practitioners can be found on the Court's website: www.fmc.gov.au.



J PASCOE

Chief Federal Magistrate

**IN THE FEDERAL MAGISTRATES COURT
OF AUSTRALIA
REGISTRY:
IN ADMIRALTY**

File number:

.....
Plaintiff

.....
Defendant

Repeat as necessary for additional parties