



FEDERAL COURT OF AUSTRALIA

ANNUAL REPORT 2009–2010

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CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
119 North Quay Brisbane Qld 4000

13 September 2010

Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I have the pleasure in submitting, in accordance with section 18S of the *Federal Court of Australia Act 1976*, a report of the management of the administrative affairs of the Court during the financial year 2009-2010 and the financial statements in respect of that financial year. The report also includes information about the Court, its composition, jurisdiction and workload.

This is the Court's twenty-first annual report.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P. A. Keane'.

P A Keane
Chief Justice

FEDERAL COURT REGISTRIES

Principal Registry

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Queensland District Registry

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Contact hours: 8.30am–5.00pm

Tasmania District Registry

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Contact hours: 8.30am–5.00pm

Victoria District Registry

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Western Australia District Registry

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- TTY users phone 133 677 then ask for your local registry's phone number as listed above
- Speak and Listen users phone 1300 555 727 then ask for your local registry's phone number as listed above
- Internet relay users connect to the NRS (www.relayservice.com.au) and then ask for your local registry's phone number as listed above.

An electronic version of the report is available at <http://www.fedcourt.gov.au>

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CHAPTER 1

Overview of the Federal Court of Australia



1.1 ESTABLISHMENT

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* and began to exercise its jurisdiction on 1 February 1977. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy.

The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time.

1.2 FUNCTIONS AND POWERS

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts appears in Appendix 5 on page 111.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Magistrates Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's jurisdiction is described more fully in Chapter 3.

1.3 OBJECTIVES

The objectives of the Court are to:

- *decide disputes according to law - promptly, courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfill the role of a court exercising the judicial power of the Commonwealth under the Constitution*
- *provide an effective registry service to the community*
- *manage the resources allotted by Parliament efficiently.*

1.4 THE COURT'S OUTCOME AND PROGRAM STRUCTURE

The Court's outcome and program structure appears in Chapter 4 on page 55.

This report uses the outcome and program structure to outline the Court's work and performance during 2009–10. Chapter 3 reports on these issues in detail.

1.5 JUDGES OF THE COURT

The Federal Court of Australia Act provides that the Court consists of a Chief Justice and other judges as appointed. The Chief Justice is the senior judge of the Court and is responsible for managing the business of the Court.

Judges of the Court are appointed by the Governor-General by commission and may not be removed except by the Governor-General on an address from both Houses of Parliament in the same session. All judges must retire at the age of seventy.

Judges, other than the Chief Justice, may hold more than one judicial office. Most judges hold other commissions and appointments.

At 30 June 2010 there were forty-nine judges of the Court. They are listed below in order of seniority with details about any other commissions or appointments held on courts or tribunals. Of the forty-nine judges, there were three whose work as members of other courts or tribunals occupied all, or most, of their time.

Judges of the Court (as at 30 June 2010)

Judge	Location	Other Commissions/Appointments
Chief Justice The Hon Patrick Anthony KEANE	Brisbane	
The Hon Jeffrey Ernest John SPENDER	Brisbane	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member
The Hon Peter Ross Awdry GRAY	Melbourne	Industrial Relations Court of Australia - Judge Administrative Appeals Tribunal - Presidential Member
The Hon Donnell Michael RYAN	Melbourne	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge
The Hon Terence John HIGGINS AO	Canberra	Supreme Court of the ACT - Chief Justice
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge Tonga Court of Appeal - Judge

Judge	Location	Other Commissions/Appointments
The Hon Paul Desmond FINN	Adelaide	
The Hon Ross Alan SUNDBERG	Melbourne	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge
The Hon John Ronald MANSFIELD AM	Adelaide	Supreme Court of the ACT - Additional Judge Supreme Court of the NT - Additional Judge Australian Competition Tribunal - Part-time Deputy President
The Hon Alan Henry GOLDBERG AO	Melbourne	
The Hon Arthur Robert EMMETT	Sydney	Copyright Tribunal - President
The Hon Raymond Antony FINKELSTEIN	Melbourne	Australian Competition Tribunal - Part-time President
The Hon Geoffrey Michael GIUDICE AO	Melbourne	Fair Work Australia - President
The Hon John Alfred DOWSETT	Brisbane	Supreme Court of the ACT - Additional Judge
The Hon Susan Coralie KENNY	Melbourne	Australian Law Reform Commission - Part-time Commissioner
The Hon Margaret Ackary STONE	Sydney	Supreme Court of the ACT - Additional Judge
The Hon Garry Keith DOWNES AM	Sydney	Administrative Appeals Tribunal - President Supreme Court of Norfolk Island - Judge
The Hon Peter Michael JACOBSON	Sydney	Supreme Court of Norfolk Island - Chief Justice Australian Competition Tribunal - Part-time Deputy President

Judge	Location	Other Commissions/Appointments
The Hon Annabelle Claire BENNETT AO	Sydney	Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member
The Hon Bruce Thomas LANDER	Adelaide	Supreme Court of the ACT - Additional Judge Supreme Court of Norfolk Island - Judge Administrative Appeals Tribunal - Presidential Member
The Hon Antony Nicholas SIOPIIS	Perth	Administrative Appeals Tribunal - Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member
The Hon Peter Ross GRAHAM	Sydney	Supreme Court of the ACT - Additional Judge
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal - Presidential Member
The Hon Steven David RARES	Sydney	Supreme Court of the ACT - Additional Judge
The Hon Berna COLLIER	Brisbane	Australian Law Reform Commission - Part-time Commissioner
The Hon Dennis Antill COWDROY OAM	Sydney	Supreme Court of the ACT - Additional Judge Australian Defence Force - Judge Advocate Australian Defence Force - Defence Force Magistrate
The Hon Anthony James BESANKO	Adelaide	Supreme Court of the ACT - Additional Judge
The Hon Christopher Neil JESSUP	Melbourne	
The Hon Richard Ross Sinclair TRACEY RFD	Melbourne	Australian Defence Force - Judge Advocate General Defence Force Discipline Appeal Tribunal - President

Judge	Location	Other Commissions/Appointments
The Hon John Eric MIDDLETON	Melbourne	Australian Competition Tribunal - Part-time Deputy President
The Hon Robert John BUCHANAN	Sydney	Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member
The Hon John GILMOUR	Perth	
The Hon Michelle Marjorie GORDON	Melbourne	
The Hon John Alexander LOGAN RFD	Brisbane	
The Hon Geoffrey Alan FLICK	Sydney	
The Hon Neil Walter Mc KERRACHER	Perth	
The Hon John Edward REEVES	Brisbane	Supreme Court of the NT - Additional Judge
The Hon Nye PERRAM	Sydney	Copyright Tribunal - Deputy President
The Hon Jayne Margaret JAGOT	Sydney	Supreme Court of the ACT - Additional Judge
The Hon Lindsay Graeme FOSTER	Sydney	Supreme Court of the ACT - Additional Judge
The Hon Michael Laurence BARKER	Perth	
The Hon John Victor NICHOLAS	Sydney	
The Hon David Markey YATES	Sydney	
The Hon Mordecai BROMBERG	Melbourne	
The Hon Julie Anne DODDS-STREETON	Melbourne	
The Hon Anna Judith KATZMANN	Sydney	

The Chief Justice was absent on the following dates during the year. Acting Chief Justice arrangements during these periods were as follows:

29–31 July 2009	The Hon Justice Spender
7–9 September 2009	The Hon Justice Spender
25 September – 4 October 2009	The Hon Justice Gray
5–18 October 2009	The Hon Justice Spender

Most of the judges of the Court devote some time to other courts and tribunals on which they hold commissions or appointments. Judges of the Court also spend a lot of time on activities related to legal education and the justice system. More information about these activities is set out in Chapter 3 and Appendix 9.

Appointments and retirements during 2009–10

During the year six judges were appointed to the Court:

- **The Honourable Justice John Victor Nicholas** (resident in Sydney) was appointed on 16 November 2009.
- **The Honourable Justice David Markey Yates** (resident in Sydney) was appointed on 30 November 2009.
- **The Honourable Justice Mordecai Bromberg** (resident in Melbourne) was appointed on 7 December 2009.
- **The Honourable Justice Julie Anne Dodds-Streeton** (resident in Melbourne) was appointed on 1 February 2010.
- **The Honourable Justice Anna Judith Katzmann** (resident in Sydney) was appointed on 1 February 2010.
- **The Honourable Chief Justice Patrick Anthony Keane** (resident in Brisbane) was appointed on 22 March 2010.

During the year two judges retired from the Court:

- **The Honourable Justice Kevin Edmund Lindgren** retired upon reaching the compulsory retirement age for federal judges on 11 February 2010.
- **The Honourable Chief Justice Michael Eric John Black AC** retired upon reaching the compulsory retirement age for federal judges on 21 March 2010.

Other appointments during the year included:

- **The Honourable Justice Cowdroy OAM** was appointed a Judge Advocate of the Australian Defence Force beginning on 13 October 2009.
- **The Honourable Justice Cowdroy OAM** was appointed a Defence Force Magistrate of the Australian Defence Force beginning on 15 October 2009.
- **The Honourable Justice Jagot** was appointed an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 11 November 2009.
- **The Honourable Justice Foster** was appointed an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 11 November 2009.
- **The Honourable Justice Tracey RFD** was reappointed Judge Advocate General of the Australian Defence Force beginning on 10 February 2010.
- **The Honourable Justice Giudice AO** was appointed an Officer of the Order of Australia on the Queen's Birthday 2010.

1.6 FEDERAL COURT REGISTRIES

Registrar

Mr Warwick Soden is the Registrar of the Court. The Registrar is appointed by the Governor-General on the nomination of the Chief Justice. The Registrar has the same powers as the Head of a Statutory Agency of the Australian Public Service in respect of the officers and staff of the Court employed under the *Public Service Act 1999* (section 18Q of the Federal Court of Australia Act).

Principal and District Registries

The Principal Registry of the Court, located in Sydney, is responsible for the overall administrative policies and functions of the Court's registries and provides policy advice, human resources, financial management, information technology support, library services, property management and support to the judges' committees.

There is a District Registry of the Court in each capital city. The District Registries provide operational support to the judges in each state, as well as registry services to legal practitioners and members of the public. The registries receive court and related documents, assist with the arrangement of court sittings and facilitate the enforcement of orders made by the Court.

The Victorian Registry is the Principal Registry for the Australian Competition Tribunal and the Defence Force Discipline Appeal Tribunal, most other District Registries are also registries for these Tribunals. The Queensland, South Australian, Western Australian and Northern Territory District Registries are registries for the High Court. The Tasmanian District Registry provides registry services for the Administrative Appeals Tribunal and the National Native Title Tribunal. The Registry of the Copyright Tribunal is located in the New South Wales District Registry.

The registries of the Court are also registries for the Federal Magistrates Court in relation to non-family law matters.

More information on the management of the Court is outlined in Chapter 4.

Officers of the Court

Officers of the Court are appointed by the Registrar under section 18N of the Federal Court of Australia Act and are:

- (a) a District Registrar for each District Registry
- (b) Deputy Registrars and Deputy District Registrars
- (c) a Sheriff and Deputy Sheriffs
- (d) Marshals under the Admiralty Act.

The registrars must take an oath or make an affirmation of office before undertaking their duties (section 18Y of the Federal Court of Australia Act). Registrars perform statutory functions assigned to them by the Federal Court of Australia Act, Federal Court Rules, Federal Court Bankruptcy Rules and the Federal Court (Corporations) Rules 2000. These include issuing process, taxing costs and settling appeal indexes. They also exercise various powers delegated by judges under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Magistrates Act 1999*. Appendix 4 on page 108 lists the registrars of the Court.

Staff of the Court

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs and Marshals) are appointed or employed under the Public Service Act. On 30 June 2010 there were 363 staff employed under the Public Service Act. Generally, judges have two personal staff members. More details on Court staff are set out in Tables 4.3 to 4.5 in Chapter 4 on pages 58 to 60.



CHAPTER 2

The year in review



Image of Court room 1 in Sydney provided by www.zoomproductions.com.au

2.1 INTRODUCTION

During the year under review the Court continued to achieve its objective of promptly, courteously and effectively deciding disputes according to law, in order to fulfil its role as a court exercising the judicial power of the Commonwealth under the Constitution. The Court's innovative approach to managing its work, and the way it operates as an organisation, brought continuing recognition of its leading role.

During 2009–10 the Court maintained its commitment to achieving performance goals for the Court's core work, while also developing and implementing a number of key strategic and operational projects. These are discussed separately below.

2.2 SIGNIFICANT ISSUES AND DEVELOPMENTS

Retirement of Chief Justice Black and Appointment of Chief Justice Keane

On 19 March 2010 a ceremonial sitting of the Federal Court was held in Melbourne to mark the retirement of the Honourable Michael Black AC who was Chief Justice of the Federal Court from 1 January 1991 to 21 March 2010. His many achievements included:

- the introduction of the individual docket system where judges have control of matters from beginning to end
- pioneering the use of technology in areas such as videoconferencing and eServices which incorporates all the Court's online services
- the management of native title matters including 'on country' hearings providing the best possible environment for indigenous witnesses
- the introduction of national fast track procedures designed to reduce costs by limiting discovery and avoiding lengthy interlocutory disputes; and
- his contributions to enhancing court architecture in Australia by ensuring concepts of light, space and accessibility were incorporated into new and refurbished Commonwealth Law Court buildings.

Chief Justice Keane was sworn in as the Court's third Chief Justice on 22 March 2010 at a ceremony at the Federal Court in Brisbane. Prior to his appointment to the Court he was a judge of the Queensland Court of Appeal.

At the swearing-in ceremony, the Attorney-General, the Hon Robert McClelland MP, noted that the new Chief Justice assumed the role at an exciting time in the Court's development and commented: 'with the many virtues that your Honour brings to this office, I have absolute confidence that this court will have strong and effective leadership in the years ahead'.

Case Management Reforms

During the reporting year important changes were made to the Federal Court of Australia Act by the *Access to Justice (Civil Litigation Reforms) Act 2009* and the *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009*. The legislation gave effect to most of the case management and other reforms proposed by the Court following discussions with the legal profession in 2008.

As a result of these changes, the Federal Court of Australia Act now states that the overarching purpose of the civil practice and procedure provisions is to facilitate the just resolution of

disputes: (a) according to law; and (b) as quickly, inexpensively and efficiently as possible. The amendments also included provisions to enhance the Court's capacity to actively manage the conduct of proceedings that come before it and changes to streamline the appeals process which allow greater case management of appeals by the Court. These reforms will help achieve the Court's commitment to an effective and accessible system of justice where people are able to resolve their disputes quickly, efficiently and fairly.

eServices strategy

The Federal Court's eServices strategy centres on the use of contemporary technology to improve efficiency and increase accessibility to the Court.

