



Jurisdiction of Courts (Family Law) Bill 2005

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Law and Bills Digest Section

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Jurisdiction of Courts (Family Law) Bill 2005

Date Introduced: 7 December 2005

House: Senate

Portfolio: Attorney-General

Commencement: The Bill's formal provisions commence on Royal Assent. Amendments relating to Family Law Magistrates of Western Australia commence six months after Royal Assent unless commenced earlier by proclamation.

Purpose

The purpose of the Bill is to make amendments to the *Family Law Act 1975* (Cwlth) that will enable the jurisdiction of 'Family Law Magistrates of Western Australia' (as defined in the Bill)¹ to be expanded so that it reflects that of the Federal Magistrates Court (or FMC). It also makes changes in relation to appeals and transfers of proceedings in family law matters and to appeals in child support matters. Under child support and family law statutes, rules relating to appeals and transfers vary depending on whether the FMC or a court of summary jurisdiction is involved. The Bill treats Family Law Magistrates of Western Australia like the Federal Magistrates Court instead of as a court of summary jurisdiction, as is presently the case. In doing so, it recognises that Family Law Magistrates of Western Australia are specialists in family law.

Background

Family law, child support and Western Australia

The Family Law Act established a Family Court of Australia. At that stage, well before the Commonwealth had received constitutional referrals of power over ex-nuptial children from the States, it was intended that the States would establish their own family courts able to comprehensively deal with family law matters including all children's matters.² However, only Western Australia established such a court – the Family Court of Western Australia.³ This court deals with all family law matters both federal and state and is funded by the Commonwealth.

In 2003, the Commonwealth Attorney-General's Department conducted a review of the workload and resources of the Family Court of Western Australia. The review has not been publicly released. The Explanatory Memorandum remarks that the review included extensive consultation with the Western Australian Department of Justice and the Family Court of Western Australia.⁴ The review concluded the court was hearing matters that

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were more appropriately dealt with at magistrates court level. This is because of the limited jurisdiction of the Perth Court of Petty Sessions (now the Magistrates Court). At Commonwealth level, less complex matters are now handled not by the Family Court of Australia - a superior court - but by the Federal Magistrates Court – a lower level court. The jurisdiction of the Federal Magistrates Court includes family law and child support. It was established to provide cheaper and more accessible justice to litigants, to relieve the workload of the Family Court of Australia and to ensure that the Family Court concentrated on more complex and lengthier cases. However, the Federal Magistrates Court does not operate in Western Australia.

The Explanatory Memorandum states that the 2003 review recommended that Commonwealth child support and family law statutes be amended to give specialist family law magistrates in Western Australia the same jurisdiction as the Federal Magistrates Court and provide that their decisions be subject to the same appeal processes.⁵

Courts of summary jurisdiction, family law and child support

Various superior courts, such as the Family Court of Australia and the Family Court of Western Australia are invested with jurisdiction under child support statutes and the Family Law Act. The Federal Magistrates Court has jurisdiction in most family law matters (exceptions include applications for nullity of marriage and property matters where the value of the property exceeds \$700,000). It has the same jurisdiction as superior courts in relation to child support. Courts of summary jurisdiction (sometimes called magistrates courts or local courts) have more limited jurisdiction under the Family Law Act. They can hear undefended divorces and property matters so long as the value of the property does not exceed \$20,000 (in which case the matter must be transferred to the Family Court unless the parties otherwise agree). They can also hear certain, but not all, children's matters. For instance, they cannot hear contested proceedings for parenting orders. However, they have the same jurisdiction as the Federal Magistrates Court and superior courts under child support legislation.

There are rules about appeals from courts of summary jurisdiction and about the transfer of Family Law Act proceedings from these courts to superior courts. For example, an appeal lies from a court of summary jurisdiction to the Supreme Court of the particular State or Territory or, in the case of Western Australia to the Family Court of Western Australia, and then to the Full Court of the Family Court. Different rules about appeals and transfers apply to the Federal Magistrates Court. Here an appeal lies straight to the Family Court of Australia.

The Bill will alter existing law in relation to specialist Family Law Magistrates of Western Australia so that, rather than the appeal and transfer processes set out for courts of summary jurisdiction, the same rules that relate to the Federal Magistrates Court will apply.

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The expression, 'Family Law Magistrate of Western Australia' is defined in **item 10** of Schedule 1 of the Bill. It means a magistrate of the Western Australian Magistrates Court who also holds office as a registrar of the Family Court of Western Australia. As the Explanatory Memorandum points out, this is how Family Law Magistrates of Western Australia are appointed.⁶ The definition, which is inserted into the Family Law Act, will also apply to other statutes amended by the Bill - the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*.

Main Provisions

Schedule 1 – Amendments

Amendments to the Child Support (Assessment) Act 1989

The *Child Support (Assessment) Act 1989* (the Assessment Act) contains a formula for the administrative assessment of child support by the Child Support Agency (or CSA), provides for review and appeal processes and contains provision for the making of child support agreements.

