

Overview of the Court

PART 2

Role and functions of the Court

The Federal Magistrates Court of Australia 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 *Do Not Call Register Act 2006* which came into effect on 31 May 2007. The industrial law jurisdiction of the Court was expanded following commencement of the *Independent Contractors Act 2006* on 1 March 2007.

After seven 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.

Thirteen additional federal magistrates were appointed to the Court during 2006-07, increasing the total number of federal magistrates to 49. The new appointments have assisted the Court to deal with its expanding jurisdiction and expanding workloads.

Objective of the Court

The objective of the Federal Magistrates Court is to provide a simple and accessible alternative to litigation in the Family Court and the Federal Court. This allows the higher level 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 dispute resolution and negotiation methods such as counselling, mediation and conciliation prior to or during the court process.

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. Also see page 58.

Judicial Officers

The Court consists of the Chief Federal Magistrate and federal magistrates. At 30 June 2007, those appointed included:

- Chief Federal Magistrate John Pascoe AO — Sydney (appointed 14 July 2004)
- Federal Magistrate Warren Donald — Parramatta (appointed 13 June 2000)
- Federal Magistrate Christine Mead — Adelaide (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 Michael Connolly — Melbourne (appointed 4 June 2001)
- Federal Magistrate John Walters — Melbourne (appointed 29 October 2001)
- Federal Magistrate Stewart Brown — Adelaide (appointed 5 November 2001)
- Federal Magistrate Shenagh Barnes — Sydney (appointed 5 November 2001)



Victoria's Ballarat Law Courts, used for regional circuits

- 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 — Sydney (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 Graham Mowbray — Canberra (appointed 2 August 2004)
- Federal Magistrate Matthew Smith — 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)
- Federal Magistrate Heather Riley — Melbourne (appointed 3 July 2006)
- Federal Magistrate Philip Burchardt — Melbourne (appointed 10 July 2006)
- Federal Magistrate John O'Sullivan — Melbourne (appointed 10 July 2006)
- Federal Magistrate David Halligan — Parramatta (appointed 31 July 2006)
- Federal Magistrate Toni Lucev — Perth (appointed 14 August 2006)
- Federal Magistrate John Morcombe — Adelaide (appointed 14 August 2006)
- Federal Magistrate Keith Wilson — Brisbane (appointed 14 August 2006)
- Federal Magistrate Robert Cameron — Sydney (appointed 3 October 2006)
- Federal Magistrate Frank Turner — Sydney (appointed 3 October 2006)
- Federal Magistrate Tom Altobelli — Sydney (appointed 13 November 2006)



Federal Magistrates Court, Cairns



Federal Magistrate Coates, Cairns

- Federal Magistrate Michael Burnett — Brisbane (appointed 24 November 2006)
- Federal Magistrate Stephen Coates — Cairns (appointed 27 November 2006)
- Federal Magistrate Leanne Spelleken — Brisbane (appointed 11 December 2006)
- Federal Magistrate Charlotte Kelly — Adelaide (appointed 12 March 2007)
- Federal Magistrate Janet Terry — Darwin (appointed 10 April 2007)
- Federal Magistrate Denys Simpson — Adelaide (appointed 12 June 2007)

Retirements

Federal Magistrate Judy Ryan resigned her appointment as a Federal Magistrate to take up appointment as a judge of the Family Court on 31 July 2006.

Federal Magistrate Adrian Dangerfield was appointed on 25 September 2006 and retired on 13 November 2006.

Federal Magistrate Jennifer Rimmer resigned her appointment as a Federal Magistrate on 1 February 2007.

Jurisdiction of the Court

The Federal Magistrates Court deals with a wide range of matters, sharing jurisdiction with the Federal Court and the Family Court and, in some cases, state courts. The transfer provisions of the *Family Law Act 1975* and the *Federal Court of Australia Act 1976*, enable those courts to transfer any matters within their jurisdiction to the Federal Magistrates Court. Upon transfer, the Court will have jurisdiction in any matter transferred to it, including matters in which the Federal Magistrates Court would not otherwise have jurisdiction. Generally, the Court's rules and procedures are less formal than those of the federal superior courts, and aim to reduce costs and the number of court appearances for clients.



Federal Magistrate Terry and Associate Cathy White, Darwin

Family law and child support

The Federal Magistrates Court exercises the same family law jurisdiction as the Family Court with the exception of adoption and applications for nullity or validity of marriage.

The Court also has the same jurisdiction as the Family Court in relation to matters under child support legislation.

General federal law

The Court can hear and decide on matters that relate to administrative, admiralty, bankruptcy, copyright, industrial, migration, privacy, trade practices and unlawful discrimination law, as well as any matter transferred from the Federal Court.

The Court has jurisdiction in the following areas of general federal law:

ADMINISTRATIVE LAW

- Matters under the *Administrative Decisions (Judicial Review) Act 1997*
- Appeals from the Administrative Appeals Tribunal remitted from the Federal Court.

ADMIRALTY

- *In personam* actions (claims against a specific person or company) such as cargo claims, damage claims and seafarers' wages
- *In rem* actions remitted by the Federal Court and state/territory Supreme Courts.

BANKRUPTCY

- All civil claims and matters under the *Bankruptcy Act 1966*, except those requiring jury trials.



Federal Magistrate Coker;Townsville

COPYRIGHT

- Civil claims and matters under Parts V,VAA, IX and Section 248J of the *Copyright Act 1968*, such as claims for injunctions and damages for breach of copyright.