In 2009–10 the Court continued to deliver on its commitment to create an environment where actions which are commenced electronically, are managed electronically. Much has been accomplished as a result of the implementation of a number of key components of this strategy including:

- improved access to court services through on-line delivery
- reduced need to attend at court or registry counter
- increased service availability
- the potential to reduce the costs of litigation
- reduced reliance on the printing and photocopying of documents.

A key component of the strategy is eLodgment. This application enables any member of the public, whether a practitioner, law firm, corporation or self represented litigant to electronically lodge documents with the Federal Court or the Federal Magistrates Court.

By May 2010 eLodgment was made available to all Court users, following a limited live release in late 2009 which allowed the Court and some frequent users to test the new system for functionality and usability. The success of the limited live release resulted in the Court releasing eLodgment more broadly.

eLodgment allows a litigant to commence an action electronically. Documents relating to existing matters may also be lodged via eLodgment. The lodged documents remain accessible to the lodging party via eLodgment and litigants can monitor the progress of their lodgments, as well as review the processed documents, through their Lodgment History. They can also access the sealed electronic versions of the documents should they require them for service.

The approach to the full release of eLodgment was staged in order to manage the workload impact on registries and ensure that litigants were confident with the application. As part of the implementation, many information sessions and demonstrations of eLodgment were held. These public demonstrations were well attended and great interest in eLodgment and the Court's intention to ultimately provide more on-line services was evident. At the end of June 2010 there were over 550 registered users of eLodgment.

Since the release of the application 1260 documents have been lodged electronically, with the majority of these being filings in the Federal Court.

Native Title Review of Caseload and Priority Setting

On 18 September 2009 the *Native Title Amendment Act 2009* (Cth) came into force. The amendments to the *Native Title Act 1993* (Cth) (NTA) were significant in a number of respects, in that they empowered the Court to:

- refer a matter to a mediator, other than the National Native Title Tribunal or a Court registrar
- make orders to give effect to the terms of an agreement between the parties that are about matters other than native title, whether or not a determination of native title is made
- make these orders where only some of the parties are in agreement about the orders which are sought.

The Attorney-General, in the Second Reading Speech for the new legislation, said that the amendments were intended to ‘...contribute to broader, more flexible and quicker negotiated settlements of native title claims’ and that ‘these changes will result in better outcomes for participants in the native title system’.

The amendments to the Act gave clear responsibility to the Court for managing all aspects of native title proceedings, including, as noted, the opportunity to refer a matter to mediation before a person or body other than to the National Native Title Tribunal or a Registrar of the Court. During the reporting period the Court’s Native Title Practice Committee met on many occasions to focus on the amendments and to put in place a number of practice initiatives to ensure – to the extent that it can – that resolution of native title cases can be achieved more easily and delivered in a more timely, effective and efficient fashion.

In considering how to improve the time it takes to resolve a native title case, the Committee recognised that it was not possible for all pending cases to be intensively managed at the same time by the Court and the parties. The Committee decided there was a need to prioritise cases across each State and within the area of each native title representative body or service provider: organisations whose primary role is to represent native title claimants within a designated region of Australia.

The process of deciding the order in which the Court will deal with pending cases involves numerous factors and the Committee approached this task by reviewing each case, either through directions hearings, regional case management conferences or State or region based callovers. In addition, the Queensland and Western Australian user forums and associated Committees have provided an opportunity for more focussed consideration of this, and related, issues.

The criteria used to determine priorities include whether the case involves a matter of public interest, whether the resolution of the case will impact on other cases or the attitudes of the parties and in turn speed up the resolution of other related cases, the level of future act activity, the views of the parties, the level of preparedness of the Applicant (that is, the extent of evidence gathered and issues identified) and the age of the case.

The Court will soon publish a priority list of native title cases. It is expected that, over time, the list will evolve and be updated. The Committee will maintain an oversight of all pending cases through the Court’s usual case conferences, directions hearings or callovers.

Access and Fairness Survey

In August 2009 the Court conducted an access and fairness survey in each of its registries. The survey forms part of the Court’s ongoing commitment to demonstrate accountability and improve the delivery of services by the Court.

The purpose of the survey was to gather feedback from court users on their experience of accessibility to the Court, together with their views about treatment in terms of fairness and courtesy. The survey is one of the suggested performance measurement tools to address two of

the areas for court excellence that are set out in the International Framework for Court Excellence. The framework has been developed by an international consortium including the United States Federal Judicial Centre, the United States National Centre for State Courts, the World Bank, the Courts of Singapore and the Australian Institute of Judicial Administration (AIJA). The framework is a quality performance measurement tool which includes values, concepts and mechanisms by which courts can voluntarily assess and improve the quality of justice and the efficiency of court administration.

The areas of court excellence surveyed are:

- client needs and satisfaction
- public trust and confidence

The survey is the first of its kind for any court in Australia. In particular, it asked for comments about how people felt they were treated (including by judicial officers) in terms of fairness. The survey results indicate that, in every registry across Australia, the Court operates in a very accessible and very fair manner. In the available ranking out of 5 the Court ranked, on average across Australia, 4.41 for access and 4.47 for fairness. Scores above 4 are considered to be in the 'excellent' category.

2.3 THE COURT'S PERFORMANCE

Workload

The Federal Court's registries provide registry services for the Federal Magistrates Court (FMC). During the year there were 3,642 actions commenced in the Court and 6,908 in the general federal law jurisdiction of the FMC, a total of 10,550. This represents a one per cent increase on the combined workload in 2008–09.

In 2009–10 the total number of filings in the Federal Court decreased by just under six per cent to 3,642. The majority of the decrease was in the Court's appellate jurisdiction, primarily migration appeals. In 2009–10, appellate proceedings filed in the Court concerning decisions under the Migration Act fell by twenty-six per cent and now comprise forty-six per cent of appeals and related actions, compared with fifty per cent in 2008–09. While the reasons for the drop in migration appeals are not clear, it is likely that the Court's procedures to streamline the preparation and conduct of these appeals and applications, which have resulted in reduced timeframes for their disposition, have had an impact. Further information about the management of migration appeals can be found in Chapter 3 on page 30. The workload in the Court's original jurisdiction decreased by one per cent in 2009–10.

Notwithstanding the reduction in Federal Court filings in 2009–10, the workload has grown since 2000, when the FMC was established. In 1999–2000 the combined filings in the FMC and the original jurisdiction (i.e. not including appeals) of the Federal Court were 5,885, compared with 9,857 this year.

It should be noted that Federal Court Registrars hear and determine a substantial number of cases in the FMC, particularly in the bankruptcy jurisdiction. During the year Federal Court Registrars dealt with, and disposed of, 4,671 FMC bankruptcy matters which equates to ninety-two per cent of the FMC's bankruptcy caseload.

Performance against time goals

The Court has three time goals for the performance of its work: the first goal concerns the time taken from filing a case to completion; the second goal concerns the time taken to deliver reserved judgments and the third goal concerns the time taken to complete migration appeals. The time goals assist the Court in managing its work to achieve the performance targets. The goals do not determine how long all cases will take, as some are very long and complex and others will, necessarily, be very short.

Time goal 1: Eighty five per cent of cases completed within 18 months of commencement

During the reporting year, the Court completed eighty-eight per cent of cases in less than eighteen months, compared with ninety per cent in the previous year. As shown in Figure 6.5 and Table 6.5 in Appendix 6 on page 122, over the last five years the Court has consistently exceeded its benchmark of eighty-five per cent, with the average over the five years being ninety-one per cent.

Time goal 2: Judgments to be delivered within three months

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and the pressure of other business upon the Court. During 2009–10 the Court handed down 1,748 judgments for 1,550 court files (some files involve more than one judgment being delivered eg. interlocutory decisions and sometimes, one judgment will cover multiple files). The data indicates that seventy-nine per cent of appeals (both full court and single judge) were delivered within three months and seventy-eight per cent of judgments at first instance were delivered within three months of the date of being reserved.

Time goal 3: Disposition of migration appeals and related applications within three months

The *Migration Litigation Reform Act 2005* effectively gave the FMC almost all first instance jurisdiction in migration cases. Since December 2005, most matters commenced in the Federal Court from decisions arising under the Migration Act are appeals and related applications. The majority of these cases have been heard and determined by a single judge exercising the appellate jurisdiction of the Court.

Following the introduction of the amendments, the Court implemented a time goal of three months for the disposition of migration appeals and related applications. The Court introduced a number of initiatives to assist in achieving the goal, including special arrangements to ensure that all appeals and related applications were listed for hearing in the Full Court sitting periods as soon as possible after filing. Additional administrative arrangements were also made to streamline the pre-hearing procedures.

Although not covered in previous Annual Reports, the Court has carefully monitored the achievement of the three month goal in order to ensure that there are no delays in migration appeals and related applications, and that delay was not an incentive to commencing appellate proceedings.

In the years since 2005 the Court has been successful in achieving the disposition target of three months for most of the migration appeals and related applications dealt with by a single judge or a Full Court. In the period covered by this report, 438 migration appeals and related applications were disposed, with the average time from filing to final disposition being 110 days, and the median time from filing to final disposition being ninety days.

Assisted Dispute Resolution (ADR)

The Court's use of ADR, particularly mediation, continued during the reporting year with 476 matters referred to mediation, a decrease of almost nine per cent on 2008–09. This is, however, substantially higher (twenty-six per cent) than the average annual referral rate of 379 matters for the previous five years. Fifty-two per cent of mediated matters in 2009–10 were resolved in full at mediation. A further six per cent were resolved in part.

There is no comprehensive and comparative collection of statistics concerning ADR connected with Court proceedings. Scholars have called for such statistics and the Court has decided to commence collecting and reporting additional ADR statistics. These statistics can be found in Chapter 3 at page 33.

As part of the Individual Docket System (IDS) (refer to page 26 for an explanation of the IDS) and the Court's active case management approach, the use of ADR is considered when determining the most appropriate case management method for individual matters. Due to the nature of the Court's work, other case management tools may be more appropriate in some instances.

Financial management and organisational performance

During the reporting year the Court continued to achieve its objective of promptly, courteously and effectively deciding disputes according to law. It did so with an unceasing commitment to delivering innovative and excellent services. These achievements came within the context of a reduced budget and reduced operating staff as the Court was not quarantined from the effect of the global financial crisis.

The reduced operating budget challenged the Court to continue to meet the high standards it has set and that Court users continue to expect. Over the last two financial years reviews were undertaken and decisions made to achieve a balanced budget by 30 June 2010. The net result of this work was a fourteen per cent reduction in the Court's staffing numbers (full-time, part-time, ongoing and non-ongoing positions) from 422 at 30 June 2008 to 363 at 30 June 2010. This has been achieved with no reduction in the quality of the services provided both internally and externally. This report is an opportunity to publicly acknowledge the remarkable efforts made by judges and staff who readily understood the need to work differently, more innovatively and focus on achieving improvements in practice that deliver benefits both internally and to members of the legal profession, litigants, or members of the public.

As noted above, the Court's 2009–10 budget was predicated on the assumption that it would be a break even budget. Instead the Court achieved a \$1.242m surplus in 2009–10. The surplus was primarily the result of the deferment of several projects including a Native Title ADR project and the acquisition of new computers and printers.

There have been major adjustments to the Court's annual recurrent funding for 2010–11, including the removal of depreciation funding, reduced funding for judicial officers and increased funding to cover rent increases. These changes have by and large been met by corresponding adjustments to projected expenditure for 2010–11. The carry forward of the projects deferred in 2009–10 and salary increases mean that the Court is budgeting for a small deficit of \$628,000 in 2010–11.



CHAPTER 3

The work of the Court in 2009–2010



3.1 INTRODUCTION

The Federal Court has one key outcome identified for its work, which is, through its jurisdiction, to apply and uphold the rule of law to deliver remedies and enforce rights and, in so doing, contribute to the social and economic development and wellbeing of all Australians.

This chapter reports on the Court's performance against this objective. In particular, it reports extensively on the Court's workload during the year, as well as its management of cases and performance against its stated workload goals. The chapter also reports on aspects of the work undertaken by the Court to improve access to the Court for its users, including changes to its practices and procedures. Information about the Court's work with overseas courts is also covered.

3.2 MANAGEMENT OF CASES AND DECIDING DISPUTES

The following examines the Court's jurisdiction, management of cases, workload and use of assisted dispute resolution.

The Court's jurisdiction

The Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary and indictable criminal matters. It also has jurisdiction to hear and determine any matter arising under the Constitution.

Central to the Court's civil jurisdiction is s 39B(1A)(c) of the *Judiciary Act 1903*. This jurisdiction includes cases created by federal statute, and extends to matters in which a federal issue is properly raised as part of a claim or of a defence and to matters where the subject matter in dispute owes its existence to a federal statute.

Cases arising under Part IV (restrictive trade practices) and Part V (consumer protection) of the *Trade Practices Act 1974* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. See Figure 6.8 on page 125 for comparative statistics regarding consumer protection matters. In late 2009 the Court was given jurisdiction in relation to the new indictable offences for serious cartel conduct.

The Court also has jurisdiction under the *Judiciary Act* to hear applications for judicial review of decisions by officers of the Commonwealth. Many cases also arise under the *Administrative Decisions (Judicial Review) Act 1977*, which provides for judicial review of most administrative decisions made under Commonwealth enactments on grounds relating to the legality, rather than the merits, of the decision. The Court also hears appeals on questions of law from the Administrative Appeals Tribunal.

The Court hears taxation matters on appeal from the Administrative Appeals Tribunal. It also exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation. Figure 6.13 on page 130 shows the taxation matters filed over the last five years.

The Court shares first instance jurisdiction with the Supreme Courts of the States and Territories in the complex area of intellectual property (copyright, patents, trademarks and designs). All appeals in these cases, including appeals from the Supreme Courts, are to a Full Federal Court. Figure 6.14 on page 131 shows the intellectual property matters filed over the last five years.

A significant part of the Court's jurisdiction derives from the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications, revised native

title determination applications, compensation applications, claim registration applications, applications to remove agreements from the Register of Indigenous Land Use Agreements and applications about the transfer of records. The Court also hears appeals from the National Native Title Tribunal (NNTT) and matters filed under the Administrative Decisions (Judicial Review) Act involving native title. The Court's native title jurisdiction is discussed on page 31. Figure 6.11 on page 128 shows native title matters filed over the last five years.

Another important part of the Court's jurisdiction derives from the *Admiralty Act 1988*. The Court has concurrent jurisdiction with the Supreme Courts of the States and Territories to hear maritime claims under this Act. Ships coming into Australian waters may be arrested for the purpose of providing security for money claimed from ship owners and operators. If security is not provided, a judge may order the sale of the ship to provide funds to pay the claims. During the reporting year the Court's Admiralty Marshals made fourteen arrests. See Figure 6.10 on page 127 for a comparison of Admiralty Act matters filed in the past five years.