Many decisions that are made by the Child Support Agency can be appealed to a court following internal review by the Agency. For example, a parent can appeal to a court against a child support assessment made by the CSA, ask a court to set aside a child support agreement or contest a CSA decision that they are not entitled to a child support assessment. Section 99 of the Assessment Act confers jurisdiction to hear these matters on the Family Court of Australia, the Federal Magistrates Court, the Family Court of Western Australia, the Supreme Court of the Northern Territory, and State and Territory courts of summary jurisdiction.

Items 1 and 2 of Schedule 1 deal with the hearing of appeals from decisions of a Family Law Magistrate of Western Australia exercising jurisdiction under the Assessment Act. The amendments provide for an appeal pathway which reflects the appeal pathway from decisions of the Federal Magistrates Court.

Section 103 of the Assessment Act deals with cases stated, that is, where a lower court wishes a superior court to rule on a question of law. As a result of **item 3**, case stated rules for Family Law Magistrates of Western Australia will mirror the case stated rules for the FMC.

Item 4 ensures that the general rules relating to appeals from courts of summary jurisdiction do not apply to Family Law Magistrates of Western Australia and is a consequence of the amendments effected by **items 1 and 2**.

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Amendments to the Child Support (Registration and Collection) Act 1988

Amendments are also made to the *Child Support (Registration and Collection) Act 1988* (the Registration and Collection Act). This Act establishes the Child Support Agency and provides for the registration, collection and enforcement of child support.

A parent can ask a court to review various CSA decisions made under the Registration and Collection Act – for instance, decisions to register or refuse to register a maintenance liability. Section 104 of the Registration and Collection Act confers jurisdiction on the Family Court of Australia, the Federal Magistrates Court, the Family Court of Western Australia, the Supreme Court of the Northern Territory, and State and Territory courts of summary jurisdiction in relation to such matters.

Like the amendments relating to the Assessment Act, **items 6 and 7** ensure that appeals from decisions by a Family Law Magistrate of Western Australia made under the Registration and Collection Act mirror the appeal process for Federal Magistrates Court decisions. Case stated amendments are made by **item 8**. **Item 9** ensures that provisions about appeals from courts of summary jurisdiction do not apply to Family Law Magistrates of Western Australia and is a consequence of the amendments effected by **items 6 and 7**.

Amendments to the Family Law Act 1975

Item 11 will enable a proclamation to be made giving a Family Law Magistrate of Western Australia the same jurisdiction in matrimonial causes under the Family Law Act as the Federal Magistrates Court.

Items 12 and 13 deal with monetary limits of jurisdiction under the Family Law Act in courts of summary jurisdiction. Once a ceiling is reached, the matter must be transferred to a superior court unless the parties otherwise agree. In the case of a Family Law Magistrate of Western Australia, the amendments provide that the monetary limit will be set down by regulation. In any other case, the ceiling will continue to be specified in the Family Law Act and remain at its current limit of \$20,000. Note that the Federal Magistrates Court currently has jurisdiction in property matters where the value of the property does not exceed \$700, 000 (unless the parties agree). Note also that amendments contained in the Family Law Amendment (Shared Parental Responsibility) Bill 2005 currently before the Parliament remove the monetary limit that the FMC currently has in relation to matrimonial property proceedings.⁷

Subsection 46(2A) of the Family Law Act ensures that only undefended divorce proceedings can be heard by courts of summary jurisdiction. It does this by providing that defended proceedings must be transferred to the Family Court, a State or Territory Supreme Court or the Federal Magistrates Court. **Item 14** exempts Family Law Magistrates of Western Australia from this general rule thus ensuring that they, like Federal Magistrates, can hear defended divorce proceedings.

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Item 17 allows a proclamation to be made giving Family Law Magistrates of Western Australia the same jurisdiction in children's matters under the Family Law Act as the Federal Magistrates Court.

Item 18 ensures that a Family Law Magistrate of Western Australia can hear contested proceedings for parenting orders. It does this by exempting such magistrates from the general rule that courts of summary jurisdiction can only hear uncontested proceedings and must transfer contested parenting order proceedings to a superior court or the Federal Magistrates Court.

Items 20-24 are amendments and consequential amendments providing that the appeal pathway from a decision of a Family Law Magistrate of Western Australia under the Family Law Act is the same as that applying to an appeal from the Federal Magistrates Court. They also apply the same rules about leave to appeal from decisions of Family Law Magistrates of Western Australia. Finally, **item 26** ensures that rules about appeals from courts of summary jurisdiction do not apply to a decision of a Federal Magistrate of Western Australia.

Technical amendments

Items 28-30 omit redundant occurrences of the word 'or' in three Family Law Act provisions.

Endnotes

- 1 See below page 4.
- 2 Parker et al, *Australian Family Law in Context. Commentary and Materials*, LBC Casebook.
- 3 Consequently, Western Australia did not refer power over ex-nuptial children to the Commonwealth.
- 4 Explanatory Memorandum, p. 2.
- 5 Explanatory Memorandum, p. 1. Note, as indicated in the 'Purpose' section and elsewhere in this Digest that courts of summary jurisdiction (including the WA Magistrates Court) are not at present limited in their exercise of child support jurisdiction. It is only in relation to family law matters that the Bill increases the jurisdiction of Family Law Magistrates of Western Australia.
- 6 And see *Magistrates Court Act 2004* (WA).
- 7 See item 1, Schedule 7.

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