

# Overview of the Court

## Establishment

The Federal Magistrates Court of Australia was established by the *Federal Magistrates Act 1999* (the Act). The Act received royal assent on 23 December 1999.

The Court is an independent federal court under the Australian Constitution. It is a federal court of record and a court of law and equity. Under section 8 of the Act the Court is constituted by the Chief Federal Magistrate and federal magistrates as appointed. Federal magistrates are appointed under the Act as justices in accordance with Chapter III of the Australian Constitution.

The first applications made in the Federal Magistrates Court of Australia were filed on 23 June 2000. The Court conducted its first sittings on 3 July 2000 in Adelaide, Brisbane, Canberra, Melbourne, Newcastle, Parramatta and Townsville. The Court has expanded considerably since that time and has added Cairns, Darwin, Launceston, Perth and Sydney to its permanent sitting locations.

## Objectives

The Court was established to provide a simpler and more accessible alternative to litigation in the Federal Court of Australia (Federal Court) and the Family Court of Australia (Family Court) and to relieve the workload of the superior federal courts.

The Act directs the Court to operate informally and to use streamlined procedures; this complements the Government's initiatives aimed at encouraging people to use of a range of dispute resolution processes.

The Court has maintained its commitment to providing access to justice to the people of Australia. This commitment has been enhanced by the work conducted through the Court's regional circuit network. Circuits involve federal magistrates regularly travelling to regional locations to give directions and to hear matters, eliminating the need for regional litigants (and their legal representatives) to travel to major cities to have their matter dealt with. The Federal Magistrates Court is the only federal court that regularly conducts regional circuits. The Court's commitment to the principle of access to justice for all Australians is further strengthened by the Court's ability to conduct special sittings in most regions of Australia on demand.

# Jurisdiction

The *Federal Magistrates (Consequential Amendments) Act 1999* gave the Court its initial jurisdiction. Jurisdiction is also conferred on the Court by laws of the Commonwealth other than the *Federal Magistrates Act 1999*.

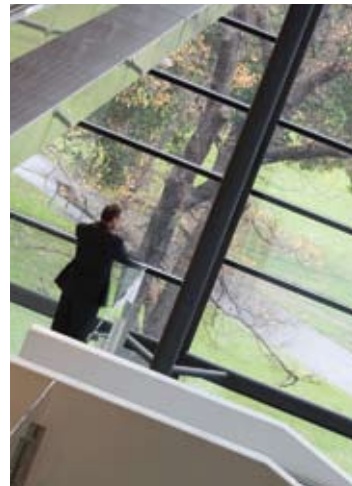
The jurisdiction of the Court includes family law and child support, administrative law, admiralty law, bankruptcy, copyright, human rights, industrial law, migration, privacy, and trade practices. The Court shares these jurisdictions with the Family Court and Federal Court respectively.

## Family law and child support

In family law, the Court has jurisdiction in the following matters:

- applications for divorce
- applications concerning spousal maintenance
- property disputes
- all parenting orders, including those regarding a child's place of residence, who a child spends time and communicates with, maintenance or specific issues
- enforcement of orders made by either the Family Court or the Federal Magistrates Court
- location and recovery orders as well as warrants for the apprehension or detention of a child
- determination of parentage and recovery of child-bearing expenses.

The Court exercises all aspects of the *Family Law Act 1975* jurisdiction except adoption and applications concerning nullity or validity of marriage. In addition, the Court has the same jurisdiction as the Family Court in relation to matters under the *Child Support Act 1988*.



## General federal law

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 law

- *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 or territory Supreme Courts

### Bankruptcy

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

### 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

### Human rights

- Federal human rights matters under the *Human Rights and Equal Opportunity Commission Act 1986* relating to complaints under the:
  - *Age Discrimination Act 2004*
  - *Disability Discrimination Act 1992*
  - *Racial Discrimination Act 1975*
  - *Sex Discrimination Act 1984*



## 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 in connection with building work and certain types of industrial action
- matters under the *Independent Contractors Act 2006* including review of a contract for service to determine 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*.

## 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
  - Division 1AAA—Pyramid selling schemes
  - Division 1A—Product safety and product information
  - Division 2A—Actions against manufacturers and importers of goods
- 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 this Act up to the amount of \$750 000.

