

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**JURISDICTION OF THE FEDERAL MAGISTRATES COURT LEGISLATION
AMENDMENT BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Philip Ruddock, MP)

JURISDICTION OF THE FEDERAL MAGISTRATES COURT LEGISLATION AMENDMENT BILL 2005

OUTLINE

The purpose of the Bill is to extend the jurisdiction of the Federal Magistrates Court (FMC) under the *Trade Practices Act 1974* (TP Act) and to confer jurisdiction on the FMC in matters transferred to it by the Federal or Family Court, *in personam* matters under the *Admiralty Act 1988* and appeals against departure prohibition orders under the *Child Support (Registration and Collection) Act 1988*.

A review of the first two years of operation of the FMC in 2003 found that the FMC was operating successfully in dealing with less complex family law and other general federal law disputes, and was enabling the Family and Federal Courts to focus on more complex and lengthy matters. The outcome of the FMC Review provides a sound basis for expanding the jurisdiction of the FMC.

The FMC currently has jurisdiction to deal with most family law and child support matters. That jurisdiction is conferred under the *Family Law Act 1975* and relevant child support legislation and is concurrent with the jurisdiction of the Family Court.

The FMC also has jurisdiction in various areas of general federal law, including consumer protection matters under the TP Act (Divisions 1 (unfair practices) and 1A (product safety and product information) of Part V), bankruptcy matters and matters arising under the *Migration Act 1958*. Jurisdiction in general federal law matters is conferred on the FMC under subject-specific legislation and is concurrent with the jurisdiction of the Federal Court.

It was always the Government's intention that the FMC would deal with a wide range of lower level work of the Family and Federal Court, and thus provide more time and resources in the superior courts to deal with more complex matters. The Bill also provides further opportunities for litigants to take advantage of the streamlined and accessible forum offered by the FMC.

The amendments expanding the FMC's trade practices jurisdiction implement recommendations of the FMC Review and the Government's response in June 2004 to the Senate Economics References Committee's March 2004 report, *The Effectiveness of the Trade Practices Act 1974 in Protecting Small Business*. The new jurisdiction would replicate as closely as possible the jurisdiction of lower level State courts. It would enable the FMC to deal with claims under Parts IVA, IVB, V and VA of the TP Act and to award damages up to an amount of \$750,000 rather than \$200,000.

The amendments would give the FMC jurisdiction in any matter transferred to it by the Federal or Family Court, as recommended by the FMC Review. They would also give the FMC other suitable, less complex jurisdiction under the Admiralty Act and Child Support (Registration and Collection) Act.

Financial impact statement

The amendments are not expected to have any significant financial impact.

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NOTES ON CLAUSES

Clause 1: Short title

1. Clause 1 is a formal provision specifying the short title of the Bill.

Clause 2: Commencement

2. Sections 1-3 of the Act will commence on the day on which the Act receives the Royal Assent. Schedules 1, 2 and 3 of the Act will commence on the 28th day after the day on which the Act receives the Royal Assent.

Clause 3: Schedule(s)

3. This clause provides that each Act that is specified in a Schedule is amended as set out in that Schedule.

Schedule 1 – Jurisdiction over trade practices

Trade Practices Act 1974

Item 1

4. Item 1 amends subsection 86(1A) to confer new jurisdiction on the FMC in matters arising under several parts or divisions of the TP Act in respect of which a civil proceeding is instituted by a person other than the Minister or the Australian Competition and Consumer Commission (the Commission).

5. In addition to the FMC's existing jurisdiction under the consumer protection provisions of Part V, Division 1 (unfair practices) and Division 1A (product safety and product information), the Bill extends the jurisdiction of the FMC to include matters arising under Part IVA (unconscionable conduct), Part IVB (industry codes), Divisions 1AAA (pyramid selling) and 2A (actions against manufacturers and importers of goods) of Part V and Part VA (liability of manufacturers and importers for defective goods).

6. Under subsection 86(1A), the FMC does not have jurisdiction in a matter in respect of which a proceeding is instituted by the Minister or the Commission, including where the proceeding is instituted on behalf of another person.

Item 2

7. Item 2 provides that the amendment to section 86(1A) of the TP Act extending the jurisdiction of the FMC applies in relation to all matters, including matters arising before the commencement of the Schedule.

8. For example, the FMC's extended jurisdiction will apply to proceedings instituted after commencement though concerning matters that arose before commencement.

9. Item 3 applies the limit on the FMC's jurisdiction in section 86AA to proceedings under Part VA.

Item 4

10. Item 4 increases from \$200,000 to \$750,000 the monetary limit on damages that can be awarded by the FMC in proceedings under section 82, in relation to Part IVA, IVB or Part V, and in proceedings under Part VA.