The Court's jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* covers a diversity of matters ranging from the appointment of provisional liquidators and the winding up of companies, to applications for orders in relation to fundraising, corporate management and misconduct by company officers. The jurisdiction is exercised concurrently with the Supreme Courts of the States and Territories. See Figure 6.7 on page 124 for a comparison of corporations matters filed in the last five years.

The Court exercises jurisdiction under the *Bankruptcy Act 1966*. It has power to make sequestration (bankruptcy) orders against persons who have committed acts of bankruptcy and to grant bankruptcy discharges and annulments. The Court's jurisdiction includes matters arising from the administration of bankrupt estates. See Figure 6.6 on page 123 for a comparison of bankruptcy matters filed in the last five years.

The Court has jurisdiction under the *Fair Work Act 2009*, *Fair Work (Registered Organisations) Act 2009* and related industrial legislation (including matters to be determined under the *Workplace Relations Act 1996* in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*). Workplace relations and Fair Work matters filed over the last five years are shown in Figure 6.12 on page 129.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court, and from the Federal Magistrates Court in non-family law matters. In recent years a significant component of its appellate work has involved appeals from the Federal Magistrates Court concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in this Chapter on page 30. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's appellate jurisdiction is discussed on page 29. Figure 6.15 on page 132 shows the appeals filed in the Court since 2004–05.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction are listed in Appendix 5 on page 111.

Changes to the Court's jurisdiction in 2009–10

The Court's jurisdiction during the year was enlarged or otherwise affected by several statutes including:

- *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009* (which included amendments to expand the Court's jurisdiction under the *International Arbitration Act 1974*)
- *National Consumer Credit Protection Act 2009*
- *Personal Property Securities Act 2009*

- *Freedom of Information (Removal of Conclusion Certificates and Other Measures) Act 2009*
- *Resale Royalty Rights for Visual Artists Act 2009*

The *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009* amended the *Trade Practices Act 1974* to create new indictable offences for cartel conduct that may be dealt with in the Federal Court or the Supreme Court of a State and Territory.

Amendments to the Federal Court of Australia Act

During the reporting year the Federal Court of Australia Act was amended by several statutes.

The *Federal Court of Australia Amendment (Criminal Jurisdiction) Act 2009* amended the Federal Court of Australia Act, Judiciary Act and other legislation to facilitate the exercise of the new indictable jurisdiction by the Court. The amendments to the Federal Court of Australia Act included the insertion of new provisions in relation to indictments, pre-trial issues, bail, juries, pleas, trials, verdicts and criminal appeals.

The *Access to Justice (Civil Litigation Reforms) Amendment Act 2009* inserted new provisions to:

- enhance the Court's capacity to actively manage the conduct of proceedings, including appeals, that come before it
- streamline the appeals process by removing inconsistencies that existed in the provisions dealing with how appeals may be brought to and from the Federal Court
- explain that the overarching purpose of the civil practice and procedure provisions in the Act are to facilitate the just resolution of disputes:
 - (a) according to law
 - (b) as quickly, inexpensively and efficiently as possible.

The *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009* included amendments to:

- empower the Court to make rules to refer matters to a referee for report
- allow a single judge to make any interlocutory order in the appellate jurisdiction pending the determination of an appeal to the Full Court
- allow a single judge to make any interlocutory order in the original jurisdiction of the Court in any proceeding that must be heard and determined by a Full Court.

The *Trans-Tasman Proceedings Act 2010* and the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010* will implement the *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* signed on 24 July 2008. Part IIIA of the Federal Court of Australia Act, which deals with the conduct of Trans Tasman proceedings brought under the Trade Practice Act, will be omitted once the substantive provisions of the new Acts commence.

As mentioned in last year's annual report, the Fair Work (Transitional Provisions and Consequential Amendments) Act, which amended the Federal Court of Australia Act to create a General Division and a Fair Work Division, commenced on 1 July 2009.

Amendments to the Federal Court of Australia Regulations

On 1 July 2009 the Regulations were amended to introduce a reduced fee for certain applications under the Fair Work Act.

In August 2009 the Regulations were amended to replace references to the Human Rights and Equal Opportunity Commission and the *Human Rights and Equal Opportunity Commission Act 1986* with references to the Australian Human Rights Commission and the *Australian Human Rights Commission Act 1986* respectively.

In December 2009 the Regulations were amended to provide for the payment of an allowance to those who are summonsed for jury service and to those who are selected as jurors.

In June 2010 the Regulations were amended to increase the quantum of the filing and other fees set out in Schedule 1 of the Regulations, insert a new fee for commencing a proceeding under the *Bankruptcy Act 1966* and introduce a system of tiered hearing fees whereby the daily fee increases depending on the length of the trial. These amendments commenced on 1 July 2010.

Federal Court Rules and Practice Notes

The judges are responsible for making the Rules of Court under the Federal Court of Australia Act. The Rules provide the procedural framework within which matters are commenced and conducted in the Court. The Rules of Court are made as Commonwealth Statutory Rules.

The Rules are kept under review. New and amending rules are made to ensure that the Court's procedures are current and responsive to the needs of modern litigation. They also provide the framework for new jurisdiction conferred upon the Court. A review of the Rules is often undertaken as a consequence of changes to the Court's practice and procedure described elsewhere in this report. Where appropriate, proposed amendments are discussed with the Law Council of Australia and other relevant organisations.

During the reporting year, a number of amendments were made to the Rules. These included amendments to:

- Order 1 rule 5AC to provide that a party who has filed an affidavit by electronic communication by sending an image of the affidavit pursuant to Order 1 subrules 5AC(2) and (5) must produce the original of the affidavit to the Court if directed to do so, and to omit subrule (5A) so that subpoenas lodged electronically are dealt with in the same manner as other court documents lodged electronically.
- Orders 1, 4, 15, 22, 42 and 49 to clarify that a reference to a 'directions hearing' for the purposes of the computation of time within which acts must be done is a reference to the hearing date appointed in a document commencing a proceeding in the Court's original jurisdiction.
- Order 7 subrule 11(3) to provide for how service may be effected on a party who, having originally appeared by a solicitor, parts company with the solicitor and fails to file a new address for service, and to insert a new Order 45 rule 7A setting out the information to be included in a new address for service.
- Order 13 rules 2 and 3 that deal with the amendment of court documents and pleadings.
- Order 35 subrule 7(2) to make it clear that the Court may set aside an order that an application in the appellate jurisdiction be dismissed for failure of the applicant to attend a hearing relating to the application.

- Order 35 rules 7A and 8 to adopt the harmonised rules on interest rates on judgment as recommended by the Discount and Interest Rate Harmonisation Committee of the Council of Chief Justices.
- Order 37 rule 9 and Schedule 1 to prescribe a form for a warrant of committal in relation to a contempt and a form for a warrant of committal for an offence.
- Order 46 rule 7A to allow a Registrar, when determining whether a document appears to be an abuse of process of the Court or to be frivolous or vexatious, to have regard to the document and to any documents submitted for filing with the document or referred to in the document or any accompanying documents.
- Order 52 to prescribe the procedure and forms by which an appeal or related application (such as an application for leave to appeal or an application for an extension of time to appeal) may be discontinued.
- Order 80 rules 9 and 10 to provide that the Court may make a costs order entitling a pro bono practitioner representing a successful party to recover from the losing party the practitioner's fees and disbursements reasonably incurred.
- Schedule 2 to adjust the quantum of prescribed costs.

Amendments were also made:

- to insert a new Order 68, which deals with applications under the *International Arbitration Act 1974*, and a new Order 72A, which deals with the referral of all, or part, of a proceeding to a referee for report, consequential upon the enactment of the *Federal Justice System Amendment (Efficiency Measures) Act (No 1) 2009*
- to replace each reference to the Human Rights and Equal Opportunity Commission and the *Human Rights and Equal Opportunity Commission Act 1986* with a reference to the Australian Human Rights Commission and the *Australian Human Rights Commission Act 1986* respectively
- consequential upon changes made to the Migration Act by the *Migration Legislation Amendment Act (No 2) 2008*
- consequential upon the amendments made to the Federal Court of Australia Act by the *Access to Justice (Civil Litigation Reforms) Amendment Act 2009*.

Rule 15A.5 and Form 19 of the Federal Court (Corporations) Rules 2000 were amended in light of articles 19 and 21 of the Model Law on Cross-Border Insolvency of the United Nations Commission on International Trade Law which operates in Australia pursuant to the *Cross-Border Insolvency Act 2009* (Cth). These amendments were in accordance with the recommendations of the Council of Chief Justices' Harmonised Corporations Rules Monitoring Committee.

Practice Notes supplement the procedures set out in the Rules of Court. The Judges' National Practice Committee reviewed the use of Practice Notes, Practice Directions and national and local Notices to Litigants and Practitioners in the Court during the reporting period and recommended that only two forms of practice documents be issued by the Court:

- (a) Practice Notes issued by the Chief Justice upon the advice of the judges of the Court and
- (b) Local Administrative Notices issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notices relate.

Pursuant to this decision, on 25 September 2009 the Chief Justice replaced the existing practice notes, practice directions and national notices to litigants and practitioners with new Practice Notes. On the same date, the District Registrars replaced their local notices to litigants and practitioners with new Administrative Notices.

The Chief Justice subsequently issued the following new or revised practice notes:

- A revised Practice Note CM 9 - Freezing orders aka 'Mareva Orders'
- A revised Practice Note CM 11 - Search orders aka 'Anton Pillar Orders'
- A revised Practice Note IP 1 - Proceedings under the *Patents Act 1990* (Cth) [commenced on 1 July 2010]
- A new Practice Note ARB 1 - Proceedings under the *International Arbitration Act 1974*
- A new Practice Note CM 16 - Pre-judgment Interest [commenced on 5 July 2010]
- A new Practice Note CM 17 - Representative Proceedings Commenced under Part IVA of the Federal Court of Australia Act [commenced on 5 July 2010].

Practice Notes and Administrative Notices are available through District Registries and on the Court's website. They are also available in loose-leaf legal services.

Workload of the Federal Court and Federal Magistrates Court

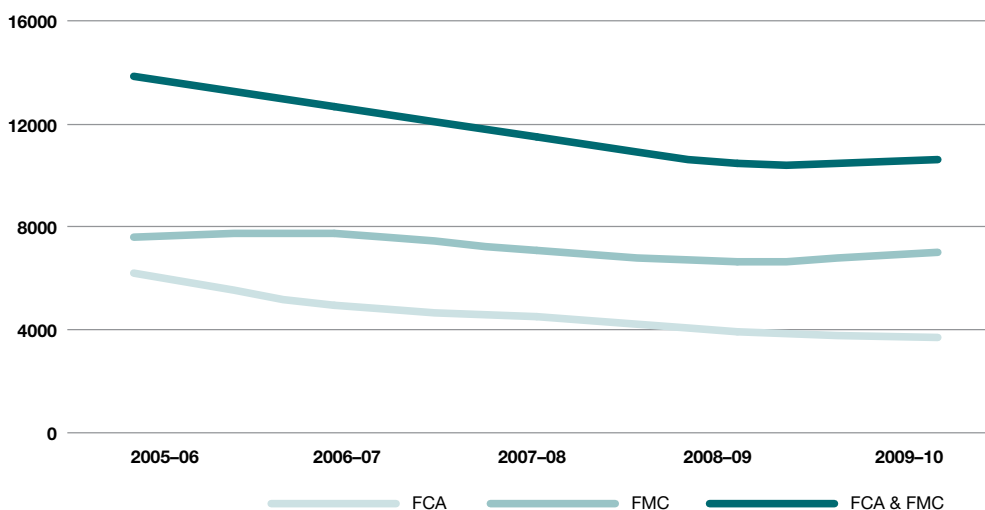
The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law including bankruptcy, human rights, workplace relations and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general federal law jurisdiction.

Figure 3.1 below shows a decline in the combined filings of the two courts between 2005–06 and 2008–09. As noted in Chapter 2, and evident from figure 3.1, the combined workload increased slightly in the last financial year. The 2010 calendar year filings to date indicate that this increase is continuing.

In 2009–10, a total of 10,550 matters were filed in the two courts. In 1999–2000 there were 6,276 filings in the two courts. The overall growth in the number of filings since 2000 has had a considerable impact on the Federal Court's registries, which process the documents filed for both courts and provide the administrative support for each matter to be heard and determined by the relevant Court.

Figure 3.1 - Filings to 30 June 2010

Federal Court of Australia (FCA) and Federal Magistrates Court (FMC)



Case flow management of the Court's jurisdiction

The Court has adopted as one of its key case flow management principles the establishment of time goals for the disposition of cases and the delivery of reserved judgments. The time goals are supported by the careful management of cases through the Court's Individual Docket System, and the implementation of practices and procedures designed to assist with the efficient disposition of cases according to law.

Under the Individual Docket System, a matter will usually stay with the same judge from commencement until disposition. This means a judge has greater familiarity with each case and leads to the more efficient management of the proceeding.

Disposition of matters other than native title

In 1999–2000 the Court set a goal of eighteen months from commencement as the period within which it should dispose of at least eighty-five per cent of its cases (excluding native title cases). The time goal was set having regard to the growing number of long, complex and difficult cases, the impact of native title cases on the Court's workload, and a decrease in the number of less complex matters. It is reviewed regularly by the Court in relation to workload and available resources. The Court's ability to continue to meet its disposition targets is dependent upon the timely replacement of judges.

Notwithstanding the time goal, the Court expects that most cases will be disposed of well within the eighteen month period, with only particularly large and/or difficult cases requiring more time. Indeed, many cases are urgent and need to be disposed of quickly after commencement. The Court's practice and procedure facilitates early disposition when necessary.

During the five year period from 1 July 2005 to 30 June 2010, ninety-one per cent of cases (excluding native title matters) were completed in less than eighteen months, eighty-five per cent in less than twelve months and seventy-one per cent in less than six months (see Figure 6.4 on page 121). Figure 6.5 on page 122 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2009–10, eighty-eight per cent of cases were completed within eighteen months.

Delivery of judgments

In the reporting period, 1,748 judgments were delivered. Of these, 184 judgments were delivered in Full Court appeals and 1,564 in cases heard by single judges (both appeals and first instance cases). These figures include both written judgments and judgments delivered orally on the day of the hearing, immediately after the completion of evidence and submissions.

The nature of the Court's workload means that a substantial proportion of the matters coming before the Court will go to trial and the decision of the trial judge will be reserved at the conclusion of the trial. The judgment is delivered at a later date and is often referred to as a 'reserved judgment'. The nature of the Court's appellate work also means a substantial proportion of appeals require reserved judgments.