## Transfers from the Federal Court

The Court has jurisdiction to hear any matter within the jurisdiction of the Federal Court which the Federal Court transfers to the Federal Magistrates Court.

## Changes to the Court's jurisdiction during 2007–08

The Court's jurisdiction during the year was expanded to include the following:

### *Water Act 2007*

The Court was conferred limited enforcement jurisdiction under this Act which came into effect on 3 March 2008.

### *National Greenhouse and Energy Reporting Act 2007*

This Act introduced a uniform reporting mechanism on greenhouse gas emissions for corporations with effect from 1 July 2008. The Court has jurisdiction in relation to the enforcement of mandatory information and reporting obligations under this Act.

## Federal Magistrates Court Rules

### Federal Magistrates Court Amendment Rules 2008 No. 1

A majority of federal magistrates approved the amendments to the *Federal Magistrates Court Rules 2001* which came into effect on 1 March 2008. The Federal Magistrates Court of Australia has now adopted the same processes as the Family Court of Australia for the filing of applications for an order under Part VII of the *Family Law Act 1975*. This means that a certificate demonstrating that mediation has been conducted is required when an application is filed unless an exemption has been granted by a registrar.



Federal Magistrate Giles Coakes, Family Law Workshop, Adelaide, October 2007



As a consequence of the Rules amendments, a new practice direction, Practice Direction 2008 No. 1, was issued by the Chief Federal Magistrate which sets out the requirement for the certificate to be filed at the same time as the application unless an exemption has been granted. Where a certificate is required and is not produced, the application will not be accepted for filing.

The amendments to the Rules also included amendments to enable the power to make determinations under sections 60I and 60J of the *Family Law Act* to be delegated to registrars. Registrars are available to determine requests for exemptions as they currently do for the Family Court, rather than by a federal magistrate on the first court date.

## Federal Magistrates Court (Bankruptcy Amendment) Rules 2008 (No. 1)

A harmonised Rules monitoring committee was established comprising representatives from the Federal Magistrates Court, the Federal Court, the Family Court and a representative from the legal profession. This committee recommended a number of Rule amendments following consultation with various stakeholders. The amendments were approved by a majority of federal magistrates and commenced on 1 April 2008. The amendments included the following changes:

- time for service of annulment applications and applications to review a registrar's decision to make a sequestration order
- content of affidavit under Rule 4.06
- filing of affidavit under Rule 4.07
- Forms 2 and 3—requirement to state relevant provision of the Bankruptcy Act
- Form 6—notice that petition must be served on Official Receiver.

## Federal Magistrates Regulations 2000

The following amendment was made to the Federal Magistrates Regulations 2000 during the year:

- *Federal Magistrates Amendment Regulations 2007 (No. 1)*

This amendment changed the amounts of certain fees for family law matters as part of the implementation of a simplified fee structure for the two federal family law courts. Separate amendments were made to the Family Law Regulations to implement fee amendments for the Family Court.

The elements of the simplification include:

- the alignment in both courts of filing fees for family law applications and responses
- the hearing fees have been amended for both courts
- removal of a fee for corporations in family law matters in the Federal Magistrates Court

- the invoicing of fees for approved users of the Federal Magistrates Court from 28 September 2007. An approved user now does not have to pay a fee each time a document is filed. Instead the Court sends the user an invoice setting out all the fees incurred during the period.

The new fees commenced on 15 October 2007.

## Governance

The legal framework for the Court's corporate governance practices is set out in the *Federal Magistrates Act 1999*, the *Financial Management and Accountability Act 1997* and the *Public Services Act 1999*.

The Court has governance practices in place to ensure it adheres to appropriate levels of accountability, disclosure and transparency.