Item 5

11. Item 5 provides that the amendments to section 86AA apply to proceedings instituted in the FMC after commencement of the Schedule and to proceedings instituted in another court before, on or after commencement of the Schedule that are transferred to the FMC after commencement of the Schedule.

Schedule 2 – Jurisdiction in proceedings transferred from Family Court or Federal Court

Family Law Act 1975

Item 1

12. Item 1 amends section 33B by granting jurisdiction to the FMC to hear any matter that is the subject of a proceeding transferred to it by the Family Court under this section.

13. This amendment will give the FMC non-appellate jurisdiction in matters in which it would not otherwise have jurisdiction because the jurisdiction has not been conferred under another provision or there is a limit on the FMC's jurisdiction, such as matrimonial causes where the value of the property concerned exceeds a certain limit (section 45A, Family Law Act).

Item 2

14. Item 2 amends section 33C by granting jurisdiction to the FMC to hear any matter that is the subject of a proceeding transferred to it by the Family Court under this section.

15. This amendment will give the FMC non-appellate jurisdiction in matters transferred in which it would not otherwise have jurisdiction because the jurisdiction has not been conferred under another provision or there is a limit on the FMC's jurisdiction, such as matrimonial causes where the value of the property concerned exceeds a certain limit (section 45A, Family Law Act).

Federal Court of Australia Act 1976

Item 3

16. Item 3 amends section 32AB by granting jurisdiction to the FMC to hear any matter that is the subject of a proceeding transferred to it by the Federal Court under this section.

17. This amendment will give the FMC non-appellate jurisdiction in matters in which it would not otherwise have jurisdiction because the jurisdiction has not been conferred under another provision or there is a limit on the FMC's jurisdiction, such as a limit on the amount of damages that can be awarded (eg section 86AA of the TP Act).

Item 4

18. Item 4 provides that the amendments in the Schedule outlined above will apply in relation to proceedings started before, on or after the commencement of the Schedule. Thus the amendments will apply to proceedings that have been commenced in the Federal or Family Court but not transferred to the FMC before the commencement date.

Schedule 3 - Jurisdiction over certain admiralty actions

Admiralty Act 1988

Item 1

19. Item 1 amends subsection 9(1) by conferring jurisdiction on the FMC, in *in personam* actions. Subsection 9(1) already provides for Federal, State and Territory courts to have jurisdiction in these matters. Jurisdiction in respect of limitation proceedings (defined in section 3 of the Admiralty Act) remains confined to the superior courts referred to in subsection 9(2).

Item 2

20. Item 1 applies to matters arising before, on or after the commencement of the Schedule. For example, the FMC would have jurisdiction in respect of proceedings instituted after commencement concerning matters that arose before commencement.

Item 3

21. Item 3 amends subsection 27(1) to give the FMC the same power as the other courts listed in the subsection have to transfer proceedings to another court having jurisdiction under the Act in relation to the subject-matter of the claim.

Item 4

22. Item 4 extends the remittal power of the Federal Court and State Supreme Courts to allow them to remit to the FMC – in addition to State and Territory courts - proceedings commenced as actions *in rem*.

Item 5

23. Item 5 confers jurisdiction on the FMC in respect of proceedings remitted under section 28.

Item 6

24. The amendments to sections 27 and 28 apply in relation to proceedings started before, on or after the commencement of this Schedule.

Item 7

25. Item 7 amends subsection 41(4) by conferring jurisdiction on the FMC in respect of matters arising under the Rules made pursuant to subsection 41(1).

Item 8

26. The amendment to section 41 applies to matters arising before, on or after the commencement of Schedule 3.

Schedule 4 – Jurisdiction over appeals against departure prohibition orders

Child Support (Registration and Collection) Act 1988

Item 1

27. This item provides that aggrieved persons can appeal to the FMC, or the Federal Court, against the making of a departure prohibition order.

Item 2

28. This amendment applies in relation to departure prohibition orders made before, on, or after the commencement of this Schedule.

Item 3

29. Item 3 clarifies that an appeal from a decree made by the FMC under s 72Q lies to the Federal Court rather than to the Family Court.

30. As appeals from decisions of the Federal Court under section 72Q lie to the Full Federal Court, it is appropriate that appeals from decisions of the FMC lie to the Federal Court rather than the Family Court.

Federal Court of Australia Act 1976

Item 4

31. Paragraph 24(1)(d) of the Federal Court Act currently prohibits the Federal Court hearing appeals from judgments of the FMC exercising original jurisdiction under the Child Support (Registration and Collection) Act.

32. This amendment creates an exception to allow the Federal Court to hear appeals from judgments of the FMC exercising jurisdiction under s 72Q of the Child Support (Registration and Collection) Act.