Appendix 8 on page 138 includes a summary of decisions of interest delivered during the year and illustrates the Court's varied jurisdiction.

The workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 2,949 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 6.2 on page 116.

Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

- *Judiciary Act 1903*, section 44
- Cross-vesting Scheme Acts
- *Corporations Act 2001*
- *Federal Magistrates Act 1999*

During the reporting year, twenty nine matters were remitted or transferred to the Court:

- two from the High Court
- nine from the Federal Magistrates Court
- seven from the Supreme Courts
- eleven from other courts

Matters may be transferred from the Court under:

- *Federal Court of Australia (Consequential Provisions) Act 1976*
- *Jurisdiction of Courts (Cross-vesting) Act 1987*
- *Administrative Decisions (Judicial Review) Act 1977*
- *Bankruptcy Act 1966*
- *Trade Practices Act 1974*
- *Corporations Act 2001*
- *Administrative Appeals Tribunal Act 1975*

During 2009–10, twenty three matters were transferred from the Court:

- nineteen to the Federal Magistrates Court
- three to the Supreme Courts
- one to the Administrative Appeals Tribunal

Matters completed

Table 6.2 on page 116 shows a comparison of the number of matters commenced in the Court's original jurisdiction and the number completed. The number of matters completed during the reporting year was 2,758 against 3,197 in the previous reporting year.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2,494 (see Table 6.2), compared with 2,303 in 2008–09.

Age of pending workload

The comparative age of matters pending in the Court's original jurisdiction (against all major causes of action, other than native title matters) at 30 June 2010 is set out in Table 3.1 below.

Native title matters are not included in Table 3.1 because of their complexity, the role of the National Native Title Tribunal and the need to acknowledge regional priorities. The age of pending native title matters is set out in Table 3.4 on page 33.

Table 3.1 – Age of current matters

(excluding appeals and related actions and native title matters)

Age at 30 June 2010	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub-Total
Cause of Action						
Administrative Law	62	32	3	5	10	112
Admiralty	18	19	10	10	11	68
Bankruptcy	22	30	7	2	10	71
Competition Law	12	8	5	5	5	35
Trade Practices	97	72	23	28	49	269
Corporations	492	98	37	31	66	724
Human Rights	23	12	4	5	2	46
Workplace Relations	9	16	17	3	6	51
Intellectual Property	75	40	32	14	57	218
Migration	5	1	0	0	4	10
Miscellaneous	24	12	8	7	4	55
Taxation	39	92	25	4	145	305
Fair Work	50	20	0	0	0	70
Total	928	452	171	114	369	2034
% of Total	45.6%	22.2%	8.4%	5.6%	18.1%	100.0%
Running Total	928	1380	1551	1665	2034	
Running %	45.6%	67.8%	76.3%	81.9%	100.0%	

Table 3.1 shows that at 30 June 2010 there were 483 matters over 18 months old compared with 596 in 2009 (not including native title matters). Taxation and corporations make up a high proportion of the matters over twenty-four months old.

The Court will continue to focus on reducing its pending caseload and the number of matters over 18 months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 6 to this report commencing on page 114.

The Court's appellate jurisdiction

The *Access to Justice (Civil Litigation Reforms) Amendment Act 2009* (Cth) ('the Act') amended the Federal Court of Australia Act in relation to the Court's original and appellate jurisdiction. The amendments will streamline and clarify appeal pathways and provide the Court with greater flexibility in dealing with appeals and related applications and some other Full Court matters. The Act also inserted provisions into the Federal Court Act that specified the types of appeals that may be heard by the High Court of Australia from judgments of the Federal Court. The amendments commenced on 1 January 2010.

The appellate workload of the Court constitutes a significant part of the Court's overall workload.

While most of the appeals arise from decisions of single judges of the Court or the Federal Magistrates Court, some are in relation to decisions by State and Territory courts exercising certain federal jurisdiction.

The number of appellate proceedings commenced in the Court is dependent on many factors including the number of first instance matters disposed of in a reporting year, the nature of matters filed in the Court, and whether the jurisdiction of the Court is enhanced or reduced by legislative changes or decisions of the High Court of Australia on the constitutionality of legislation.

Subject to s25(1), (1AA) and (5) of the Federal Court Act, appeals from the Federal Magistrates Court, and courts of summary jurisdiction exercising federal jurisdiction, may be heard by a Full Court of the Federal Court or by a single judge in certain circumstances. All other appeals must be heard by a Full Court, which is usually constituted by three, and sometimes five, judges.

Towards the end of each calendar year, the Court publishes details of the four scheduled Full Court sitting periods to be held in February, May, August and November of the following year. Each sitting period is up to four weeks in duration. In the 2010 calendar year, Full Court sitting periods have been scheduled for Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, Hobart and Darwin. Once an appeal is ready to be heard, it can usually be listed for the next scheduled Full Court sittings in the capital city where the matter was heard at first instance.

When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court which may, if necessary and appropriate, use video conferencing facilities or hear the appeal in a capital city other than that in which the case was originally heard. During the reporting year there was an increase in the need to convene a Full Court to enable the early disposition of urgent appeals. Special sittings of the Full Court were arranged on fifteen occasions in 2009–10 compared with eight occasions in the previous year.

The appellate workload

During the reporting year 860 appellate proceedings were filed in the Court. They include appeals and related actions (693), cross-appeals (15) or interlocutory applications made by notice of motion such as applications for security for costs in relation to an appeal, for a stay of an appeal, to vary or set aside orders or various other applications (152).

The Federal Magistrates Court is a significant source of appellate work accounting for sixty one per cent (527) of the total number of appeals and related actions, cross-appeals and other appellate motions filed in 2009–10. The majority of these proceedings continue to be heard and determined by single judges exercising the Court's appellate jurisdiction. Further information on the source of appeals and related actions is set out in Figure 6.16 on page 133.

The above figures indicate a decrease of nineteen per cent in the Court's appellate workload in 2009–10 (860) compared with 2008–09 (1,067). The majority of the decrease reflects a further decline in migration appeals.

In the reporting year 927 appeals, cross-appeals and related actions were finalised, including 157 interlocutory applications made by notice of motion.

At 30 June 2010, 369 appeals, cross-appeals and related actions were current including sixty-nine interlocutory applications made by notice of motion. The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2010 is set out in Table 3.2 below.

At 30 June 2010 there were twenty-five appeals, cross-appeals, related actions or applications that are eighteen months or older. These matters involve a number of related native title proceedings that require further consideration of the final orders to be made or where a negotiated outcome is being pursued and proceedings in other jurisdictions that have been stayed or are presently under consideration by the Court. The age of these cases generally reflects the nature and complexity.

Table 3.2 – Age of current appeals and related actions

(including notices of motion and cross appeals)

Current Age	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Appeals & Related Actions	251	58	35	15	10	369
% of Total	66.6%	15.4%	9.3%	4.5%	4.2%	100.0%

Managing migration appeals

In 2009–10, 392 appellate proceedings were commenced in the Court concerning decisions under the Migration Act compared with 530 in 2008–09. Migration matters in the current reporting year accounted for forty six per cent of the Court’s overall appellate workload.

In 2009–10 fourteen migration cases filed in the Court’s appellate jurisdiction related to judgments of single judges of the Court exercising the Court’s original jurisdiction and 378 migration cases related to judgments of the Federal Magistrates Court.

Table 3.3 below shows the number of appeals involving the Migration Act as a proportion of the Court’s overall appellate workload since 2005–06. The Court continues to apply a number of procedures to streamline the preparation and conduct of these appeals and applications and to facilitate the expeditious management of the migration workload.

Initially, the Court applies systems to assist with identifying matters raising similar issues and where there is a history of previous litigation. This process allows for similar cases to be managed together resulting in more timely and efficient disposal of matters. Then, all migration related appellate proceedings (whether to be heard by a single judge or by a Full Court) are listed for hearing in the next scheduled Full Court sitting period. Fixing migration related appellate proceedings for hearing in the four scheduled Full Court sitting periods has provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same sitting period.

Where any migration related appellate proceeding requires an expedited hearing, the matter is allocated to a docket judge or duty judge (in accordance with local practice) or referred to a specially convened Full Court.

Table 3.3 - Appellate proceedings concerning decisions under the Migration Act as a proportion of all appellate proceedings (including notices of motion and cross appeals)

Appellate Proceedings	2005-06	2006-07	2007-08	2008-09	2009-10
Migration Jurisdiction	1,053	1,092	1,020	530	392
%	79%	72%	67%	50%	46%
Total Appellate Proceedings	1,331	1,520	1,526	1,067	859

Information about the Court's time goal for the disposition of migration appeals can be found in Chapter 2 at page 16.

The Court's native title jurisdiction

The *Native Title Act 1993* (Cth) (NTA), which confers jurisdiction on the Court to decide applications for the recognition of native title and various other proceedings in relation to native title, has been subject to various amendments since 1998. During the reporting year it was further amended when the *Native Title Amendment Act 2009* (Cth) came into force on 18 September 2009. As noted in Chapter 2, the amendments were significant in a number of respects. Amongst other things they empowered the Court to:

- refer a matter to a mediator, other than the National Native Title Tribunal or Court registrar
- make orders to give effect to the terms of an agreement between the parties that are about matters other than native title, whether or not a determination of native title is made
- make such orders where only some of the parties are in agreement as to the orders which are sought.

The Court recognises the significance of the amendments along with the challenges and opportunities they present. The amendments to the Act give clear responsibility to the Court for managing all aspects of native title proceedings, including, as noted, the opportunity to refer a matter to mediation before a person or body other than the National Native Title Tribunal (NNTT) or a Registrar of the Court. The Court's Native Title Practice Committee met on many occasions throughout the reporting period to focus on the amendments and put in place a number of improvements to practice to ensure – to the extent that it can – that resolution of native title cases can be achieved more easily and delivered in a more timely, effective and efficient fashion.

An important area of focus was the process to be used to identify, select and appoint appropriate mediators. Expressions of interest were sought from suitably qualified mediators so that a list of names could be compiled and made available to the Court and the parties to refer to when considering the reference of a matter or part of a matter to a mediator (other than a member of the Tribunal or a Registrar).

A list of over seventy mediators has been developed and published on the Court's website. The mediators have been advised that their inclusion on the list does not amount to an endorsement of their skills and capacity as a mediator, nor does it create a contract between the mediator and the Court. Rather the list is to be used by the Court and the parties as a resource and appointments will be made on a case by case basis.

Information about the Court's work to review all current native title matters and develop a priority list of cases can be found in Chapter 2 at page 14.

National allocation

Upon filing native title matters are allocated to the relevant Native Title List Judge for a particular region. All matters in mediation with the NNTT are generally allocated to a Native Title List Judge who reviews them from time to time and receives reports from the Tribunal about the progress of mediation. Where the case requires the hearing of a substantive issue, or where mediation has been terminated and the matter requires a hearing, it may be allocated to a trial judge to manage the matter through to hearing.

Between 1999 and 30 June 2010, a total of 402 native title matters have been substantively allocated. The majority of these have been resolved or dismissed. Some matters were re-allocated to the relevant Native Title List Judge for the region when it became clear they were not ready for hearing. Forty four matters remain in the substantive list and are allocated to twelve judges with the majority of these proceeding to a hearing.

User group meetings

The Court continues to meet with its users and to be informed and assisted by their feedback. Many user group meetings were held during the reporting period to consider the 2009 amendments. In particular various local committees were formed to identify improvements to practice. These forums and committees were convened under the leadership of the respective Native Title List Judges.

In summary, the forums have assisted the Court to:

- consider the powers and procedures available to the Court to ensure the resolution of native title matters in as timely, effective and efficient a manner as possible
- inform ‘stakeholders’ that the Court is able to apply a variety of mechanisms to expedite resolutions
- elicit a more flexible approach from those involved in the assessment of connection evidence to the extent of evidence or material necessary to advance consent determinations.

Case management strategies

As with other litigation in the Court, native title cases continue to be subject to intensive case management and there is extensive judicial involvement in the supervision and monitoring of a case in progress. The Court encourages innovative approaches to settling a native title claim and uses a number of different mechanisms to progress matters, including:

- making orders requiring a high level of specificity in the timetabling of mediation
- the use of case management and regional case management conferences
- referral of a matter or specific issue to mediation
- the appointment of Court experts and/or the convening of conferences of experts
- early evidence hearings to inform future mediation.

The native title workload

During the reporting year, the Court made nine determinations in respect of the existence of native title. One of these was made after contested hearings and eight were achieved through mediation and negotiation.

At 30 June 2010 there were 460 current native title cases.

Table 3.4 – Age of current native title matters

Age at 30 June 2009	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub-Total
Native Title Action	18	14	6	17	405	460
% of Total	3.9%	3.0%	1.3%	3.7%	88.0%	100.0%
Running Total	18	32	38	55	460	
Running %	3.9%	7.0%	8.3%	12.0%	100.0%	

Figure 6.11 on page 128 provides more information on native title act filings.

Assisted Dispute Resolution (ADR)

New ADR statistics

The Court has a longstanding commitment to deliver effective and responsive ADR services. During the reporting year the Court expanded its collection of ADR statistics with a view to developing a comprehensive and comparative collection of statistics concerning ADR connected with Court proceedings.

The statistics have been compiled in the Court's registries directly from manual records and depend on the accuracy of the records kept by the individual registry. For the purpose of this reporting period the following statistics cover both judge referrals to mediation and the mediations actually undertaken by the Court's registrars. In order to give a sense of the volume of mediation referrals and mediation conferences as a proportion of the Court's workload, a comparison to the filings in the Court has been used. This comparison can only be a guide because matters may not be referred to mediation in the same reporting period as the actions were filed. As well, the number of matters referred to mediation will generally not equal the number of mediations completed as matters may be referred and mediated in different reporting periods.

Referrals to ADR and mediation

The ADR options currently available to the Court under the Federal Court of Australia Act (the Act) and Federal Court Rules (the Rules), supplemented by established case management practices of the Court include:

- mediation
- arbitration
- Early Neutral Evaluation (ENE)
- experts conferences
- Court appointed experts
- case management conferences

Mediation continues to be the most frequently used ADR referral made by judges. During the reporting period the data collected by the Court generally only includes referrals to a registrar of the Court rather than referrals to external mediators. In addition, the data collected does not always record the number of ADR activities undertaken as part of the Court's general case management for some of the reasons which follow. For example, some judges regularly order that the parties' experts confer to attempt to maximise agreement on the issues, material to be

considered, or the method to be followed, but may not order that process to occur under the supervision of a Registrar i.e. as a conference of experts. Other judges may regularly refer matters to mediation, leaving it for the parties to agree the mediator. These external referrals might not always be recorded and counted in the Court’s statistics. Further, parties may undertake ADR processes in matters before the Court without seeking an order in relation to those processes, e.g. the parties may attend private mediation. In these circumstances the Court does not record the fact that the matter has been mediated or the outcome of the mediation.

