



# **Jurisdiction of the Federal Magistrates Service Legislation Amendment Act 2001**

**No. 157, 2001**



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**An Act to amend the law relating to the jurisdiction  
of the Federal Magistrates Service, and for related  
purposes**

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## **An Act to amend the law relating to the jurisdiction of the Federal Magistrates Service, and for related purposes**

*[Assented to 1 October 2001]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Jurisdiction of the Federal Magistrates Service Legislation Amendment Act 2001*.

### **2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
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- (2) Items 5 to 28 of Schedule 1 do not commence if Schedule 1 to the *Migration Legislation Amendment (Judicial Review) Act 2001* commences on or before the day on which this Act receives the Royal Assent.
  - (3) Items 26 and 27 of Schedule 1 do not commence if Part 1 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 2001* commences on or before the day on which this Act receives the Royal Assent.
  - (4) Schedule 3 commences immediately after the later of the following:
    - (a) the commencement of section 1;
    - (b) the commencement of Schedule 1 to the *Migration Legislation Amendment (Judicial Review) Act 2001*.
  - (5) Items 1, 2, 3 and 9 of Schedule 4 do not commence if Schedule 1 to the *Migration Legislation Amendment (Judicial Review) Act 2001* commences on or before the day on which this Act receives the Royal Assent.
  - (6) Subject to subsection (5), items 1, 2, 3 and 9 of Schedule 4 commence immediately after the later of the following:
    - (a) the commencement of section 1;
    - (b) the commencement of Part 1 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 2001*.
  - (7) Items 4, 5, 6, 7, 8 and 10 of Schedule 4 commence immediately after the later of the following:
    - (a) the commencement of section 1;
    - (b) the commencement of Part 2 of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 2001*.
  - (8) Schedule 5 commences immediately after the later of the following:
    - (a) the commencement of section 1;
    - (b) the commencement of Part 1 of Schedule 1 to the *Migration Legislation Amendment Act (No. 6) 2001*.

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### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Migration Act 1958 conferring jurisdiction on the Federal Magistrates Court in migration matters**

### **Part 1—Amendment of the Migration Act 1958**

#### **1 Subparagraph 42(2A)(e)(ii)**

Omit “High Court or the Federal Court” (wherever occurring), substitute “High Court, the Federal Court or the Federal Magistrates Court”.

#### **2 Subsection 114(1)**

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

#### **3 Subsection 137G(1)**

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

#### **4 Subsection 153(2)**

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

#### **5 Part 8 (heading)**

Repeal the heading, substitute:

### **Part 8—Review of decisions by Federal Court or Federal Magistrates Court**

#### **6 Division 2 of Part 8 (heading)**

Repeal the heading, substitute:

### **Division 2—Review of decisions by Federal Court or Federal Magistrates Court**

Note: The heading to section 475 is altered by inserting “**or Federal Magistrates Court**” after “**Court**”.



**7 Subsection 476(1)**

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

**8 Subsection 477(1)**

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

**9 Subsection 477(2)**

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

**10 Subsection 478(1)**

After “application”, insert “made to the Federal Court”.

**11 After section 478**

Insert:

**478A Application for review by Federal Magistrates Court**

- (1) An application made to the Federal Magistrates Court under section 476 or 477 must:
  - (a) be made in such manner as is specified in the Rules of Court made under the *Federal Magistrates Act 1999*; and
  - (b) be lodged with a Registry of the Federal Magistrates Court within 28 days of the applicant being notified of the decision.
- (2) The Federal Magistrates Court must not make an order allowing, or which has the effect of allowing, an applicant to lodge an application outside the period specified in paragraph (1)(b).

**12 Subsection 481(1)**

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

Note: The heading to section 481 is altered by inserting “**and Federal Magistrates Court**” after “**Court**”.

**13 Paragraph 481(1)(a)**

Omit “Court”, substitute “court”.

**14 Paragraph 481(1)(b)**

Omit “Court”, substitute “court”.

**15 Paragraph 481(1)(d)**

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Omit “Federal Court”, substitute “court”.

**16 Subsection 481(2)**

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

**17 Paragraph 481(2)(c)**

Omit “Federal Court”, substitute “court”.

**18 Subsection 481(3)**

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

**19 Subsection 482(1)**

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

**20 After subsection 482(2)**

Insert:

- (2A) If an application is made to the Federal Magistrates Court under section 476 or 477 in relation to a judicially-reviewable decision, the Federal Magistrates Court or a Federal Magistrate may make such orders of the kind referred to in subsection (3) as that Court or Magistrate considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.