INDUSTRIAL LAW

- Matters under the *Workplace Relations Act 1996*, including unlawful termination claims
- Breaches of the Australian Fair Pay and Conditions Standards, claims with respect to the business transmission rules, workplace agreements, right of entry and certain types of industrial action
- Matters arising under the *Building and Construction Industry Improvement Act 2005* with respect to unfair contracts for services with respect to building work and certain types of industrial action
- Matters under the *Independent Contractors Act 2006*, to review a contract for service to see if it is unfair or harsh.

MIGRATION

- Most first instance judicial reviews of visa-related decisions of the Migration Review Tribunal, Refugee Review Tribunal and the Administrative Appeals Tribunal. The Court does not have jurisdiction to undertake a merits review of these types of decisions.

PRIVACY

- Enforcing determinations of the Privacy Commissioner and private sector adjudicators under the *Privacy Act 1988*.



Federal Magistrate Riethmuller on circuit in Ballarat

TRADE PRACTICES

The Court has jurisdiction under the *Trade Practices Act 1974* with respect to claims under the following Sections:

- Part IVA – Unconscionable conduct
- Part IVB – Breach of industry codes
- Part V – Consumer protection
- Division 1 – Unfair practices, including 'misleading and deceptive' conduct
- IAAA – Pyramid selling schemes
- IA – Product safety and product information, and
- 2A – Actions against manufacturers and importers of goods, and
- Part VA – Liability of manufacturers and importers of defective goods.

The Court can provide injunctive relief under Section 80 and award damages under Section 82 of the *Trade Practices Act 1974* up to \$750,000.

UNLAWFUL DISCRIMINATION

Federal unlawful discrimination matters under the *Human Rights and Equal Opportunity Commissions Act 1986* relating to complaints under the:

- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*, and
- *Sex Discrimination Act 1984*.



Federal Magistrates Court Family Law Meeting,
30 June 2007, Sydney



Federal Magistrate Mead, Family Law Meeting,
30 June 2007, Sydney

Federal Magistrates Court Rules

During 2006-07 the following amendments were made to the *Federal Magistrates Court Rules 2001*:

FEDERAL MAGISTRATES COURT AMENDMENT RULES 2007 (NO 1)

These amendment rules came into effect on 27 June 2007 and included the following miscellaneous amendments:

- To remove the prescription, by schedule, of forms for use in the Federal Magistrates Court. The amendments enable forms to be approved by the Chief Federal Magistrate.
- Consequential amendments to the terminology used in the Rules for dispute resolution to accord with the terminology in the *Federal Magistrates Act 1999* and the *Family Law Act 1975* as amended by the *Family Law Amendment (Shared Parental Responsibility) Act 2006*.
- Amendments to enable the filing of a statement of claim (points of claim) or defence (points of defence) rather than a supporting affidavit, in proceedings other than family law or child support.
- New rules to introduce a new form – Application in a case, for applications seeking interim, procedural, ancillary or interlocutory orders, after commencement of proceedings.
- An amendment to introduce time limits for the service of an application and any document filed, of no less than three days before the day fixed for the hearing of an application in a case; or no less than seven days before the day fixed for the hearing of any other application.
- New rules in relation to child support proceedings which include applications for child maintenance. These new rules facilitate determination of such matters, where possible, on the first return date and include rules in relation to appeals from the Social Security Appeals Tribunal (SSAT) consistent with legislative amendments to child support legislation.



Federal Magistrate Jarrett, Family Law Meeting,
30 June 2007, Sydney



Darwin registry

Federal Magistrates Regulations 2000

There were no amendments to the fee regulations during the reporting period. However, as part of the Combined Registry Project, consideration is being given to a simplified fee structure for family law proceedings. It is expected that this review of fees will also address current anomalies in the Court's fee regulations resulting in greater consistency between the fee regulations of the courts exercising concurrent jurisdiction.

Practice Directions

PRACTICE DIRECTION NO 1 OF 2006 — TRIAL OF A NEW FORM: INITIATING APPLICATION (FAMILY LAW)

To advance the implementation of the Combined Registry Project, the Federal Magistrates Court and the Family Court agreed to trial a new form entitled 'Initiating Application (Family Law)'. The Practice Direction took effect from 8 January 2007 and relates to the use of this new form in the Federal Magistrates Court.

PRACTICE DIRECTION NO 1 OF 2007 — APPLICATION FOR DIVORCE, RESPONSE TO DIVORCE AND DIVORCE SERVICE FORMS

This Practice Direction was issued following a review of the divorce forms which resulted in extensive revision of the forms used in divorce proceedings filed in the Court. The Practice Direction commenced on 11 January 2007 and enabled the new forms to be used in proceedings for divorce prior to a formal rule amendment. Amendments have subsequently been made to the Federal Magistrates Court Rules 2001 by the Federal Magistrates Court Amendment Rules 2007 (No 1).



Josephine Willis, local barrister, Cairns

PRACTICE DIRECTION NO 2 OF 2007 — FAMILY DISPUTE RESOLUTION - APPLICATIONS FOR ORDERS UNDER PART VII *FAMILY LAW ACT 1975*

This Practice Direction took effect from 1 July 2007 and outlines the procedural requirements for applicants who seek to file an application for an order under Part VII of the *Family Law Act 1975* in the Federal Magistrates Court. The Practice Direction provides that applications seeking an order under Part VII, will (after 1 July 2007) be required to provide a certificate from a registered family dispute resolution practitioner, unless they fall within the exceptions outlined in the Act. A party who contends that the matter falls within one of the exceptions must set this out in their affidavit in support of their application.