

Update on federal jurisdiction in VCAT

1. On 10 August 2021, the *Victorian Civil and Administrative Tribunal and Other Acts Amendment (Federal Jurisdiction and Other Matters) Act 2021* (Vic) (the ‘Act’) received Royal assent.
2. The Act amends the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) to allow the Magistrates' Court of Victoria to hear and determine proceedings that the Tribunal would have had jurisdiction to hear and determine in its original jurisdiction if the proceedings did not involve federal subject matter and their determination did not involve the exercise of judicial power. Consequential amendments are also made to the *Magistrates' Court Act 1989* (Vic).
3. Part 2 of the Act (Federal subject matter amendments) comes into force on the day that it is proclaimed in the Victorian Government Gazette. This has not occurred yet.
4. The second reading speech gives a good overview of the purpose of the amendments:¹

The Victorian Civil and Administrative Tribunal and Other Acts Amendment (Federal Jurisdiction and Other Matters) Bill will make critical changes to Victoria’s court system to ensure all Victorians can get access to justice. In particular, it will empower the Magistrates’ Court of Victoria to resolve disputes relating to federal jurisdiction matters that cannot be heard by the Victorian Civil and Administrative Tribunal (VCAT).

Recent decisions by the High Court² and Victorian Court of Appeal³ make clear that VCAT is not a ‘court of the state’ for the purposes of the Commonwealth Constitution and therefore does not have jurisdiction to resolve what are known as

¹ Victoria, *Parliamentary Debates*, Legislative Assembly, 26 May 2021 (Hutchins).

² *Burns v Corbett* (2018) 265 CLR 304.

³ *Meringnage v Interstate Enterprises Pty Ltd* (2020) 60 VR 361.

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‘federal jurisdiction matters’ arising under the Constitution. These include matters where the Commonwealth is a party; where the dispute arises under a Commonwealth law; and where the dispute is between residents of different states (such as residential tenancy disputes where the landlord lives outside Victoria).

...

The Bill will address both these issues, by conferring new jurisdiction on the Magistrates’ Court to resolve federal jurisdiction matters which cannot be resolved by VCAT for Constitutional reasons, and validating past VCAT decisions in federal jurisdiction matters. These reforms will benefit the Victorian community.

5. The Minister went on to set out the mechanics of an application to the Magistrates’ Court where VCAT lacks jurisdiction:

Parties in federal jurisdiction matters will apply directly to the Magistrates’ Court to have their matters heard. If a party applies to VCAT but the matter is a federal jurisdiction matter, VCAT will refund that party’s filing fee and assist them to apply to the Magistrates’ Court. The Bill provides that the filing fee for these matters is the same across the Magistrates’ Court and VCAT. In practice, parties will only need to pay one filing fee, meaning they are not further out of pocket due to their matter being a federal jurisdiction matter.

This new process will be available in new disputes, and for parties who have previously been affected by the gap in jurisdiction, such as those who previously applied to VCAT but were unable to have their matters heard due to a lack of jurisdiction.

The Magistrates’ Court will have power to hear and determine these applications if it is satisfied that it involves a federal jurisdiction matter in VCAT’s original jurisdiction. In addition, the Magistrates’ Court may hear proceedings where there is some doubt as to whether they would involve an exercise of federal jurisdiction. While in most cases federal jurisdiction will be clear, it is important that cases in which there is some doubt may be determined by a Court of the State to ensure the validity of such decisions.

In hearing and determining these federal jurisdiction matters, the Magistrates’ Court will have the same functions and powers that VCAT would have had, in addition to its existing functions and powers. The Bill also seeks to ensure consistency between VCAT processes and the Magistrates’ Court’s processes for handling federal jurisdiction matters where appropriate. For example, the same rules relating to legal representation will apply in these matters as apply in VCAT. Like VCAT, the Court will not be bound by rules of evidence under the Evidence Act 2008 in federal jurisdiction matters (unless it decides to adopt those rules) and the privilege against self-incrimination will not apply. This promotes fairness and consistency by ensuring that the procedure in relevant Magistrates’ Court hearings, and the treatment of parties, are consistent with VCAT practice wherever possible.

Importantly, parties in federal jurisdiction matters will have access to the Magistrates' Court's existing alternative dispute resolution ('ADR') processes. This will enable parties to avoid the time and expense of hearings in appropriate cases.

Orders made by the Magistrates' Court will be enforced in the same way as other orders of the Court. Appeal processes will also follow the general Magistrates' Court processes. In addition, parties will be able to appeal interim and interlocutory orders, to align with appeal rights of parties in VCAT.

6. Critically, s 100 of the *Magistrates' Court Act* limits the jurisdiction of the Magistrates' Court for civil disputes to claims not exceeding \$100,000. That cap has been removed for 'federal matters' (i.e. matters ordinarily heard in VCAT).⁴

10 August 2021

⁴ Section 8 of the Act.