**21 Subsection 482(3)**

After “(2)”, insert “or (2A)”.

**22 After subsection 482(4)**

Insert:

- (4A) The Federal Magistrates Court or a Federal Magistrate may, by order, vary or revoke an order in force under subsection (2A) (including an order that has previously been varied under this subsection).

**23 Subsection 482(5)**

After “(2)”, insert “or (2A)”.

**24 Subsection 485(1)**

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Omit “Federal Court does”, substitute “Federal Court and the Federal Magistrates Court do”.

Note: The heading to section 485 is altered by omitting “does” and substituting “**and Federal Magistrates Court do**”.

## **25 Subsection 485(2)**

Repeal the subsection, substitute:

- (2) Subsection (1) does not affect the jurisdiction of the Federal Court or the Federal Magistrates Court in relation to appeals under section 44 or 44AA of the *Administrative Appeals Tribunal Act 1975*.

## **26 Subsection 485(3)**

After “Court” (first occurring), insert “or the Federal Magistrates Court”.

## **27 Subsection 485(3)**

Omit “Federal Court” (last occurring), substitute “court”.

## **28 Section 486**

Omit “Federal Court has”, substitute “Federal Court and the Federal Magistrates Court have concurrent”.

Note: The heading to section 486 is altered by inserting “**and Federal Magistrates Court**” after “**Court**”.

## **29 Subsection 500(6)**

Omit all the words after “that has been”, substitute:  
made by:

- (a) the Tribunal; or
- (b) a presidential member under section 41 of the *Administrative Appeals Tribunal Act 1975*; or
- (c) the Federal Court of Australia or a Judge of that Court under section 44A of that Act; or
- (d) the Federal Magistrates Court or a Federal Magistrate under section 44A of that Act.

## **Part 2—Application of amendments**

### **30 Application of amendments**

The amendments of the *Migration Act 1958* made by this Schedule apply in relation to:

- (a) an application made under section 476 of that Act on or after the commencement of this item for review of a judicially-reviewable decision made on or after the commencement of this item; and
- (b) an application made under subsection 477(1) of that Act on or after the commencement of this item in respect of a failure to make a judicially-reviewable decision that ought reasonably to have been made in a period that ends on or after the commencement of this item; and
- (c) an application made under subsection 477(2) of that Act on or after the commencement of this item in respect of a failure to make a judicially-reviewable decision that is required to be made in a period that ends on or after the commencement of this item.

## **Schedule 2—Amendment of other Acts conferring jurisdiction on the Federal Magistrates Court in migration matters**

### **Part 1—Amendments**

#### *Administrative Appeals Tribunal Act 1975*

##### **1 Paragraph 44AA(2)(b)**

Repeal the paragraph.

#### *Administrative Decisions (Judicial Review) Act 1977*

##### **2 Subsection 5(4)**

Repeal the subsection.

##### **3 Subsection 6(4)**

Repeal the subsection.

##### **4 Subsection 7(3)**

Repeal the subsection.

##### **5 Subsection 13(10A)**

Repeal the subsection.

## **Part 2—Application of amendments**

### **6 Application of amendments**

- (1) The amendment of the *Administrative Appeals Tribunal Act 1975* made by item 1 applies in relation to an appeal instituted in the Federal Court of Australia on or after the commencement of this item.
- (2) The amendments of the *Administrative Decisions (Judicial Review) Act 1977* made by items 2, 3, 4 and 5 apply in relation to a decision made on or after the commencement of this item.

## **Schedule 3—Amendments linked to the Migration Legislation Amendment (Judicial Review) Act 2001**

### **Part 1—Amendment of the Migration Act 1958**

#### **1 Section 475A**

After “1903”, insert “or section 39 of the *Federal Magistrates Act 1999*, or the jurisdiction of the Federal Magistrates Court under section 483A of this Act, section 44 of the *Judiciary Act 1903* or section 32AB of the *Federal Court of Australia Act 1976*,”.

#### **2 Paragraph 475A(b)**

Omit “Court’s”, substitute “court’s”.

Note: The heading to section 475A is altered by inserting “**or Federal Magistrates Court**” after “**Court**”.

#### **3 Subsection 476(1)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

Note: The heading to section 476 is altered by omitting “**does**” and substituting “**and Federal Magistrates Court do**”.

#### **4 Subsection 476(2)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

#### **5 Subsection 476(2A)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

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**6 Subsection 476(2B)**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does”, substitute “(including section 483A, sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), the Federal Court and the Federal Magistrates Court do”.

**7 Subsection 476(4)**

After “Federal Court” (wherever occurring), insert “or the Federal Magistrates Court”.

