

2002-2003-2004

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

Presented and read a first time

EXPOSURE DRAFT

**Jurisdiction of the Federal Magistrates
Court Legislation Amendment Bill 2004**

No. , 2004

(Attorney-General)

**A Bill for an Act to amend the law relating to the
jurisdiction of the Federal Magistrates Court, and
for related purposes**

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EXPOSURE DRAFT

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1 **A Bill for an Act to amend the law relating to the**
2 **jurisdiction of the Federal Magistrates Court, and**
3 **for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Jurisdiction of the Federal*
7 *Magistrates Court Legislation Amendment Act 2004.*

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

Jurisdiction of the Federal Magistrates Court Legislation Amendment Bill 2004 No. , 2004

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.
3

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1, 2 and 3	The 28th day after the day on which this Act receives the Royal Assent.	

4 Note: This table relates only to the provisions of this Act as originally
5 passed by the Parliament and assented to. It will not be expanded to
6 deal with provisions inserted in this Act after assent.

7 (2) Column 3 of the table contains additional information that is not
8 part of this Act. Information in this column may be added to or
9 edited in any published version of this Act.

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.

1
2 **Schedule 1—Jurisdiction over consumer**
3 **protection**
4

5 *Australian Securities and Investments Commission Act 2001*

6 **1 After subsection 12GJ(1)**

7 Insert:

8 (1A) Jurisdiction is conferred on the Federal Magistrates Court in any
9 matter:

10 (a) arising under Subdivision D; or

11 (b) arising under Part 3 in its application in relation to an
12 investigation of a contravention of Subdivision D;

13 in respect of which a civil proceeding may be instituted under this
14 Subdivision or under Part 3 as so applying.

15 (1B) The Federal Magistrates Court’s jurisdiction under subsection (1A)
16 does not extend to awarding an amount for loss or damage that
17 exceeds:

18 (a) \$750,000; or

19 (b) if another amount is specified in the regulations—that other
20 amount.

21 **2 Subsection 12GJ(4)**

22 After “other than”, insert “the jurisdiction of the Federal Magistrates
23 Court under subsection (1A),”.

24 **3 Application of amendments**

25 The amendments of the *Australian Securities and Investments*
26 *Commission Act 2001* made by this Schedule apply in relation to
27 matters arising before, on or after the commencement of this Schedule.

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Schedule 2—Jurisdiction over trade practices

Trade Practices Act 1974

1 Subsection 86(1A)

After “Part V”, insert “, or under Part VA,”.

2 Application of amendment of subsection 86(1A)

The amendment of subsection 86(1A) of the *Trade Practices Act 1974* made by this Schedule applies in relation to matters arising before, on or after the commencement of this Schedule.

3 Paragraph 86AA(a)

Omit “\$200,000”, substitute “\$750,000”.

4 Application of amendment of section 86AA

The amendment of section 86AA of the *Trade Practices Act 1974* made by this Schedule applies only to proceedings:

- (a) instituted in the Federal Magistrates Court after the commencement of that amendment; or
- (b) instituted in another court, and transferred to the Federal Magistrates Court, after the commencement of that amendment.

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Schedule 3—Jurisdiction over corporations

Corporations Act 2001

1 Section 9 (paragraph (c) of the definition of *Corporations legislation*)

Omit “or the Family Court”, substitute “the Family Court or the Federal Magistrates Court”.

2 Section 9 (at the end of paragraph (b) of the definition of *rules*)

Add “or”.

3 Section 9 (after paragraph (b) of the definition of *rules*)

Insert:

(c) rules of the Federal Magistrates Court;

4 Subsection 58AA(1) (at the end of the definition of *Court*)

Add:

Note: In certain provisions of Chapter 5 and Part 9.5, *Court* includes the Federal Magistrates Court.

5 Section 416

Insert:

Court includes the Federal Magistrates Court.

Note 1: This definition of *Court* extends the definition of *Court* in subsection 58AA(1).

Note 2: Despite this definition of *Court*, the Federal Magistrates Court may exercise jurisdiction only in some proceedings or applications arising under this Part. See paragraph 1337B(1A)(a).

6 Section 435B

Insert:

Court includes the Federal Magistrates Court.

1 Note 1: This definition of *Court* extends the definition of *Court* in subsection
2 58AA(1).

3 Note 2: Despite this definition of *Court*, the Federal Magistrates Court may
4 exercise jurisdiction only in some proceedings or applications arising
5 under this Part. See paragraph 1337B(1A)(a).