Table 3.5 below shows the total ADR referrals for 2009–10 by type.

Table 3.5 - ADR referrals in 2009–10 by Type

Referral type	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Mediation	98	274	61	18	3	13	6	3	476
Arbitration	0	0	0	0	0	0	0	0	0
ENE	0	0	0	0	0	0	0	0	0
Conference of experts	0	1	0	0	0	0	0	0	1
Court appointed expert	0	0	0	0	0	0	0	0	0
Referee	0	0	0	0	0	0	0	0	0
Total	98	275	61	18	3	13	6	3	477

Table 3.6 shows the referrals to mediation by registry and matter type. The figures suggest that intellectual property and consumer protection matters are the most frequently referred matter types nationally (although this is not necessarily replicated in every state/territory – see corporations matters in South Australia).

Table 3.6 - Mediation referrals in 2009–10 by Cause of Action (COA) and State

Referral type	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Admiralty	7	2	5	0	0	0	0	0	14
Corporations	8	40	13	2	3	6	3	0	75
Costs	4	7	0	0	0	0	0	0	11
Full Court Appeals	0	0	3	0	0	0	0	0	3
Human Rights	2	30	2	1	0	0	0	0	35
Industrial	3	73	2	0	0	0	0	0	78
Intellectual Property	24	59	2	4	0	1	0	0	90
Migration	0	0	0	0	0	0	0	0	0
Native Title	1	2	6	3	0	1	0	0	13
Non Panel	8	4	28	2	0	2	3	3	50
Trade Practices (Competition)	2	0	0	0	0	0	0	0	2
Tax	1	3	0	0	0	3	0	0	7
Trade Practices (consumer protection)	38	54	0	6	0	0	0	0	98
Total	98	274	61	18	3	13	6	3	476

Table 3.7 below shows referrals to mediation as a percentage of total filings for each of the last ten reporting years. The percentage of referrals has almost tripled over that period. Total filings may not, however, give the clearest representation of the rate of referral to mediation. It is generally considered that within the scope of the Court's jurisdiction there is no limit to the type of cases that may be referred to ADR. However, there are categories of cases where it could be said that as a general rule, ADR may not be appropriate. These include migration appeals, administrative law matters and company winding up applications dealt with by registrars.

Table 3.7 - Mediation referrals as a proportion of total filings by financial year

	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10
Referrals	286	279	270	326	321	342	332	379	522	476
Total filings	5394	4528	4846	6020	4517	6157	4925	4430	3864	3642
Proportion (%)	5%	6%	6%	5%	7%	6%	7%	9%	14%	13%

Table 3.8 shows both the total matters filed and the number of filings once matters not commonly referred to mediation are excluded. While figures vary, filings of matter types commonly considered for referral make up fifty-five per cent of total filings nationally.

Table 3.8 - Total filings and suitable filings (excluding non-mediation COAs, e.g. migration)

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Suitable filings	995	528	173	165	5	119	7	26	2018
Total filings	1637	976	314	411	11	202	37	54	3642
Proportion (%)	61%	54%	55%	40%	45%	59%	19%	48%	55%

When the filings commonly considered for referral are used to ascertain the rate of referral to mediation, the percentage of matters referred by judges to mediation nationally in the reporting year was twenty-four per cent (see Table 3.9). The real figure may be even higher as some registries only record referrals to mediation when the parties request that the mediation be conducted by a registrar. Further, not all parties seek a referral to mediation if they intend to use a private mediator, which means that the percentage of applicable matters that have some form of ADR process applied is likely to be considerably higher than twenty-four per cent. In the following tables the term 'suitable filings' is used to refer to matters commonly considered for referral.

Table 3.9 - Mediation referrals as a proportion of suitable filings, by State

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Total referrals	98	274	61	18	3	13	6	3	476
Proportion (%)	10%	52%	35%	11%	60%	11%	86%	12%	24%

Table 3.10 shows a breakdown of mediation referrals to Federal Court registrars (internal referrals) and external mediators (external referrals) by matter type. Internal and external referrals to mediation are presented as percentages of suitable matters in Table 3.11.

Table 3.10 - Internal and external mediation referrals by COA

	Internal	External
Admiralty	14	0
Corporations	75	0
Costs	11	0
Full Court appeals	3	0
Human Rights	35	0
Industrial	78	0
Intellectual Property	87	3
Migration	0	0
Native Title	13	0
Non Panel	50	0
Trade Practices (Competition)	0	2
Tax	7	0
Trade Practices (Consumer protection)	95	3
Total	468	8

Table 3.11 - Internal and external mediation referrals as a proportion of suitable filings

	Internal	External
Total referrals	468	8
Suitable filings	2018	2018
Percentage	23%	1%

Mediations held in the reporting period

Table 3.12 shows the outcomes of mediations conducted by Federal Court registrars by matter type. The percentage of these matters that are resolved either in full, or in part, is also shown. The overall percentage of matters referred to mediation by a registrar that are resolved either in full, or in part, is fifty-seven per cent.

It should be noted that the number of matters referred by judges to mediation in the reporting year (476) differs from the number of mediations convened by registrars of the Court. This reflects the fact that matters referred to mediation in one reporting year may not be mediated until the following reporting year. It may also differ because some referrals to mediation are conducted by private mediators and may not be recorded.

Table 3.12 - Mediation outcomes by COA in 2009-10

OUTCOMES BY COA	Resolved	Resolved in part	Not Resolved	Total	Proportion resolved/ in part (%)
Admiralty	11	1	2	14	86%
Corporations	32	3	25	60	58%
Costs	8	3	2	13	85%
Full Court Appeals	2	2	1	5	80%
Human Rights	12	0	17	29	41%
Industrial	33	3	35	71	51%
Intellectual	43	4	29	76	62%
Migration	0	0	0	0	0%
Native Title	0	0	0	0	0%
Non Panel	19	1	8	28	71%
Trade Practices (Competition)	0	0	0	0	0%
Tax	3	0	2	5	60%
Trade Practices (Consumer protection)	30	5	38	73	48%
Total	193	22	159	374	57%

Table 3.13 shows the outcome of mediated matters by state and the percentage of mediated matters resolved either in full or partially.

Table 3.13 - Mediation outcomes by State

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	Total
Resolved	36	119	22	5	1	6	4	0	193
Resolved in part	7	11	2	1	1	0	0	0	22
Not resolved	35	101	12	2	1	1	6	1	159
Total	78	231	36	8	3	7	10	1	374
Proportion resolved/ in part (%)	55%	56%	67%	75%	67%	86%	40%	0%	57%

The Court's case management system, Casetrack, separately records each time a matter is listed for mediation. So, if mediation in a matter occurs over a number of days, each day will be recorded in Casetrack. For the purposes of reporting, the Court's registries record only the number of concluded mediations, regardless of whether a matter is mediated over one, or a number of days. Table 3.14 compares the Casetrack statistics of 583 mediation events with the 374 mediations recorded by the registries. The difference indicates that in many matters mediations occurred over more than one day.

Table 3.14 - Casetrack and Registry recorded mediation events, by matter type

	Registry	Casetrack
Admiralty	14	16
Corporations	60	96
Costs	13	0
Full Court Appeals	5	6
Human Rights	29	29
Industrial	71	105
Intellectual Property	76	106
Migration	0	0
Native Title	0	0
Non Panel	28	110
Trade Practices (Competition)	0	0
Tax	5	4
Trade Practices (Consumer protection)	73	111
Total	374	583

While the Court will continue to look at how it could provide more statistics concerning ADR (particularly external referrals), there are limits on the capacity of Casetrack to be modified to collect these statistics at this time. Processes to collect new statistics will be considered in any future reviews of Casetrack. More detailed collection at this stage would require manual processes and would be very time consuming and expensive to implement.

The Court's registrar mediators continued to assist in the delivery of the Court's mediation programs for courts in the Pacific. More information on this project is contained in the section on Work with International Jurisdictions at page 48.

Management of cases and deciding disputes by Tribunals

The Court provides operational support to the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal. This support includes the provision of registry services to accept and process documents, collect fees, list matters for hearings and otherwise assist the management and determination of proceedings. The Court also provides the infrastructure for tribunal hearings, including hearing rooms, furniture, equipment and transcript services.

A summary of the functions of each tribunal and the work undertaken by it during the reporting year is set out in Appendix 7 on page 98.

3.3 IMPROVING ACCESS TO THE COURT AND CONTRIBUTING TO THE AUSTRALIAN LEGAL SYSTEM

Introduction

The following section reports on the Court's work during the year to improve the operation and accessibility of the Court, including reforms to its practices and procedures, enhancements in the use of technology and improvements to the information about the Court and its work.

This section also reports on the Court's work during the year to contribute more broadly to enhancing the quality and accessibility of the Australian justice system, including the participation of judges in bodies such as the Australian Law Reform Commission, the Judicial Conference of Australia and in other law reform and educational activities.

Practice and procedure reforms

The National Practice Committee is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee dealt with a range of matters including:

- the development of new Practice Notes and Administrative Notices that replaced the existing practice notes, practice directions and national and local notices to litigants and practitioners and were issued on 25 September 2009
- the development of a new scale that will allow the amount of party costs to be determined on the basis of what is fair and reasonable, prepared in light of detailed consultations with the Law Council of Australia. Adoption of the new scale will be considered by the judges of the Court in the second half of 2010
- consideration of the report of the Access to Justice Taskforce that was released by the Australian Government in September 2009, and of the report by the National Alternative Dispute Resolution Advisory Council titled *The Resolve to Resolve: Embracing ADR to Improve Access to Justice in the Federal Jurisdiction* (NADRAC Report)
- the development of a guide setting out procedures for facilitating media access to court documents
- the development of a policy on the anonymisation of personal information that may be recorded in transcripts and judgments to prevent the publication of information that might facilitate identity theft in relation to litigants and witnesses involved in court proceedings
- the implementation of changes to the Court's case management system that will facilitate the creation of a publicly accessible electronic register of suppression orders made under section 50 of the Federal Court of Australia Act
- the development of Practice Note ARB 1 which sets out the arrangements for the conduct of proceedings under the *International Arbitration Act 1974* (Cth) and was issued by the Chief Justice on 8 December 2009
- the development of Practice Note CM 16 which sets out the procedures and arrangements for the conduct of representative proceedings under Part IVA of the Federal Court of Australia Act, issued by the Chief Justice on 28 June 2010.

The Civil Dispute Resolution Bill 2010 was introduced in the Parliament in June 2010. The Bill implements one of the recommendations in the NADRAC Report and will, if enacted, require prospective litigants and their representatives to take genuine steps to resolve disputes before commencing certain types of proceedings in the Court.

Liaison with the Law Council of Australia

Members of the National Practice Committee met during the reporting year with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure, these included:

- case management reforms - including the development and implementation of the legislative reforms to support active case management
- the rules revision project
- the interaction between the national and local arrangements whereby the Court liaises with the legal profession
- the possible use of panels of judges to hear and determine long and complex cases in the Court's original jurisdiction
- the impact of possible changes to the structure of the federal courts and the creation of a new Military Court
- the review of the costs scales in Schedule 2 to the Federal Court Rules.

Assistance for self represented litigants

The Court delivers a wide range of services to self represented litigants. These services have been developed to meet the needs of self represented litigants for information and assistance concerning the Court's practice and procedure. The Court is now able to extract some broad statistics about the number of self represented litigants appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of self represented litigants is not a mandatory field in the Court's case management system the following statistics are indicative only. In the reporting year, 572 people who commenced proceedings in the Federal Court were identified as self represented. The majority were appellants in migration appeals.

The following tables provide some further information.

Table 3.15 - Actions commenced by Self Represented Litigants (SRLs) during 2009-10 by Registry

	ACT	NSW	NT	QLD	SA	VIC	WA	Total
Actions commenced by SRLs 2009–10	12	325	1	34	54	109	37	572
% of Total	2%	57%	0%	6%	9%	19%	6%	

Table 3.16 - Actions commenced by SRLs in 2009-10 by Cause of Action (COA)

COA	Total actions	% of Total
Administrative law	55	10%
Admiralty	5	1%
Appeals and related action	391	68%
Assisted dispute resolution	1	0%
Bankruptcy	19	3%
Bill of costs	2	0%
Competition law	3	1%
Consumer protection	11	2%
Corporations	20	3%
Cross claim	2	0%
Fair work	11	2%
Human rights	12	2%
Industrial	1	0%
Intellectual property	4	1%
Migration	8	1%
Miscellaneous	4	1%
Native title	19	3%
Taxation	4	1%
Total	572	100%

Table 3.17 - Appeals commenced by SRLs in 2009–10 by type of appeal

Type of Appeals	Total actions	% of Total
Administrative Law	25	6%
Bankruptcy	39	10%
Consumer Protection	8	2%
Corporations	8	2%
Human Rights	3	1%
Industrial	5	1%
Intellectual Property	4	1%
Migration	297	76%
Taxation	2	1%
Total	391	

Interpreters

The Court is aware of the difficulties faced by litigants who have little or no understanding of the English language. The Court will not allow a party or the administration of justice to be disadvantaged by a person's inability to secure the services of an interpreter. It has therefore put in place a system to provide professional interpreter services to people who need those services but cannot afford to pay for them. In general, the Court's policy is to provide these services for litigants who are unrepresented and who do not have the financial means to purchase the services, and for litigants who are represented but have exemption from, or have been granted a waiver of fees, under the Federal Court of Australia Regulations (see below).

Remission or waiver of court and registry fees

Under the Federal Court of Australia Regulations, fees are charged for commencing a proceeding and for setting a matter down for hearing (including a daily hearing fee). A setting down fee is not payable on all matters and the amount of the daily hearing fee will vary depending on the nature of the hearing.

The Federal Court of Australia Regulations authorise registrars to remit or waive fees payable where a person:

- has been granted legal aid by a body approved by the Attorney-General
- is the holder of a health care card, a pensioner concession card or a Commonwealth seniors health card
- is the holder of any other card issued by the Department of Families, Housing, Community Services and Indigenous Affairs or the Department of Veterans Affairs certifying entitlement to Commonwealth health concessions
- is an inmate of a prison or is otherwise lawfully detained in a public institution
- is a child under the age of 18 years
- is in receipt of a youth ABSTUDY or AUSTUDY allowance

Registrars also have discretion to waive or remit a fee where payment would cause financial hardship to a person, taking into account the person's assets, day-to-day living expenses, income and liabilities. A registrar's decision to refuse an application to waive a fee is reviewable by the Administrative Appeals Tribunal. There were no applications to the Tribunal during the reporting period.

Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 103.

In May 2010 the Government announced changes to Federal Court fees (including waivers and exemptions). A new flat fee of \$100 will be introduced to replace certain applications (and other items) that were previously eligible for fee waivers and exemptions.

Remote hearings

Where appropriate, the Court will conduct native title hearings 'on country' in remote locations which are the subject of the claim. The preparedness for the Court to hear from native title claimants 'on country' recognises that for many claimants their relationship to country is not able to be explained in the abstract and that it is necessary to be 'on country' to gain a true appreciation and understanding of that relationship and the claimants' evidence about it. It is also an acknowledgment that, under traditional law, some evidence can only be given 'on country', and there will be many cases in which it would be quite onerous to expect claimants to talk about and explain their relationship to country by reference solely to maps, which may have no meaning to the claimants and cannot begin to reflect their relationship to the country in question.

Website

The website is integral to the Court's business and contains useful information about the Court and its work including full text judgments, daily court lists, practice and procedure guides, forms and fees, information for litigants and legal practitioners. Usage of the Court's eServices has increased to the extent that eighteen per cent of website visits are to access these services. During the year thirteen Practice News updates were issued to 1,502 subscribers alerting them to changes in the practice and procedure of the Court.

As noted above, the Court's Practice Notes were reviewed In September 2009 and a new series created with all previous notices being revoked. This necessitated a reworking and redesign of these website pages and to improve access a direct sidebar link was incorporated.

Published information

The Court publishes a number of brochures on aspects of its work including: a guide for witnesses appearing in the Court; information on procedures in appeals, bankruptcy, native title and human rights cases; and information on the Court's use of mediation. These brochures are available from any of the Court's registries and are downloadable from the Court's website, www.fedcourt.gov.au.

Access to judgments

When a decision of the Court is delivered a copy of it is made immediately available to the parties and the media. The Court also provides electronic copies of judgments to legal publishers and other subscribers.

Judgments are also made available in full text on the Internet at the Australasian Legal Information Institute (AustLII) site. A link to this site is provided on the Court's website. High profile judgments are usually made available at the AustLII site within a few hours of publication and other judgments within a few days. From the beginning of the 2010 law term the way information about

a judgment is displayed changed to make it more relevant to website browsing, including the automated addition of a link to any judgment related to an appeal.

Information for the media and televised judgments

During the reporting year the Court provided a range of assistance to journalists covering cases before the Court and issues related to the Court's work. This included managing access to court proceedings by television and radio news outlets in matters of public interest. For example Justice Reeves gave permission to ABC television to film him delivering his judgment in *Wilson v Northern Territory* [2009] FCA 800 at Elliott in the Northern Territory.

High profile judgments that required extensive media coordination included:

- *Larrikin Music v EMI Songs* [2010] FCA 29 in which Justice Jacobson found the song 'Downunder' infringed Larrikin's copyright of the song 'Kookaburra'
- *Roadshow Films Pty Ltd v iiNet Limited (No. 3)* [2010] FCA 24 where Justice Cowdroy concluded the internet service provider did not authorise the infringement of copyright of its users or subscribers when they downloaded cinematograph films in a manner which infringed copyright. (In Australian copyright law, a person who authorises the infringement of copyright is treated as if they themselves infringed copyright directly.)
- *CSR Limited, in the matter of CSR Limited* [2010] FCA 33 in which Justice Stone ruled that splitting CSR's sugar and building materials operations could disadvantage victims of asbestos poisoning.

In 2009–10 a meeting was held between regular media users and Court staff in NSW in order to exchange information and gain a better understanding of how each works. This led to a more streamlined national process regarding access to the Court's records.

A number of educational and training DVDs are also produced by the Court, some of which can be viewed via the Court's website. During the reporting year a DVD was produced on the Fast Track case management procedures and another regarding the opening of the new ceremonial court room, Court 1, in Sydney. This DVD focussed on the artists responsible for the bench and coat of arms.

Community relations

The Court engages in a wide range of activities with the legal profession, including regular user group meetings, as well as seminars and workshops on issues of practice and procedure in particular areas of the Court's jurisdiction. The aim of user groups is to provide a forum for Court representatives and the legal profession to discuss existing and emerging issues, provide feedback to the Court and act as a reference group.

The Court also engages in a range of strategies to enhance public understanding of the Court and its work, and the Court's registries are involved in educational activities with schools and universities, and, on occasion, with community organisations which have an interest in the Court's work. The following highlights some of these activities during the year.

In 2009–10 judges and registrars in the NSW Registry hosted ten user group meetings or seminars with practitioners on areas such as admiralty, native title, patents and copyright. On 2 July 2009 Deputy District Registrar Hannigan presented a seminar to officers from the Australian Taxation Office about litigation in the Court and on 25 November 2009 Deputy District Registrar Lackenby gave a presentation to the ACT Law Society about mediation and ADR rules and practice in the Court. During the reporting year two orientation sessions were held for lawyers new to practice in the Court.

The Victorian Registry held quarterly meetings of its Class Action Users Group, Federal Court Users Committee and Insolvency Users Committee.

On 7th August 2009, the Victorian Registry hosted a group of Year 10 students from the Mill Park

Secondary School. The Registry also hosted several work experience students at different times through the year. On 12 March 2010, law students from the University of Melbourne undertaking a Masters Program attended a presentation at the Victorian Registry. Justice Finkelstein spoke about the Fast Track List while the District Registrar gave an overview of Assisted Dispute Resolution (ADR) in the Court.

The Victorian Registry hosted a number of Moot Courts for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities. It also hosted Moot Court Competitions for the Victorian Bar Readers. On two occasions, Justice Gray and Deputy District Registrar Burns addressed the Victorian Bar Readers Welcome. The address provided an overview of the Court, the Victorian Registry and federal jurisdiction.

The Victorian Registry participated in the Indigenous Clerkship Program run by the Victorian Bar. Three clerks participated in the program with each clerk spending one week with each of the participating institutions: The Federal Court of Australia, The Supreme Court of Victoria and the Victorian Bar. The Registry also hosted three law students as part of the 'Stepping into Law' program between 16 November 2009 and 18 December 2009. Two library students also undertook industrial placements in the Registry's library.

The Queensland Registry held user group meetings and forums with practitioners in the Native Title, Bankruptcy and Corporations jurisdictions. Queensland judges and registry staff hosted twelve judges and court officials from the South Pacific for a three day Pacific Regional Mediation Forum from 15 - 17 February 2010. The Queensland Registry also hosted visits by students from Bond University and Forest Lake State High School and participated in moot courts for the Queensland University of Technology and University of Queensland.

The West Australia Registry hosted a Native Title Forum which provided an opportunity for stakeholders to consider the management of Native Title cases in Western Australia in the context of the 2009 amendments to the Native Title Act. The Registry also hosted a series of working groups involving a wide range of participants to further canvass some of the ideas from the Forum. In addition, user group meetings were held with practitioners specialising in the Admiralty jurisdiction and seminars were run about intellectual property and bankruptcy.

The Registry delivered four comprehensive information sessions on the Court's processes for junior solicitors and paralegals. A handbook covering information delivered during the session was provided on a compact disc. The grand final of the University of Western Australia's International Humanitarian Law Mooting Competition was held in the Court and was adjudicated by Justice McKerracher. Registry staff gave presentations on admiralty law and mediation to university students and participated in a meeting of the Association of Litigation Support Managers (Perth) to discuss Practice Note CM6 on Electronic Technology in Litigation.

Judges and staff from South Australia presented information sessions to practitioners on a range of topics including statutory interpretation, eLodgment, insolvent trading, and public examinations. The District Registrar spoke about insolvency to the International Womens Insolvency and Reconstruction Confederation. She also addressed staff from the Insolvency and Trustee Service Australia (ITSA) about the Court's processes in bankruptcy matters. Meetings were held with the Bankruptcy User Group and Federal Court Liaison Committee. A native title forum was held to discuss the management of native title cases in South Australia.

Registry staff delivered a presentation about the Court during Law Week, undertook presentations and building tours for schools and other community groups throughout the year and, with judges, participated in the South Australian Bar Readers Course.

In September 2009 the Northern Territory Registry held a native title forum to discuss the management of native title cases. The Registry also ran eLodgment presentations in May 2010 to demonstrate and promote the service to the local profession and, in early June, the Registry Manager spoke with a class of local secondary school students about the role of the Court in the Australian Legal System.

Staff from the ACT and Tasmanian Registries held demonstrations of the Court's eLodgment

system for practitioners from local legal firms. On 31 May 2010 the Tasmanian Registry held its first user group meeting which was attended by Chief Justice Keane, Justice Marshall, Justice Middleton and members of the local legal profession.

Complaints about the Court's processes

During the reporting year, eighteen complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. This figure does not include complaints about the merits of a decision by a judge, which may only be dealt with by way of appeal.

Involvement in legal education programs and legal reform activities

The Court is an active supporter of legal education programs, both in Australia and overseas. Information about the Court's engagement with legal education programs for international jurisdictions is described below.

During the reporting year, members of the Court were involved in organising two major international conferences as detailed below:

- 27 - 28 November 2009: 'International Commercial Litigation and Dispute Resolution Conference'. Sponsored by the Court, the Business Law Section of the Law Council of Australia and the Ross Parsons Centre of Commercial Corporate and Taxation Law, the conference was primarily concerned with international aspects of commercial litigation and dispute resolution. It also included a session on case management, particularly the management of complex commercial litigation. Over 150 people attended the Conference which was held in the Court's premises in Sydney. The Conference papers were compiled into a book which was launched by Chief Justice Keane in Sydney in April 2010.
- 7 - 11 March 2010: Chief Justice Black and Justice Downes, the President of the Administrative Appeals Tribunal, (as joint-presidents of the International Association of Supreme and Administrative Jurisdictions (IASAJ)) co-hosted the 10th IASAJ Congress. The Congress examined aspects of administrative law in civil and common law systems.

The Chief Justice and many judges:

- presented papers, gave lectures and chaired sessions at judicial and other conferences, judicial administration meetings, continuing legal education courses and university law schools
- participated in Bar reading courses, Law Society meetings and other public meetings.

An outline of the judges' work in this area is included in Appendix 9 on page 160.

3.4 WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programs Unit, the Court collaborates with neighbouring judiciaries across the Asia-Pacific region interested in reform. In 2009–10, the Court coordinated a number of programs and hosted a number of official visits from judicial and senior administrative staff from other countries.

Supreme Court of Indonesia

Through the Indonesia-Australia Legal Development Facility funded by the Australian Agency for International Development (AusAID), the Court has continued to collaborate with the Supreme Court of Indonesia as it progresses towards its objectives of increasing accountability, transparency and efficiency.

In July 2009, a further Annex to the Memorandum of Understanding between the Courts was signed. The Annex sets out the priority areas the Supreme Court wishes to focus on over the coming year. In early December 2009, a number of Indonesian Supreme Court judges and senior registry officials visited the Court in Sydney to discuss and review the activities underway, pursuant to the Annex. Of particular focus was discussion about how the Supreme Court can effectively implement its new policies of all cases being decided within twelve months and reduce the amount of time permitted for judgments to be published.

In April 2010, the Registrar of the Court visited Indonesia to discuss further the case management reforms within the Supreme Court. The program included a visit to the Semarang High Court where discussions focused on strategic planning, transparency, case management reform and court modernisation.

Supreme People's Court of the Republic of China

Following the successful completion in January 2009 of the Court's first substantive program with the Supreme People's Court of the Republic of China, a second program commenced in November 2009 and ended in June 2010. The Maritime Law and Strategic Planning Program comprised three phases, with the judges of each Court spending time in both China and Australia to exchange experiences and knowledge to promote the capacity of the Chinese judiciary to manage pollution of inland rivers and waterways. The programmed visits, which took place in January, April and June 2010 were also used to discuss each Court's respective approach to the arrest (or maritime attachment) of ships in each jurisdiction, and to develop a medium-term plan for ongoing collaboration between the courts in areas identified as mutual priorities.

Supreme People's Court of Vietnam

The Court concluded its support to the Supreme People's Court of Vietnam under the Benchbook Revision Project. The project was completed in March 2010 with 6500 hard copies of the Benchbook distributed across the country, 9000 CDROM copies of the Benchbook prepared and the Benchbook uploaded onto the Supreme People's Court website. To ensure that judges are able to use the Benchbook in its different formats and are aware of what it contains, a judge from each of the 682 District Courts and 63 Provincial Courts received training. Representatives from the key national judicial training centres in Vietnam were also trained to enable them to use the Benchbook as a central training tool for new and existing judges.

Coinciding with the launch of the Benchbook, the Chief Justices of the Federal Court and the Supreme People's Court of Vietnam signed a Memorandum of Understanding to facilitate continuing cooperation and collaboration between the Courts. The Memorandum is designed to promote further understanding of each country's laws and judicial cultures, common international legal standards, regional developments, and relevant emerging issues while enhancing the capacity of the Supreme People's Court of Vietnam to fulfill its functions and duties in accordance with the Constitution and other legislation of Vietnam.

In December 2009 an Annex to the memorandum was signed at the Federal Court in Victoria. The Annex articulates a program that provides assistance with the development of strategic policies on education and training and identifies areas requiring specialist training. A series of activities will take place over the coming year.

Supreme Court of India

In collaboration with the Supreme Court of India and the National Judicial Academy of India, the Court completed its first project with the Indian judiciary this year. Funded by AusAID, the aim of the project was to promote efficiency in the management of cases and will focus on the judiciary's philosophical approach to case management, as well as procedural reforms, including the use of technology.

The first phase of the project involved the Federal Court in Sydney hosting a high level judicial delegation from India. Led by Chief Justice Balakrishnan, the delegation comprised judges from the Supreme Court, several High Courts and District Courts and was facilitated by Dr Mohan Gopal, Director of the National Judicial Academy.

The broad ranging discussions included in the programme allowed judges from India and Australia to share their unique perspectives and learn about each other's approaches to judicial administration. To provide as broad an experience of the Australian legal system as possible the visit included meetings with the High Court of Australia, Supreme Court of New South Wales, District Court of New South Wales, Federal Attorney-General's Department and the Australian Human Rights Commission.

In November 2009, the Registrar of the Court travelled to Bhopal, India to present a paper on the Court's management systems at the National Judicial Academy's National Conference of Registrars General.

The final phase of the project took place in February 2010 and involved a delegation of judicial officers from the Federal Court, the Family Court, the District Court of New South Wales and a professor from Melbourne University visiting five locations across India to observe and discuss the approaches and procedures to case management taken by courts in both countries.

