



## FEDERAL MAGISTRATES COURT OF AUSTRALIA

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### NOTICE TO LITIGANTS AND PRACTITIONERS (NSW 2007/01)

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#### MIGRATION MATTERS

This Notice sets out administrative information on the conduct of migration matters by the Federal Magistrates Court in New South Wales.

Migration matters filed in the Federal Magistrates Court in Sydney or remitted from the High Court for filing in the Sydney Registry will be randomly allocated to the dockets of Federal Magistrates. The aim of the Federal Magistrates Court is to develop best practice for the most efficient disposal of all matters. Rule 44.11 of the *Federal Magistrates Court 2001* (the Rules) gives the Court a wide discretion to deal with Migration matters on their first court date. With these considerations and the overall caseload of each Federal Magistrate in mind, individual Federal Magistrates will adopt different approaches to the management of the matters in their dockets.

#### **First court date**

Federal Magistrates Driver, Cameron, Emmett, Lloyd- Jones, Scarlett, Smith and Turner will conduct their own first court dates. Federal Magistrate Driver will conduct first court dates at either Queens Square or John Maddison Tower. Federal Magistrates Cameron, Emmett, Lloyd- Jones, Scarlett, Smith and Turner will conduct first court dates at John Maddison Tower.

Matters in the dockets of Federal Magistrates Raphael, Barnes and Nicholls will be given a first court date before a Registrar at either Queens Square or John Maddison Tower.

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 (show cause) or a final hearing on the merits of the relief sought in the application.

However, in some 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 instance, where the absence of jurisdiction appears on the face of the application. A respondent who seeks such an order should, if possible, give prior notice to the applicant by service of a Response and affidavit.

In cases concerning a protection visa, any issues relating to an applicant's access to the legal advice scheme will be dealt with at the first court date.

### **Service of applications**

To ensure that the Minister for Immigration and Citizenship (the Minister) has early notice of an application, the Registry will forward by email a copy of the filed application and supporting affidavit (but without annexures) to the Department of Immigration and Citizenship (the Department) in Canberra. On receipt, the Department will engage a firm of solicitors to act on behalf of the Minister. The firm will provide a notice of appearance to the applicant or their legal representative.

The forwarding of the copy of the application and affidavit to the Department by the Registry does not constitute service on the Minister. Pursuant to Rule 6.03, the applicant or their legal representative must serve a sealed copy of the application and affidavit (with all annexures) on the Minister. This can occur by serving a staff member from the Department at the ground floor counter 26 Lee Street Sydney or at any other office of the Department.

The application may also need to be served on the Migration Review Tribunal or the Refugee Review Tribunal. This can occur by delivering a sealed copy of the application and affidavit (with all annexures) to the Department at the ground floor counter 26 Lee Street Sydney who will make arrangements for service on the relevant Tribunal.

### **Service of notice for matters remitted from the High Court**

Pursuant to Rule 44.09, the Registrar must serve a sealed copy of a notice on each party to the proceedings in the High Court. The Notice must include the date for a first court date and advise each party, apart from the applicant, to enter an appearance in the Registry (if they have not already done so).

### **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 'Green Book'). The Court Book will include copies of the documents in the possession or power of the Minister. Unless directed by the Court, it will not include a copy of any transcript of proceedings before the Migration Review Tribunal or the 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 the 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, 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. A response does not need 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 facility outside of New South Wales) or is otherwise held at a remand centre, the Registry does not arrange the party to be brought to Court. The Minister's solicitors will arrange with the detention or remand centre for the party's attendance at Court or seek the party attend by video link.

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 in writing that the party is in custody. The Minister's solicitors should fax the letter to the Registry, addressed to the Duty Registrar, and allow adequate time to enable the Registry to refer the request to a Federal Magistrate. The Federal Magistrate will consider the request and if approved, will make an order that the party in custody be brought to Court.

Where a party in custody is represented, in the absence of an order or direction of the Court to the contrary, the party will not be brought to the Court as a matter of course.

The Court gives priority to listing cases for final hearing where the applicant is in detention. The Minister's solicitors should inform the Court if an applicant in detention is released prior to a final hearing date.

### **Interpreters**

Where a party requires an interpreter and is not represented, the Minister's solicitors should notify the Court as to particular interpreter requirements. Where a party requires an interpreter and is represented, the party's solicitor must make arrangements for an interpreter.

### **Costs**

Parties should be aware of Rule 44.15 and Schedule 1 of the Rules which sets out a standard scale where proceedings are concluded and automatic costs where proceedings are discontinued.

The Federal Magistrate's Court's website is located at [www.fmc.gov.au](http://www.fmc.gov.au)

**Date: 01 May 2007**

**The Notice to Practitioners NSW 2005/01 dated 1 December 2005 as it relates to the Federal Magistrates Court is superseded by this Notice.**