6 **7 Before Division 1 of Part 5.4**

7 Insert:

8 **Division 1A—Definitions**

9 **459AA Definitions**

10 In this Part, unless the contrary intention appears:

11 *Court* includes the Federal Magistrates Court.

12 Note: The definition of *Court* in this section extends the definition of *Court*
13 in subsection 58AA(1).

14 **8 At the end of section 459B**

15 Add:

16 (2) This section does not apply to the Federal Magistrates Court.

17 **9 At the end of subsection 459C(2)**

18 Add:

19 Note: This subsection applies in relation to the Federal Magistrates Court
20 only if an application is made to that Court under section 459P or an
21 application for leave to make an application under that section is made
22 to that Court.

23 **10 Before Division 1 of Part 5.4B**

24 Insert:

25 **Division 1AA—Definitions**

26 **465AA Definitions**

27 In this Part, unless the contrary intention appears:

1 **Court** includes the Federal Magistrates Court.

2 Note 1: The definition of **Court** in this section extends the definition of **Court**
3 in subsection 58AA(1).

4 Note 2: Despite this definition of **Court**, the Federal Magistrates Court may
5 exercise jurisdiction only in some proceedings or applications arising
6 under this Part. See paragraph 1337B(1A)(c).

7 **11 Before Division 1 of Part 5.5**

8 Insert:

9 **Division 1A—Definitions**

10 **489A Definitions**

11 In this Part, unless the contrary intention appears:

12 **Court** includes the Federal Magistrates Court.

13 Note: The definition of **Court** in this section extends the definition of **Court**
14 in subsection 58AA(1).

15 **12 At the end of Division 1 of Part 5.6**

16 Add:

17 **513AA Definitions**

18 In this Part, unless the contrary intention appears:

19 **Court** includes the Federal Magistrates Court.

20 Note 1: The definition of **Court** in this section extends the definition of **Court**
21 in subsection 58AA(1).

22 Note 2: Despite this definition of **Court**, the Federal Magistrates Court may
23 exercise jurisdiction only in some proceedings or applications arising
24 under this Part. See paragraph 1337B(1A)(c).

25 **13 After section 582**

26 Insert:

27 **582A Definitions**

28 In this Part, unless the contrary intention appears:

1 **Court** includes the Federal Magistrates Court.

2 Note 1: This definition of **Court** extends the definition of **Court** in subsection
3 58AA(1).

4 Note 2: Despite this definition of **Court**, the Federal Magistrates Court may
5 exercise jurisdiction only in some proceedings or applications arising
6 under this Part. See paragraph 1337B(1A)(a).

7 **14 At the end of section 588J**

8 Add:

9 (4) In this section:

10 **Court** includes the Federal Magistrates Court.

11 Note: The definition of **Court** in this section extends the definition of **Court**
12 in subsection 58AA(1).

13 **15 At the end of section 588Z**

14 Add:

15 (2) In this section:

16 **Court** includes the Federal Magistrates Court.

17 Note: The definition of **Court** in this section extends the definition of **Court**
18 in subsection 58AA(1).

19 **16 Before Division 1 of Part 5.9**

20 Insert:

21 **Division 1A—Definitions**

22 **596AN Definitions**

23 In this Part, unless the contrary intention appears:

24 **Court** includes the Federal Magistrates Court.

25 Note 1: The definition of **Court** in this section extends the definition of **Court**
26 in subsection 58AA(1).

27 Note 2: Despite this definition of **Court**, the Federal Magistrates Court may
28 exercise jurisdiction only in some proceedings or applications arising
29 under this Part. See paragraph 1337B(1A)(c).

1 **17 After subsection 1318(2)**

2 Insert:

3 (2A) If:

4 (a) a person to whom this section applies has reason to
5 apprehend that any claim will or might be made against the
6 person in respect of any negligence, default, breach of trust
7 or breach of duty in a capacity as such a person; and

8 (b) the Federal Magistrates Court would have jurisdiction in
9 proceedings against the person for such a claim;

10 then:

11 (c) the person may apply to the Federal Magistrates Court for
12 relief; and

13 (d) the Federal Magistrates Court has the same power to relieve
14 the person as it would have had under subsection (1) if it had
15 been a court before which proceedings against the person for
16 negligence, default, breach of trust or breach of duty had
17 been brought.