## Judicial officers

The Court's judiciary comprises the Chief Federal Magistrate and 52 federal magistrates. At 30 June 2008 the judiciary included:

Chief Federal Magistrate	Location	Date of appointment
John Pascoe	Sydney	14 July 2004
Federal Magistrate	Location	Date of appointment
Warren Donald	Parramatta	13 June 2000
Christine Mead	Adelaide	13 June 2000
Michael Baumann	Brisbane	19 June 2000
James Brewster	Canberra	19 June 2000
Norah Hartnett	Melbourne	19 June 2000
Stephen Scarlett	Sydney	19 June 2000
John Coker	Townsville	26 June 2000
Rolf Driver	Sydney	31 July 2000
Kenneth Raphael	Sydney	31 July 2000
Stuart Roberts	Launceston	4 December 2000
Maurice Phipps	Melbourne	18 December 2000
Michael Connolly	Melbourne	4 June 2001
John Walters	Melbourne	29 October 2001
Stewart Brown	Adelaide	5 November 2001
Shenagh Barnes	Sydney	5 November 2001
Giles Coakes	Newcastle	12 January 2004
Stuart Lindsay	Adelaide	19 January 2004
Michael Jarrett	Brisbane	2 February 2004
Sylvia Emmett	Sydney	5 July 2004
Grant Riethmuller	Melbourne	19 July 2004

Federal Magistrate	Location	Date of appointment
Michael Lloyd-Jones	Sydney	26 July 2004
Graham Mowbray	Canberra	2 August 2004
Daniel O'Dwyer	Melbourne	2 August 2004
Matthew Smith	Sydney	2 August 2004
Nick Nicholls	Sydney	23 August 2004
Robyn Sexton	Sydney	27 September 2004
Kevin Laphorn	Newcastle	29 August 2005
Keith Slack	Brisbane	12 September 2005
Louise Henderson	Parramatta	28 November 2005
Judith Housego	Newcastle	16 January 2006
Kate Hughes	Melbourne	30 January 2006
Heather Riley	Melbourne	3 July 2006
Philip Burchardt	Melbourne	10 July 2006
John O'Sullivan	Melbourne	10 July 2006
David Halligan	Parramatta	31 July 2006
Toni Lucev	Perth	14 August 2006
Keith Wilson	Brisbane	14 August 2006
Robert Cameron	Sydney	3 October 2006
Frank Turner	Melbourne	3 October 2006
Tom Altobelli	Sydney	13 November 2006
Michael Burnett	Brisbane	24 November 2006
Stephen Coates	Cairns	27 November 2006
Leanne Spelleken	Brisbane	11 December 2006
Charlotte Kelly	Adelaide	12 March 2007
Janet Terry	Darwin	10 April 2007
Denys Simpson	Adelaide	12 June 2007
Warwick Neville	Canberra	2 July 2007
Dale Kemp	Sydney	4 July 2007
Paul Howard	Brisbane	9 July 2007
Susan Purdon-Sully	Brisbane	15 October 2007
Margaret Cassidy	Brisbane	5 November 2007
Jillian Orchiston	Sydney	12 November 2007

## Appointments and retirements

During the year six new federal magistrates were appointed and one federal magistrate resigned. Those appointed were:

- Federal Magistrate Warwick Neville (resident in Canberra), on 2 July 2007.
- Federal Magistrate Dale Kemp (resident in Sydney), on 4 July 2007.
- Federal Magistrate Paul Howard (resident in Brisbane), on 9 July 2007.
- Federal Magistrate Susan Purdon-Sully (resident in Brisbane), on 15 October 2007.
- Federal Magistrate Margaret Cassidy (resident in Brisbane), on 5 November 2007.
- Federal Magistrate Jillian Orchiston (resident in Sydney), on 12 November 2007.

Federal Magistrate Murray McInnes resigned from his appointment on 28 January 2008.

## Deaths

Federal Magistrate John Morecombe died in office on 26 November 2007. He served 15 months as a federal magistrate in Adelaide.

## Staff of the Court

The Court's staff are employed under the *Public Service Act 1999*. As at 30 June 2008 there were 116 ongoing and 59 non-ongoing staff members. This figure does not include federal magistrates, staff employed on a casual or intermittent basis or staff on long-term leave.

Federal magistrates are supported by two staff members who undertake the administrative responsibilities associated with the day-to-day management of chambers and court. These chambers staff members constitute the majority of the Court's Australian Public Service employees.



Mary Suter (left) and Sally Mashman, Project Managers



Sydney National Office