

## Role and functions of the Court

The Federal Magistrates Court is a federal court established under the Constitution by the *Federal Magistrates Act 1999* ('the Act'). It was established to handle less complex matters in the areas of family law and general federal law. The Court shares jurisdiction with the Family Court and the Federal Court.

The Act received royal assent on 23 December 1999. The first court sittings were on 3 July 2000 in Adelaide, Brisbane, Canberra, Melbourne, Newcastle, Parramatta and Townsville.

Jurisdiction is conferred on the Court by laws of the Commonwealth other than the Act. The initial jurisdiction of the Court was conferred by the *Federal Magistrates (Consequential Amendments) Act 1999*. The jurisdiction of the Court is expanded by amendment of Commonwealth legislation to confer the new jurisdiction, most recently by the *Workplace Relations Amendment (Work Choices) Act 2005*, *Anti-Terrorism Act (No. 2) 2005* and *Federal Magistrates Jurisdiction Amendment Act 2006*.

After six years, the Court has established itself as the basic trial court in significant areas of jurisdiction of the federal judicial system. Most first instance migration review matters are now filed with the Court. Nearly all bankruptcy work and a significant amount of children's and property applications are now completed in the Court. The Court handles almost all divorce applications filed in all states and territories in Australia other than Western Australia.

The number of federal magistrates increased to 35 during the year. In December the government announced the appointment of six new federal magistrates to hear workplace relations matters and in May announced another five federal magistrates to deal with increased jurisdiction and workload.

## Objective of the Court

The objective of the Court is to provide a simple and accessible alternative to litigation in the Federal Court and the Family Court where matters can be dealt with expeditiously. This allows the higher courts to focus on more complex cases and appellate work. It also translates into lower costs for litigants and the Government.

The Court encourages the use of various dispute resolution approaches to resolve matters without judicial decisions. This objective has been strengthened with the new family law legislation's requirement for pre-court dispute resolution activity. Where practical, parties are encouraged to resolve their disputes through family dispute resolution and negotiation methods such as counselling, mediation and conciliation any time prior to or during the court process. This approach has many benefits, the most important being more enduring resolutions to disputes.

# The administration of the Court

The Chief Federal Magistrate of the Court is Mr John Pascoe AO. Mr John Mathieson is the Chief Executive Officer.

Section 89 of the Act now provides that the Chief Federal Magistrate is responsible for the administrative affairs of the Court. The Chief Federal Magistrate continues to be responsible for the day-to-day management of the business of the Court (Section 12).

The Chief Federal Magistrate is assisted by the Chief Executive Officer, who can exercise powers on the Chief Federal Magistrate's behalf in relation to the Court's administrative affairs (Section 96). The Chief Executive Officer has the responsibilities and powers of an agency head for the purposes of the *Public Service Act 1999* and *Financial Management and Accountability Act 1997*.

A system of coordinating federal magistrates for each region was introduced in 2004-05 to assist in the management of administrative matters for federal magistrates located in each of those regions.

## Judicial officers

The Court consists of the Chief Federal Magistrate and federal magistrates.

The federal magistrates appointed to the Court as at 30 June 2006 were:

- Chief Federal Magistrate John Pascoe — Sydney (appointed 14 July 2004)
- Federal Magistrate Warren Donald — Newcastle (appointed 13 June 2000)
- Federal Magistrate Christine Mead — Adelaide (appointed 13 June 2000)
- Federal Magistrate Judy Ryan — Parramatta (appointed 13 June 2000)
- Federal Magistrate Michael Baumann — Brisbane (appointed 19 June 2000)
- Federal Magistrate James Brewster — Canberra (appointed 19 June 2000)
- Federal Magistrate Norah Hartnett — Melbourne (appointed 19 June 2000)
- Federal Magistrate Stephen Scarlett — Sydney (appointed 19 June 2000)
- Federal Magistrate John Coker — Townsville (appointed 26 June 2000)
- Federal Magistrate Murray McInnis — Melbourne (appointed 26 June 2000)
- Federal Magistrate Rolf Driver — Sydney (appointed 31 July 2000)
- Federal Magistrate Kenneth Raphael — Sydney (appointed 31 July 2000)
- Federal Magistrate Stuart Roberts — Hobart and Launceston (appointed 4 December 2000)
- Federal Magistrate Maurice Phipps — Melbourne (appointed 18 December 2000)
- Federal Magistrate Jennifer Rimmer — Brisbane (appointed 5 February 2001)
- Federal Magistrate Michael Connolly — Melbourne (appointed 4 June 2001)
- Federal Magistrate John Walters — Melbourne (appointed 29 October 2001)
- Federal Magistrate Stewart Brown — Darwin (appointed 5 November 2001)
- Federal Magistrate Shenagh Barnes — Sydney (appointed 5 November 2001)
- Federal Magistrate Giles Coakes — Newcastle (appointed 12 January 2004)