18 **18 Paragraph 1318(4)(d)**

19 After “Court”, insert “or the Federal Magistrates Court”.

20 **19 At the end of section 1319**

21 Add:

22 (2) In this section:

23 *Court* includes the Federal Magistrates Court.

24 Note: The definition of *Court* in this section extends the definition of *Court*
25 in subsection 58AA(1).

26 **20 At the end of section 1321**

27 Add:

28 (2) Subsection (1) (except paragraph (1)(a)) applies in relation to the
29 Federal Magistrates Court in the same way as it applies in relation
30 to the Court, but not so as to extend the jurisdiction of the Federal
31 Magistrates Court beyond the jurisdiction conferred on the Federal

1 Magistrates Court by subsection 1337B(1A) or any other law of the
2 Commonwealth (apart from this subsection).

3 Note 1: Subsection 1337B(1A) confers jurisdiction on the Federal Magistrates
4 Court with respect to certain matters arising under certain Parts of
5 Chapter 5.

6 **21 At the end of section 1322**

7 Add:

8 (7) This section (except subsection (3B)) applies in relation to the
9 Federal Magistrates Court in the same way as it applies in relation
10 to the Court, but not so as to extend the jurisdiction of the Federal
11 Magistrates Court beyond the jurisdiction conferred on the Federal
12 Magistrates Court by subsection 1337B(1A) or any other law of the
13 Commonwealth (apart from this subsection).

14 Note: Subsection 1337B(1A) confers jurisdiction on the Federal Magistrates
15 Court with respect to certain matters arising under certain Parts of
16 Chapter 5.

17 **22 At the end of section 1324**

18 Add:

19 (11) This section (except paragraphs (1A)(b) and (c) and
20 subsections (1B) and (9)) applies in relation to the Federal
21 Magistrates Court in the same way as it applies in relation to the
22 Court, but not so as to extend the jurisdiction of the Federal
23 Magistrates Court beyond the jurisdiction conferred on the Federal
24 Magistrates Court by subsection 1337B(1A) or any other law of the
25 Commonwealth (apart from this subsection).

26 Note: Subsection 1337B(1A) confers jurisdiction on the Federal Magistrates
27 Court with respect to certain matters arising under certain Parts of
28 Chapter 5.

29 **23 At the end of section 1327**

30 Add:

31 (2) In this section:

32 *Court* includes the Federal Magistrates Court.

33 Note: The definition of *Court* in this section extends the definition of *Court*
34 in subsection 58AA(1).

1 **24 At the end of subsection 1337A(2)**

2 Add:

- 3 ; and (c) section 32AB of the *Federal Court of Australia Act 1976*;
4 and
5 (d) Part 5 of the *Federal Magistrates Act 1999*.

6 **25 After subsection 1337B(1)**

7 Insert:

8 (1A) Jurisdiction is conferred on the Federal Magistrates Court with
9 respect to:

10 (a) civil matters arising under Part 5.2, 5.3A or 5.7 in a
11 proceeding or application that:

12 (i) is transferred to the Federal Magistrates Court from the
13 Federal Court; or

14 (ii) relates to a corporation or body that is the subject of a
15 proceeding or application that concerns another civil
16 matter arising under one of those Parts and that has been
17 transferred to the Federal Magistrates Court from the
18 Federal Court; and

19 (b) civil matters arising under Part 5.4 (except section 459B) or
20 Part 5.5, 5.7B or 5.8A; and

21 (c) civil matters arising under Part 5.4B, 5.6 or 5.9 in a
22 proceeding or application that:

23 (i) is a proceeding or application in which the Federal
24 Magistrates Court is exercising jurisdiction under
25 paragraph (a) or (b); or

26 (ii) relates to a corporation or body that is the subject of a
27 proceeding or application in which the Federal
28 Magistrates Court is exercising jurisdiction under
29 paragraph (a) or (b).

30 **26 Subsection 1337B(3) (note 1)**

31 Omit “also has”, substitute “and the Federal Magistrates Court also
32 have”.

33 **27 Paragraph 1337D(1)(a)**

1 Omit “neither the Federal Court nor the Family Court has”, substitute
2 “the Federal Court, the Family Court and the Federal Magistrates Court
3 do not have”.