Supreme and National Court of Justice, Papua New Guinea (PNG)

In late August 2009, Justice Kandakasi of Papua New Guinea visited the Federal Court in Melbourne to review developments made by the Supreme and National Courts of PNG towards implementing a system of court-annexed mediation. The visit involved reviewing the draft Court Rules and devising a system of accreditation, standards and a code of conduct for mediators. Since the visit, the Court Rules and associated documentation have been finalised, promulgated and introduced.

Recognising the long-term relationship between the courts, a formal structure for facilitating judicial co operation was established in November 2009, when the courts signed a Memorandum of Understanding. The key reform and development priorities under the Memorandum include establishing a system of court-annexed mediation, strengthening the capacity of judges to efficiently manage cases, improving the ability to handle commercial cases and building leadership and change management capacity. The initial suite of activities associated with these priorities were finalised in early 2010.

The first activity to be implemented is the Court-Annexed Mediation Programme. A roundtable discussion was convened at the Court in Victoria in late June 2010 which clarified the requirements for and content of a locally tailored mediation training programme. In addition to several judicial and mediation experts from PNG and the Court, the roundtable brought together a number of leading mediation training experts from Australia and beyond.

District Court of Samoa

Funded by the Commonwealth Secretariat, and in conjunction with the AusAID funded Volunteering for International Development from Australia Program (VIDA), the Court has assisted the District Court of Samoa to develop its Benchbook. In addition to coordinating the VIDA volunteer position, the Court provided logistical and research support to Samoa. The Benchbook was launched by the Chief Justice in late 2009 with the Australian Government Solicitor providing training on the content and use of the Benchbook in early 2010.

Pacific Mediation Forum

With funding from AusAID, the Court has been able to maintain its support to several Pacific islands as they continue to implement their systems of court-annexed mediation. In February 2010, the Court in Brisbane hosted the second Regional Pacific Mediation Forum which was designed to bring together all seven participating countries to share progress, experiences and the challenges they each face. Led by two experienced mediators from the Court, and involving several judges, the Forum also provided practical workshops along with discussion about the way forward to the participants who came from Papua New Guinea, the Solomon Islands, Vanuatu, Samoa, Tonga, the Marshall Islands and Kosrae State in the Federated States of Micronesia.

The forum brought to a close a successful project, which has seen expert mediators from the Court visit participating countries to conduct workshops, co-mediations and mentoring sessions for mediators and others who are involved or interested in court-annexed mediation.

Visitors to the Court

The Court has facilitated a number of visits from international delegations or individuals interested in learning about the role of the Court and its systems and processes. In addition to any visits mentioned above, in 2009–10 the Court welcomed the following:

- Judges, Shenzhen Intermediate Court, People's Republic of China (July 2009)
- The Hon Yvonne Mokgoro, South African Constitutional Court (July 2009)
- The Hon Arthur Chaskalson, former Chief Justice of South Africa (August 2009)
- The Hon Justice Buerghenthal, International Court of Justice, Netherlands (August 2009)
- The Hon Lord David Neuberger, Master of the Rolls, United Kingdom (August 2009)
- Japan Federation Bar Association (September 2009)
- Legal Aid Lawyers, People's Republic of China (November 2009)
- Mr Ian Mackintosh, Chairman, Accounting Standards Board United Kingdom and Europe (November 2009)
- Law Reform Commission, Kenya (December 2009)
- Constitutional Court, Russia (February 2010)
- Lawyers, People's Republic of China, participating in the Australia-China Legal Profession Development Program (March 2010)
- Mr Zhiyon Wang, former judge of the Supreme People's Court of China (May 2010)
- Master Steven Whitaker, Senior Master, Senior Courts of England and Wales Queen's Bench Division, The Queen's Remembrancer, United Kingdom (June 2010)



CHAPTER 4

Management of the Court



4.1 FEDERAL COURT GOVERNANCE

Since 1990 the Court has been self-administering, with a separate budget appropriation and reporting arrangement to the Parliament. Under the Federal Court of Australia Act, the Chief Justice of the Court is responsible for managing the administrative affairs of the Court. The Chief Justice is assisted by the Registrar/Chief Executive Officer of the Court. The Act also provides that the Chief Justice may delegate any of his or her administrative powers to judges, and that the Registrar may exercise powers on behalf of the Chief Justice in relation to the Court's administrative affairs.

In practice, the Court's governance involves two distinct structures: the management of the Court through its registry structure; and the judges' committee structure which facilitates the collegiate involvement of the judges of the Court. Judges also participate in the management of the Court through formal meetings of all judges. The registries and the judges' committees are discussed in more detail below.

Federal Court registry management structure

As outlined in Chapter 1 of this report, the Court's administration is supported by a national registry structure, with a Principal Registry responsible for managing national issues and supporting the corporate services functions of the Court, and a District Registry in each State and Territory which supports the work of the Court at a local level. A diagram of the management structure of the Court is set out in Appendix 3 on page 107.

Judges' committees

There are a number of committees of judges of the Court, which assist with the administration of the Court and play an integral role in managing issues related to the Court's administration, as well as its rules and practice.

An overarching National Practice Committee provides advice on practice and procedure to the Chief Justice and judges. There are also a small number of standing committees that focus on specific issues within the framework of the Court's practice and procedure.

An overarching Policy and Planning Committee provides advice to the Chief Justice on policy aspects of the administration of the Court. It is assisted by standing committees that focus on a number of specific issues in this area. In addition, other ad hoc committees and working parties are established from time to time to deal with particular issues. All of the committees are supported by registry staff. The committees provide advice to the Chief Justice and to all judges at the bi-annual judges' meetings.

Judges' meetings

There were two meetings of all judges of the Court during the year, which dealt with matters such as reforms of the Court's practice and procedure and amendments to the Rules of Court.

4.2 CORPORATE SERVICES

The Corporate Services Branch in the Principal Registry is responsible for supporting the national corporate functions of the Court. The following outlines the major corporate services issues during the reporting year.

Financial management

The Finance Committee, which is made up of judges from each of the registries, as well as the Registrar, oversees the financial management of the Court. The Corporate Services Branch supports the Committee. During 2009–10 the Committee met on six occasions.

Financial accounts

The net operating result from ordinary activities for 2009–10 was an operating surplus of \$1.242m. The operating surplus is primarily a result of deferred expenditure. Equity increased from \$34.816m in 2008–09 to \$35.011m in 2009–10.

During 2009–10 revenues from ordinary activities totalled \$115.487m. Total revenue, in the main, comprised:

- an appropriation from Government of \$88.410m. Included in this appropriation is \$6.890m transferred from the Federal Magistrates Court
- \$6.299m resources received free of charge, including for accommodation occupied by the Court in Sydney
- \$9.395m of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges
- \$11.380m from the sale of goods and services. Included in this figure is \$8.721m received from the Federal Magistrates Court (FMC) for registry services provided by the Court on behalf of the FMC.

Total expenses of \$114.245m in 2009–10 comprised: \$58.806m in judges' and employees' salaries and related expenses; \$31.267m in property related expenses; \$14.197m in other administrative expenses; \$2.345m in depreciation expenses; and \$7.604m paid to the Federal Magistrates Court.

Table 4.1 – Outcome and Program Statement

		Budget 09–10 (\$'000)	Actual Expenses 09–10 (\$'000)	Variation (\$'000)
Outcome 1: Through its jurisdiction, the Court will apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians				
Program 1.1 – Federal Court Business	Departmental outputs	84.040	87.168	-3.128
	Revenues from other sources (s. 31) for Federal Court	5.673	11.380	-5.707
	Subtotal for Program 1.1	89.713	98.548	-8.835
	Total for Outcome 1	89.713	98.548	-8.835
	Average staffing level (number)		316	

The Court's agency resource statement can be found at Appendix 2 on page 106.

Audit and risk management

The Audit Committee met once during 2009–10 to examine the Court's annual financial statements. The Committee usually comprises an independent chairperson, three judges, the Registrar, and the NSW District Registrar, however, the independent chairperson resigned from the Committee during the 2007–08 financial year and the chair has been temporarily filled by Justice Stone. The independent chairperson rejoined the audit committee in July 2010. The Court's Executive Director, Corporate Services and Chief Financial Officer and representatives from the audit service provider and the Australian National Audit Office (ANAO) attend committee meetings as observers.

Deloitte, the Court's internal auditors, conducted a FMA Certification and Compliance reporting audit and commenced a risk assessment during 2009–10.

Staff of the ANAO inspected the Court's 2009–10 financial statements and provided an unqualified audit certificate.

The Chief Executive Officer is satisfied that:

- Fraud control plans and fraud risk assessments have been prepared that comply with the Commonwealth Fraud Control Guidelines.
- Appropriate fraud prevention, detection, investigation and reporting procedures and practices that comply with the Commonwealth Fraud Control Guidelines are in place.
- There have been no cases of fraud during 2009–10 to be reported to the Australian Institute of Criminology.

External scrutiny

The Court was not the subject of any reports by a Parliamentary committee or the Commonwealth Ombudsman. The Court was not the subject of any judicial decisions or decisions of administrative tribunals.

Purchasing

The Court's procurement policies and procedures, expressed in the Court's Chief Executive Instructions, are based on the Commonwealth Procurement Guidelines and best practice guidance documents published by the Department of Finance and Deregulation. The Court achieves a high level of performance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes.

Consultants

During 2009–10, eleven new consultancy contracts were entered into involving total actual expenditure of \$231,659. In addition, two ongoing consultancy contracts were active during the 2009–10 year, involving total actual expenditure of \$95,656. Table 4.2 below outlines expenditure trends for consultancy contracts over the three most recent financial years.

Table 4.2 – Expenditure trend: Consultancy Contracts

Financial Year	New Contracts Actual Expenditure	Ongoing Contracts Actual Expenditure
2009–10	\$ 231,659	\$ 95,656
2008–09	\$ 232,253	\$ 129,328
2007–08	\$ 420,092	\$ 137,083

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

Table 11.1 at Appendix 11 provides more detailed information on consultancy contracts entered into during 2009–10.

Competitive tendering and contracting

During 2009–10, there were no contracts let to the value of \$100,000 or more that did not provide for the Auditor General to have access to the contractor's premises.

During 2009–10, there were no contracts or standing offers exempted by the Chief Executive Officer from publication in the contract reporting section on AusTender.

Advertising and marketing services

A total of \$53,233 was paid for recruitment advertising services throughout the reporting period.

The Court did not undertake any advertising campaigns or use market research, polling or direct mail organisations or media advertising agencies in 2009–10.

Human resources

Workplace relations

The Court's National Consultative Committee (NCC) operated effectively through the year. The Court's other staff consultative forums such as Regional Consultative Committees and the Occupational Health and Safety Committee continued to operate, reporting to the NCC. Minutes from all committees are placed on the Court's intranet where they can be readily accessed by staff.

Workplace bargaining

Negotiations for the Court's 2010–2011 Enterprise Agreement commenced and were completed during the reporting period. The new Agreement is for one year only as provided for under the APS Bargaining Framework. Given its duration, bargaining representatives and the Court made only minor changes to the previous Agreement.

Since the beginning of 2008, the Court has relied on determinations under section 24 of the *Public Service Act 1999* for SES staff and other employment conditions not covered by the Court's Enterprise Agreement. The Court has 20 employees who remain on AWAs (11 SES and nine non SES) and three employees on individual s. 24 determinations (all non SES).

Staffing overview

At 30 June 2010 the Court employed 363 employees under the Public Service Act, comprising 213 ongoing full-time employees, 17 ongoing part-time employees and 133 non-ongoing employees. The high number of non-ongoing employees is due to the nature of the employment of judges' associates (who are generally employed for 12 months) and casual court officers. The Court had an average staffing level of 316 during the reporting period.

Tables 4.3 and 4.4 below contain an overview of the Court's staffing by location at 30 June 2010 and details of the Court's SES staff. Table 4.5 outlines the Court's salary ranges by classification. Equal employment opportunity (EEO) statistics are at Appendix 10 on page 175.

Table 4.3 – Staffing overview by location

(actual occupancy at 30 June 2010 - includes full-time and part-time staff)

Level	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	Total
SES2	1	1	1								3
SES1	2	1	1	0	1	1				1	7
FCL2	3	7	5	4	1	3				2	25
FCL1							1				1
FCM2	8	1	3	1	1	1				1	16
FCM1	13		2	1	1	1				4	22
FCS6	12	23	19	6	5	6		1	1	4	77
FCS5	8	30	20	9	6	10		1		6	90
FCS4	3	5	9	1	7	4	3		2	1	35
FCS3	2	11	2	10	1	1	1	2			30
FCS2		22	14	8	4	5		2	1		56
FCS1			1								1
Total	52	101	77	40	27	32	5	6	4	19	363

Note: The Registrar, who is a holder of public office, is not included in this table.

Key:

- PR Principal Registry
- SES Senior Executive Service officer
- FCS Federal Court Staff
- FCM Federal Court Manager
- FCL Federal Court Legal
- NAT National

Includes the following staff:

- National Native Title
- Chambers of Chief Justice
- Appeals

Table 4.4 – Senior Executive Service
(at 30 June 2010 - includes full-time and part-time staff)

Principal Registry		Senior Executive Service Grading Occupied
Executive Director, Corporate Services Branch	Gordon Foster	Senior Executive Band 2
Deputy Registrar	Philip Kellow	Senior Executive Band 1
Deputy Registrar	Louise Anderson	Senior Executive Band 1
Deputy Registrar	John Mathieson	Senior Executive Band 1
New South Wales District Registry		
District Registrar	Michael Wall	Senior Executive Band 2
Deputy District Registrar	Jennifer Hedge (part-time)	Senior Executive Band 1 (Specialist)
Victoria District Registry		
District Registrar	Sia Lagos	Senior Executive Band 2
Deputy District Registrar	Daniel Caporale	Senior Executive Band 1
Queensland District Registry		
District Registrar	Vacant	Senior Executive Band 1
South Australia District Registry		
District Registrar	Patricia Christie	Senior Executive Band 1
Western Australia District Registry		
District Registrar	Martin Jan PSM	Senior Executive Band 1

Occupational Health and Safety (OHS)

The Court's national OHS Committee continued to meet through the reporting period and oversee occupational health and safety within the Court.

The program of optional annual health checks and flu shots for all staff, provided for in the Enterprise Agreement, was again conducted with around thirty nine per cent of staff taking advantage of the free health checks and immunisations.

No provisional improvement notices were issued under section 29 of the Occupational Health and Safety Act 1991 (the OHS Act). No directions or notices under section 46 of the OHS Act were served on the Court prohibiting the use of any workplace, plant or substance.

A total of twenty eight working weeks were lost due to work related injuries. The Court's Comcare premium reduced slightly during the reporting period to less than one per cent of the salary bill.