**8 After subsection 477(1)**

Insert:

- (1A) An application to the Federal Magistrates Court under section 483A for:
- (a) a writ of mandamus, prohibition or certiorari; or
  - (b) an injunction or a declaration;
- in respect of a privative clause decision in relation to which the jurisdiction of the Federal Magistrates Court is not excluded by section 476 must be made to the Federal Magistrates Court within 28 days of the notification of the decision.

**9 Subsection 477(2)**

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

**10 Subsection 477(2)**

After “subsection (1)”, insert “or (1A)”.

**11 Section 478**

Omit “subsection 477(1)”, substitute “section 477”.

**12 Section 479**

Omit “subsection 477(1)”, substitute “section 477”.

**13 Subsection 480(1)**

Omit “subsection 477(1)”, substitute “section 477”.

**14 Subsection 480(2)**

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After “Court”, insert “or Federal Magistrates Court (as the case requires)”.

**15 Section 481**

Omit “subsection 477(1)”, substitute “section 477”.

**16 After section 483**

Insert:

**483A Jurisdiction of the Federal Magistrates Court**

Subject to this Act and despite any other law, the Federal Magistrates Court has the same jurisdiction as the Federal Court in relation to a matter arising under this Act.

**17 Subsection 484(1)**

Repeal the subsection, substitute:

- (1) The jurisdiction of the Federal Court and the Federal Magistrates Court in relation to privative clause decisions is exclusive of the jurisdiction of all other courts, other than the jurisdiction of the High Court under section 75 of the Constitution.

Note: The heading to section 484 is altered by inserting “**and Federal Magistrates Court**” after “**Court**”.

## **Part 2—Application of amendments**

### **18 Application of amendments**

The amendments of the *Migration Act 1958* made by this Schedule apply in relation to applications made under section 477 of that Act after the commencement of this item.

## **Schedule 4—Amendments linked to the Migration Legislation Amendment Act (No. 1) 2001**

### **Part 1—Amendment of the Migration Act 1958**

#### **1 Subsection 485(3)**

Omit “under section 44 of the *Judiciary Act 1903*, the Court”, substitute “or the Federal Magistrates Court under section 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* or section 39 of the *Federal Magistrates Act 1999*, the court”.

#### **2 Subsection 485(4)**

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

#### **3 Section 485A**

Omit “, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does not have”, substitute “(including sections 39B and 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* and section 39 of the *Federal Magistrates Act 1999*), neither the Federal Court nor the Federal Magistrates Court has”.

Note: The heading to section 485A is altered by omitting “**does**” and substituting “**and Federal Magistrates Court do**”.

#### **4 Subsection 486B(1)**

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

#### **5 Subsection 486C(1)**

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

Note: The heading to section 486C is altered by inserting “**or Federal Magistrates Court**” after “**Court**”.

#### **6 Subsection 486C(2) (note)**

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

#### **7 Subsection 486C(3)**

After “1903”, insert “, section 39 of the *Federal Magistrates Act 1999*”.

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**8 After subsection 486C(3)**

Insert:

- (3A) This section applies to proceedings in the Federal Magistrates Court's jurisdiction under Part 8 of this Act, section 44 of the *Judiciary Act 1903*, section 32AB of the *Federal Court of Australia Act 1976* or any other law.

## **Part 2—Application of amendments**

### **9 Application of amendments made by items 1, 2 and 3**

The amendments of the *Migration Act 1958* made by items 1, 2 and 3 of this Schedule apply in relation to proceedings instituted after the commencement of this item.

### **10 Application of amendments made by items 4, 5, 6, 7 and 8**

The amendments of the *Migration Act 1958* made by items 4, 5, 6, 7 and 8 of this Schedule apply in relation to proceedings instituted after the commencement of this item.

**Schedule 5** Amendment linked to the Migration Legislation Amendment Act (No. 6) 2001

**Part 1** Amendment of the Migration Act 1958

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## **Schedule 5—Amendment linked to the Migration Legislation Amendment Act (No. 6) 2001**

### **Part 1—Amendment of the Migration Act 1958**

#### **1 Subsection 91X(1)**

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

Note: The heading to section 91X is altered by omitting “**or the Federal Court**” and substituting “, **the Federal Court or the Federal Magistrates Court**”.

## **Part 2—Application of amendment**

### **2 Application of amendment**

The amendment of the *Migration Act 1958* made by this Schedule applies in relation to proceedings instituted after the commencement of this item.

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*[Minister's second reading speech made in—  
House of Representatives on 30 August 2001  
Senate on 26 September 2001]*

(176/01)

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