- Federal Magistrate Stuart Lindsay — Adelaide (appointed 19 January 2004)
- Federal Magistrate Michael Jarrett — Brisbane (appointed 2 February 2004)
- Federal Magistrate Sylvia Emmett — Parramatta (appointed 5 July 2004)
- Federal Magistrate Grant Riethmuller — Melbourne (appointed 19 July 2004)
- Federal Magistrate Michael Lloyd-Jones — Sydney (appointed 26 July 2004)
- Federal Magistrate Daniel O'Dwyer — Melbourne (appointed 2 August 2004)
- Federal Magistrate Matthew Smith — Sydney (appointed 2 August 2004)
- Federal Magistrate Graham Mowbray — Sydney (appointed 2 August 2004)
- Federal Magistrate Nick Nicholls — Sydney (appointed 23 August 2004)
- Federal Magistrate Robyn Sexton — Sydney (appointed 27 September 2004)
- Federal Magistrate Kevin Laphorn — Newcastle (appointed 29 August 2005)
- Federal Magistrate Keith Slack — Brisbane (appointed 12 September 2005)
- Federal Magistrate Louise Henderson — Parramatta (appointed 28 November 2005)
- Federal Magistrate Judith Housego — Sydney (appointed 16 January 2006)
- Federal Magistrate Kate Hughes — Melbourne (appointed 30 January 2006)

## Retirements

Federal Magistrate Victoria Bennett resigned her appointment as a federal magistrate to take up appointment as a judge of the Family Court on 30 November 2005.

## Jurisdiction of the Court

The Court shares concurrent jurisdiction with the Family Court (family law) and the Federal Court (general federal law) in almost all areas of law where it has jurisdiction.

### Family law

The areas of family law in which the Court has jurisdiction are:

- Applications for divorce
- Applications concerning spousal maintenance
- Property disputes where the parties are or were married
- All parenting orders, whether the parents are married or unmarried
- Enforcement of family law orders made by the Federal Magistrates Court, Family Court of Australia or state courts
- Location and recovery orders and warrants for the apprehension or detention of a child or other person associated with the child
- Determination of parentage and recovery of child bearing expenses.

The Court has the same jurisdiction as the Family Court in matters relating to child support legislation. Otherwise the Court has jurisdiction to hear any matter transferred to it by the Family Court.

## General federal law

In general federal law, the Court has jurisdiction to hear matters relating to administrative law, admiralty, bankruptcy, copyright, discrimination, migration, privacy, trade practices and workplace relations.

The Court shares jurisdiction with the Federal Court in the following areas:

- Applications made under the *Administrative Decisions (Judicial Review) Act 1977*. It can hear appeals from the Administrative Appeals Tribunal transmitted by the Federal Court.
- Matters arising under sections 9, 27 and 28 of the *Admiralty Act 1988 (Cth)* ('Admiralty Act') relating to *in personam* claims. The Federal Court and state Supreme Courts may also remit any *in rem* matters to the Court.
- Matters arising under the *Bankruptcy Act 1966* ('Bankruptcy Act') apart from matters requiring jury trials.
- Civil copyright matters under the *Copyright Act 1968*, in particular, matters arising under Parts V, VAA, IX and section 248J.
- Unlawful discrimination matters under the *Human Rights and Equal Opportunity Commission Act 1986* relating to complaints under the *Age Discrimination Act (2002)*, *Disability Discrimination Act (1992)*, *Racial Discrimination Act (1975)* and *Sex Discrimination Act (1984)*.
- Industrial law, including matters under the *Workplace Relations Act 1996* and *Building and Construction Industry Improvement Act 2005* relating to unlawful termination, breaches of the Australian Fair Pay and Conditions Standards, claims about business transmission rules, workplace agreements, right of entry, certain types of industrial action and unfair contracts for building services.
- Enforcement of determinations of the Privacy Commissioner and private sector adjudicators under the *Privacy Act 1988*.
- Unfair trade practices matters arising under Parts IV and V of the *Trade Practices Act 1974*, with power to award damages up to \$750,000.

