

Book Reviews

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Federal Magistrates Court Guide Book,

Thomson Law Book Co

2000- 1 v. (loose-leaf) ISBN: 0455217483

Federal Magistrates Court Practice, CCH

2000- 1 v. (looseleaf) ISBN: 1864683880

The Federal Magistrates Court (FMC) commenced sitting on 3 July 2000. Not long after it commenced sitting Chief Justice Murray Gleeson of the High Court of Australia stated:

“A Federal Magistracy has recently been established. I expect that, within the next 20 years, it will become one of the largest courts in Australia.¹

The words of the Chief Justice have proved prophetic. Since he delivered the paper in April 2001 the number of federal magistrates has more than doubled so that currently there are 31 Federal Magistrates appointed throughout Australia.

In family law matters the court has jurisdiction to deal with divorce, parenting orders, property settlement (up to \$700,000), maintenance, child support (assessment and collection) and enforcement.

In general federal matters the FMC has jurisdiction as follows:

- to hear and determine civil claims pursuant to Divisions 1 and 1A of Part V of the Trade Practices Act 1974 and may award damages

arising out of that jurisdiction up to an amount of \$200,000.

- concurrent jurisdiction with the Federal Court under the *Bankruptcy Act 1996*, save and except the capacity to undertake trials with a jury pursuant to 30(3) of that Act.
- Under the *Copyright Act 1968* with respect to civil actions under Part V of Division 4A, eg actions by owners of copyright for infringement in proceedings where copyright is subject to exclusive licence.

to hear and determine a complaint terminated by the president of the Human Rights and Equal Opportunity Commission including complaints under the *Racial Discrimination Act 1975*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*, and more recently the *Age Discrimination Act 2004*. The FMC may provide substantive or interim relief in relation to complaints under that legislation.

- In administrative law it may hear and determine appeals from the non-presidential members of the Administrative Appeals Tribunal. Those appeals commenced in the Federal Court of Australia may then be transferred by order of that court to the FMC.
- concurrent jurisdiction with the Federal Court to hear applications under Part VIII of the *Migration Act 1958* which currently constitutes a significant proportion of the court's workload.

¹ Murray Gleeson “A Change in Judiciary” Paper delivered to Judicial Conference of Australia—Uluru—7 April 2001 p.3.

- concurrent jurisdiction with the Federal Court under the *Administrative Decision (Judicial Review) Act 1977* and to enforce determinations of the privacy commissioner and private section adjudicators under the *Privacy Act 1988*.

Based on the volume of applications, the FMC is the most significant court in Australia in relation to family law, bankruptcy and migration matters.

It will be evident from the brief introduction to the FMC and its jurisdiction that any publications concerning the FMC practice and procedure face a significant challenge in dealing with very broad jurisdiction both in family law and general federal law matters.

Hence, the challenge to the FMC in dealing with its vast jurisdiction no doubt provides a significant challenge for publishers seeking to provide an appropriate and adequate service. LexisNexis publishes a service entitled "Federal Magistrates Court Practice and Procedure", though at the time of writing the service is under review.

The two books to be reviewed are both loose-leaf services which at present comprise one volume. Each service provides updating with the CCH issuing four loose-leaf reports annually with each report accompanied by an informative summary highlighting the major points. The LBC Thomson service also includes updates three to four times per year.

Both services, in my view, have struggled to deal with the broad jurisdiction of the court, and in particular, to provide a service readily accessible

to the family law and general federal law practitioners. In practice, it is rare to find family law practitioners appearing in the FMC in general federal law matters and vice versa. As a result of specialisation in the profession which has occurred progressively over the last 20 years, there is very little cross-over by practitioners from family law into general federal law. The publications in my view would benefit by recognising this fact and providing separate tabs for family law and general federal law including the specific jurisdictions referred to earlier. Both services simply follow an alphabetical listing of relevant legislation which I suspect specialist practitioners in the separate fields would find unhelpful. It could easily be corrected in both publications.

The LBC Thomson publication includes a substantial section of cases decided in the FMC and a selection of relevant cases from the High Court and Federal Court. The inclusion of cases in the LBC Thomson publication is helpful, though again would be of greater assistance if the cases were listed under family law and general federal law categories with sub-categories of each jurisdiction clearly identified.

In terms of general layout and appearance, I prefer the LBC Thomson publication. The tabs with black print on a light blue background are easier to read than the multicoloured tabs in the CCH service. The CCH service is not produced in a form consistent with its vast library of helpful publications that have remained the same for many years. It may be thought that it is time for the CCH service in general to undergo what is fashionably called a "makeover". I find the paragraph numbering system of the CCH service on

occasions to be less than helpful and its print not as clear as the LBC Thomson service.

Both services provide useful commentary and the CCH service in particular deals in great detail with the family law jurisdiction in a manner that is both helpful and concise. As the FMC evolves there will be no doubt that more detailed commentary may be included in the general federal law part of the CCH service.

The commentary in the LBC Thomson publication is less helpful in the family law area, though arguably more detailed and useful in the general federal law jurisdiction.

Apart from dealing with jurisdiction, both services provide an up to date copy of relevant legislation, including the *Federal Magistrates Act 1999* and regulations, though it is interesting to note that the CCH service does not reproduce the *Federal Magistrates (Consequential Amendments) Act 1999* which vests the court with its general federal law jurisdiction. Again, perhaps surprisingly, that legislation is included in the Thomson LBC publication, though in the form of the "Bill". No doubt that will be corrected in due course with an update, though it is surprising that the Act has not been reproduced.

A useful feature of the Thomson LBC publication is the tab entitled "Dispute Resolution". This at least focuses attention on the FMC commitment to alternative dispute resolution which has become an integral part of the court's practice and procedure both in family and general federal law matters. In general federal law matters the FMC has available to it the outstanding service of

deputy registrars of the Federal Court who provide their expert services at approximately half the cost payable in the Federal Court. In family law the court uses both internal and external alternative dispute resolution processes which result in the majority of cases being resolved without the need for a hearing.

The CCH service under the tab "other legislation" has included the Acts Interpretation Act 1901 and the *Evidence Act 1995*. Both Acts will no doubt be found to be useful to any practitioner appearing in the FMC.

Obviously the quality and frequency of updates, together with cost variations between both publications, will be important matters for readers to consider when choosing an appropriate volume. Some readers will no doubt already have either CCH libraries or LBC Thomson libraries which will easily accommodate each service. Others like me may prefer to simply choose the more user friendly service which at present, in my view, would appear to be the LBC Thomson publication. Both services no doubt will have their supporters in due course and often one suspects in comparing publishers one undertakes a task not dissimilar from those who choose to buy either a Ford or Holden motor vehicle. Both publishers will enjoy success in the market and should both be congratulated on providing a service to the FMC which has undoubtedly become one of the major courts in Australia in a very short time.

Murray McInnis
Federal Magistrate
25 November 2004