4 **28 Paragraph 1337D(2)(c)**

5 Omit “neither the Federal Court nor the Family Court has”, substitute
6 “the Federal Court, the Family Court and the Federal Magistrates Court
7 do not have”.

8 **29 Paragraph 1337D(5)(a)**

9 Omit “or the Family Court”, substitute “, the Family Court or the
10 Federal Magistrates Court”.

11 **30 At the end of subsection 1337H(1)**

12 Add:

13 Note: Section 1337HA applies instead of this section to certain transfers
14 from the Federal Court to the Federal Magistrates Court.

15 **31 After section 1337H**

16 Insert:

17 **1337HA Transfer of proceedings under Part 5.2, 5.3A or 5.7 by the**
18 **Federal Court to the Federal Magistrates Court**

- 19 (1) This section applies to a proceeding in the Federal Court that is a
20 proceeding with respect to a civil matter arising under Part 5.2,
21 5.3A or 5.7.
- 22 (2) The Federal Court may transfer the proceeding or an application in
23 the proceeding to the Federal Magistrates Court.
- 24 (3) In deciding whether to transfer a proceeding or application to the
25 Federal Magistrates Court under this section, the Federal Court
26 must have regard to:
- 27 (a) whether proceedings in respect of an associated matter are
28 pending in the Federal Magistrates Court; and
 - 29 (b) whether the resources of the Federal Magistrates Court are
30 sufficient to hear and determine the appeal; and
 - 31 (c) the interests of the administration of justice; and
-

- 1 (d) any regulations made for the purposes of subsection (5).
- 2 (4) However, the Federal Court must not transfer the proceeding or
3 application if the proceeding is of a kind specified in the
4 regulations.
- 5 (5) The regulations may make provision in relation to transfers of
6 proceedings and applications to the Federal Magistrates Court. In
7 particular, the regulations may set out factors that are to be taken
8 into account by the Federal Court in deciding whether to transfer
9 proceedings and applications to the Federal Magistrates Court.
- 10 (6) Section 1337H has effect subject to this section.

11 **32 At the end of paragraph 1337K(1)(b)**

12 Add “or the Federal Magistrates Court”.

13 **33 Subsection 1337K(3)**

14 Omit “also a lower court”, substitute “a lower court or the Federal
15 Magistrates Court”.

16 **34 Paragraph 1337K(4)(a)**

17 After “Supreme Court”, insert “if the transferor court is a lower court,
18 or to the Federal Court if the transferor court is the Federal Magistrates
19 Court”.

20 **35 Paragraph 1337K(4)(b)**

21 After “Supreme Court”, insert “or Federal Court (as appropriate)”.

22 **36 Subsections 1337K(5) and (6)**

23 After “Supreme Court”, insert “or the Federal Court”.

24 **37 Sections 1337M and 1337N**

25 After “1337H,”, insert “1337HA,”.

26 **38 Subsection 1337P(1)**

27 Omit “and 1337U”, insert “, 1337U and 1337V”.

1 **39 Subsection 1337P(3) (paragraph (a) of the definition of**
2 ***relevant jurisdiction*)**

3 Omit “or the Family Court”, substitute “, the Family Court or the
4 Federal Magistrates Court”.

5 **40 At the end of Subdivision D of Division 1 of Part 9.6A**

6 Add:

7 **1337V Rules of the Federal Magistrates Court**

- 8 (1) The power to make rules of court conferred by section 81 of the
9 *Federal Magistrates Act 1999* extends to making rules of court:
10 (a) with respect to proceedings, and the practice and procedure,
11 of the Federal Magistrates Court under the Corporations
12 legislation; and
13 (b) with respect to any matter or thing that is:
14 (i) required or permitted, by a provision of the
15 Corporations legislation by reference to which
16 jurisdiction is conferred on the Federal Magistrates
17 Court, to be prescribed by rules within the meaning of
18 the Corporations legislation; or
19 (ii) necessary or convenient to be prescribed by such rules
20 for carrying out or giving effect to such a provision of
21 the Corporations legislation; and
22 (c) without limitation, with respect to costs, and with respect to
23 rules about meetings ordered by the Federal Magistrates
24 Court.

25 (2) In this section:

26 *Corporations legislation* does not include rules of court.

27 **41 Application of amendments**

28 The amendments of the *Corporations Act 2001* made by this Schedule
29 apply in relation to matters arising before, on or after the
30 commencement of this Schedule.