Additionally the Court has jurisdiction to hear any matter transferred to it by the Federal Court.

The Court has the same jurisdiction in relation to applications for judicial review of visa-related decisions of the Migration Review Tribunal, Refugee Review Tribunal and the Administrative Appeals Tribunal under the *Migration Act 1958*, as possessed by the High Court of Australia ('High Court').

# Federal Magistrates Court Rules 2001

The following amendments were made to the *Federal Magistrates Court Rules 2001* during the year:

- ***Federal Magistrates Court Amendment Rules 2005 (No 1)***

As a consequence of the passage of the *Migration Litigation Reform Act 2005* ('the Act'), rule amendments were made which came into effect on the commencement of the Act on 1 December 2005. A new Part 44 was introduced for proceedings under the Migration Act; it gives the Court a wide discretion as to how to deal with migration matters, including providing for a show cause application to be dealt with at the first court date. Rule amendments were also made in relation to summary dismissal, consistent with amendments made by the Act, which introduced a new test for the dismissal of a case that has 'no reasonable prospect of success'.

- ***Federal Magistrates Court (Bankruptcy) Rules 2006***

The *Federal Magistrates Court (Bankruptcy) Rules 2006* replace Chapter 4 of the *Federal Magistrates Court Rules 2001* (FMCR) and prescribe stand-alone bankruptcy rules which mirror the *Federal Court (Bankruptcy) Rules 2005*, with necessary modifications. These rules, which commenced on 6 February 2006, resulted from a joint project by the Federal Court and Federal Magistrates Court to develop harmonised rules in the bankruptcy jurisdiction as this was considered to be advantageous to all concerned. While the new harmonised Rules are based closely on the previous Chapter 4 FMCR and Order 77 Federal Court Rules, they introduce a new version of the prescribed form of creditor's petition, which includes the affidavit verifying paragraphs 1, 2, and 3 of the petition.

- ***Federal Magistrates Court Amendment Rules 2006 (No 1)***

This rule amendment includes some of the following amendments: consequential amendments following prescription of separate bankruptcy rules; amendments to rules in relation to divorce proceedings consistent with amendments to the Family Law Act to replace the terms 'dissolution of marriage', 'decree nisi' and 'decree absolute' with 'divorce' and 'divorce order'; and amendments consistent with amendments made to Order 81 by the *Federal Court Amendment Rules 2004 (No 4) SR 281 of 2004*, with the result that forms 167 and 168 of the Federal Court Rules are also prescribed for use in human rights proceedings in the Federal Magistrates Court.

## Federal Magistrates Regulations 2000

The following miscellaneous amendments were made to the Regulations during the year:

- ***Federal Magistrates Amendment Regulations 2006 (No 1)***

As a consequence of the conferral of some Admiralty Act jurisdiction, there were amendments to the fee regulations to ensure the search and seizure of goods fee does not apply to proceedings in the Court under the Admiralty Act, mirroring the comparable item in the Federal Court fee regulations. The Regulations commenced on 4 May 2006, coinciding with the commencement of Admiralty Act jurisdiction.

- ***Federal Magistrates Amendment Regulations 2006 (No 2)***

The amendments reflect changes to terminology within the divorce and child-related provisions of the Family Law Act as amended by the *Family Law Amendment Act 2005* and the *Family Law Amendment (Shared Parental Responsibility) Act 2006*. The Regulations commenced on 1 July 2006, coinciding with the commencement of Schedules 1 and 2 of the Shared Parental Responsibility Act.

- ***Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No 1)***

There were consequential amendments to the fee regulations to incorporate a new item 12 in Schedule 1 for filing an application for unlawful termination of employment; it mirrors the same item payable for filing such an application in the Federal Court. The amendment to the Regulation commenced on 27 March 2006, the same day as the commencement of the conferral of workplace relations jurisdiction on the Federal Magistrates Court pursuant to the *Workplace Relations Amendment (Work Choices) Act 2005*.

- ***Federal Magistrates Regulations 2000 - biennial fee increase***

A biennial fee increase pursuant to Regulations 14 and 15 commenced on 1 July 2006. In addition, the Government announced the appointment of five new federal magistrates in the 2006-07 Budget, the cost of whom was to be offset by a 15 per cent increase in the Federal Magistrates Court general federal law and divorce fees and Federal Court fees.