Table 4.5 - Salary ranges by classification level under Certified Agreement, AWA or Determination

(at 30 June 2010)

Court Designation	Australian Public Service (APS) Classification	Salary
Clerical Administrative Positions		
Federal Court Staff Level 1	APS Level 1	\$38 301
		\$42 328
Federal Court Staff Level 2	APS Level 2	\$43 346
		\$48 067
Federal Court Staff Level 3	APS Level 3	\$49 372
		\$53 286
Federal Court Staff Level 4	APS Level 4	\$55 030
		\$59 748
Federal Court Staff Level 5	APS Level 5	\$61 377
		\$65 081
Federal Court Staff Level 6	APS Level 6	\$66 290
		\$76 148
Federal Court Manager Level 1	Executive Level 1	\$84 845
		\$91 631
Federal Court Manager Level 2	Executive Level 2	\$97 812
		\$110 917
		\$114 631
Legal Positions		
Federal Court Legal 1	From APS Level 3	\$55 432
	To Executive Level 1	\$107 759
Federal Court Legal 2	Executive Level 2	\$124 836
		\$129 728
Senior Executive Positions		
Senior Executive Service Band 1	SES Band 1	\$162 094
Senior Executive Service Band 2	SES Band 2	\$230 845

Performance management

The Court's performance management program continued to operate effectively through the reporting period. A review of the program will take place in 2010–11 as part of the Court's Human Resources Plan.

Performance pay

There were no performance pay or bonus arrangements in 2009–10.

Learning and development/organisational development

The Organisational Development team has been working closely with the eServices team to support staff with the rollout of the Court's eLodgment platform across the Court's registries. This work will continue in 2010–11 with the development of a capability framework to reflect the skills required by staff as eServices initiatives are implemented.

During the reporting year, the team organised a series of in-house Legal Continuing Professional Development (CPD) seminars. The seminars, which are open to all staff, form part of the professional development activities for Registrars of the Court. The seminars are generally presented by Registrars and guest speakers via videoconference to registries around the country. This year's program included a series of three seminars in April-May 2010 titled 'Mediating from the Inside Out' which were presented by Dr Anne Purcell PhD (UQ) M Ed (Harvard) B Ed (HONS) (UQ) B EDST (UQ) Dip T (ACU) Academic and Mediator.

More generally, training was carefully targeted towards the development of essential core skills and the Court spent \$195,546 on external training during the period.

The Court's Studybank policy also continued to operate and provided staff with leave and financial assistance to pursue approved tertiary studies. During the reporting period \$23,846 was reimbursed to staff undertaking studies under the policy.

Workplace diversity

The Court is committed to the principles of workplace diversity. In 2009 the Court became a member of the Australian Employers' Network on Disability to enable participation in the Stepping into Law Program. This program provides work placements for final year law students with a disability. Three legal interns were employed by the Court for up to three months. Typically the interns worked in judges' chambers and with the Court's Deputy District Registrars ensuring they received the hands on experience of legal work that the program seeks to provide. Judges and staff in the Victoria and Western Australia Registries contributed actively to developing programs tailored to meet the needs of each intern and feedback from interns completing the program was excellent. Given the success of the program, the Court intends continuing with it in the coming year and beyond.

In addition, the new Enterprise Agreement continues the Court's long-term commitment to a range of family-friendly initiatives including flexible work arrangements, parental and other leave arrangements that exceed statutory requirements, homework rooms for school aged children of Court staff and a range of other flexible employment conditions to allow staff to balance work and family/personal commitments.

The Court will be developing an Indigenous Employment Strategy in 2010–11 with the aim of increasing the number of indigenous employees.

Commonwealth Disability Strategy

In accordance with the Commonwealth Disability Strategy, the Court undertook the following activities during the reporting period.

- The Court's orientation and induction programs continued to reinforce the Court's commitment to the principles of workplace diversity, a harassment-free workplace and reasonable adjustment. The focus of these programs is on both the Court's own staff and its clients. For instance, training focuses on understanding and meeting the needs of a diverse range of clients, including self represented litigants.
- The Court's national staff networks, such as the Client Services Network, continued to focus on meeting the needs of all clients, including those with disabilities and other special needs.
- The Court continued to implement initiatives from its Workplace Diversity Plan, the aim of which is to accommodate the personal circumstances of all staff as far as this is practicable, including staff with disabilities. This principle is carried through into the Court's Certified Agreement and human resource policies.
- The Court's recruitment and selection practices continue to provide information to prospective applicants via as many means as practicable, including use of the National Relay Service for the hearing impaired. During the reporting period the Court received no requests for information in alternative formats.

The Court is committed to ensuring that its facilities are accessible to all members of the community and that people with a disability do not face access problems in their contact with the Court. Building works on existing and proposed buildings continue to take into account the needs of people with disabilities.

Property management

The Court's facilities are located in Commonwealth-owned buildings in Adelaide, Brisbane, Canberra, Hobart, Melbourne and Perth. In Sydney, they are located within the Queens Square Law Courts building, which is owned by Law Courts Limited and in Darwin they are located in the Northern Territory Supreme Court building. These buildings are all shared with other jurisdictions.

Senior representatives of all federal jurisdictions co-manage the Commonwealth-owned buildings through the National Law Courts Building Management Committee. The Committee meets quarterly and establishes budgets, approves works and life-cycle programmes, as well as setting policy. Local Building Management Committees manage the day-to-day operations of each building.

The Court's Property Section also manages construction projects within our premises. Major achievements during the year included:

- Sydney – completion of levels 20 and 21 – a further component of the Queens Square Law Courts Refurbishment Project. These floors provided the new Number One court, four other courtrooms and judicial facilities.
- Melbourne – completion of Courtroom One upgrade project – works included new fully integrated audio system, permanently installed video conferencing and infrastructure for electronic court hearings (eCourt facilities).
- Melbourne – construction works commenced on a new Jury Courtroom and Jury Deliberation Room. These will provide purpose built facilities designed to support modern jury trials in a fully electronic environment. This project was nearing completion at the end of the reporting period.
- Brisbane – Court One Upgrade – the project includes enlarging the courtroom, opening the courtroom to provide natural light, inclusion of extensive public seating (part of which can double as a modern jury box), full eCourt facilities, upgraded fully integrated audio system and

permanent video conferencing facilities. The project was nearing completion at the end of the reporting period.

- Perth – Court One – Design work commenced during the year to upgrade this courtroom to a similar standard to number one courts in Brisbane and Melbourne. Construction work will follow in 2010–11.

All the above works include improved access for people with disabilities. This includes ramps, handrails, signage, wider door ways and access ways, and upgraded facilities to assist people with a hearing impairment.

Security

During the reporting period a major security review was commenced to examine the Court's security systems within the Commonwealth Law Court buildings. The review focused on security access systems, duress alarms, closed circuit television (CCTV) and associated communications systems. A works program is being developed for 2010–11.

A new access control system has been implemented nationally across all the Court's locations. The system includes new proximity cards which also function as identity cards for Court staff.

Environmental management

The Court provides the following information as required by section 516A of the *Environmental Protections and Biodiversity Conservation Act 1999*.

In order to minimise the impact of the Court's core business on the environment, the Court (together with the other jurisdictions in shared premises) seeks to minimise its impact on the environment through the following measures:

- Environmental and Building Management systems are in place in all buildings to reduce the consumption of energy, water and waste.

All Court upgrading projects comply with the Building Code of Australia. This now includes mandatory energy efficient light fittings, programmable lighting systems so that lights are turned off automatically when not required, efficient air conditioning, power supply and other measures to reduce long term consumption.

The Court has established a National Environment Committee with sub-committees set up in most registries. The committee seeks to raise staff awareness of workplace environment issues in the context of the wider global and national issues. The Court's National Environmental Initiatives Policy encourages staff to participate in energy and water saving initiatives. Unfortunately, it has proved difficult to measure results of specific initiatives as buildings have single electricity, gas and water meters for the entire facility, including all tenancies and base building services.

Technology services

The judges' Information Technology Committee oversees the Court's technology services. During 2009–10 the key projects in this area included the following.

Information Technology (IT) Infrastructure Review

During the reporting period the Court implemented a number of recommendations from a comprehensive review of its IT Infrastructure that was conducted in 2008–09. The review identified efficiencies and ways of simplifying a complex IT environment. The main recommendations implemented in 2009–10 include:

- development of a Storage Area Network (SAN)

- introduction of a new CommVault back-up system to back up all of the Court's servers and the SAN
- development of disaster recovery procedures
- development of an email archiving policy.

Operating system and hardware upgrades

Throughout the reporting year work continued on developing the Court's new Standard Operating Environment (SOE). The Court also participated in a multi-agency tender in 2009 managed by the Department of Defence. The contract negotiations with the vendors selected to join the panel were completed in February 2010 and the Court will submit its requirements to the Department of Defence's order. Work is continuing to finalise contractual matters allowing the replacement of computer equipment to meet the Court's standards.

Revised IT security policy

The Court's IT security policy has been revised to ensure that it conforms with the latest Commonwealth Government guidelines. Updated elements of the policy will be rolled out when the new SOE and laptops/desktops are introduced.

Case management system - Casetrack

The Court has continued to make enhancements to improve the functionality and usability of the system for staff across the Court.

eServices strategy

In addition to the information provided in Chapter 2, the following outlines the progress during the year on the various components of the Court's eServices Strategy.

eCourtroom

eCourtroom in its current form has been operational since the beginning of 2007. During this period, eCourtroom has been used by many judicial officers with the volume of on-line hearings averaging 200 current matters at any one time.

To support the increased use and the potential that this application holds, the Court has made some changes in line with user feedback. The changes included enhancing the functionality and the robustness of the application.

In addition, the Court applied for and received funding from the Commonwealth Government's Information and Communications Technology Business As Usual (ICT BAU) Reinvestment Fund. The funding recognised the Court's need to upgrade the eCourtroom application to meet the growing demands being placed upon it by judges, the legal community and the general public. The upgrade will include integrating the application with other Court applications and enhancing the usability of the application.

The enhancements will move eCourtroom from a stand alone application with no integration with any other Court systems to an integrated application, with the Case Management system (Casetrack), eLodgment (on-line facility to 'file' documents) and the Commonwealth Courts Portal (a collaborative federal courts' initiative, providing access to case related information), therefore reducing the amount of data duplication and streamlining access for members of the public.

Document Management System

An increasing amount of information about cases is being created electronically and provided to the Court in electronic form. This trend towards the use of electronic material and the generation of electronic documents will continue to escalate into the future but, at the same time, the need

for paper based documents will remain. Without the right document management policies, practices, procedures and tools it will become harder for the Court to manage both electronic and paper based documents and information.

During the reporting period a decision was taken to engage specialist consultants to assist the Court to identify its document management requirements and make recommendations for possible solutions and an implementation strategy.

While it is expected that the project will provide a strategic framework for implementation of a document management system to meet all of the Court's information needs, it is also expected that such implementation will be staged. The Court's highest current priority is for document management support for material required for the management and resolution of cases commenced in or transferred to the Court. The outcomes of the consultant's project will focus comprehensively on the Court's needs in this area.

The Commonwealth Courts Portal (CCP)

The Federal Court, in partnership with the Family Court of Australia and the Federal Magistrates Court of Australia, remains committed to the CCP, which provides real-time, web-based information to litigants and the public about cases before all three courts.

The CCP commenced on 30 July 2007 and to date over 1600 registered users are connected to federal law matters. During the reporting period the CCP allowed users to electronically:

- keep track of their cases
- identify documents that have been filed
- view future court dates
- view outcomes and any orders that have been made.

Federal law search became available via the CCP in April 2008, resulting in approximately 16,000 eSearches conducted in federal law matters each month, with over seventy per cent of these being by users external to the Court.

Library and information services

The Court continued to maintain a national library network, which provides a comprehensive library service to judges and staff of the Court. In Adelaide, Brisbane, Hobart, Melbourne, and Perth library access was also available to the legal profession and self represented litigants. The judges' Library Committee oversees the provision of library and information services. During 2009–10, the key projects in this area included:

- A review of library staff and services is in progress.
- A new contract was negotiated with a major legal publisher which resulted in access to all new online titles as they are published and cost savings for the Court.
- An upgrade of the Court's intranet content management software is in progress with the migration of 30,000 judgments a major component of the data migration.
- A new look for published judgments was implemented for 2010 judgments. Links to the full text of judgments appealed are part of the new look.
- A Records Authority for case management was progressed during the year. The records authority is a prerequisite for the implementation of a document management solution for the Court's files.



APPENDICES



APPENDIX 1 – Financial Statements



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Scope

I have audited the accompanying financial statements of The Federal Court of Australia (the Court) for the year ended 30 June 2010, which comprise: a Statement by the Registrar and Chief Financial Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Asset Additions; Schedule of Administered Items and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of the Registrar for the Financial Statements

The Court's Registrar is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards which, include the Australian Accounting Interpretations. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

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An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Court's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Court's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Court's Registrar, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial statements of the Federal Court of Australia:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Federal Court of Australia's financial position as at 30 June 2010 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



Graham Johnson
Senior Director
Delegate of the Auditor-General

Sydney
30 August 2010

FEDERAL COURT OF AUSTRALIA

STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2010 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Signed

Warwick Soden
Registrar and Chief Executive Officer

30 August 2010



Signed

Peter Bowen
Chief Finance Officer

30 August 2010

FEDERAL COURT OF AUSTRALIA
STATEMENT OF COMPREHENSIVE INCOME
for the period ended 30 June 2010

	Notes	2010 \$'000	2009 \$'000
EXPENSES			
Judge benefits	2A	26,791	26,217
Employee benefits	2A	32,015	32,074
Suppliers	2B	45,464	44,154
Depreciation and amortisation	2C	2,345	2,799
Finance costs	2D	13	31
Write-down and impairment of assets	2E	13	279
Other payments to FMC	2F	735	-
Contribution to FMC	2G	6,869	-
Total Expenses		114,245	105,554
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	3A	2,659	2,223
Other revenue - FMC	3B	8,721	8,028
Total own-source revenue		11,380	10,251
Gains			
Sale of assets	3C	3	1
Other gains	3D	15,694	15,258
Total gains		15,697	15,259
Total Own-source Income		27,077	25,510
Net cost of services		87,168	80,044
Revenue from Government	3E	88,410	78,206
Surplus (Deficit) attributable to the Australian Government		1,242	(1,838)
OTHER COMPREHENSIVE INCOME			
Total Comprehensive Income		-	-
Total Comprehensive Income (Loss) attributable to the Australian Government		1,242	(1,838)

FEDERAL COURT OF AUSTRALIA

BALANCE SHEET

as at 30 June 2010

	Notes	2010 \$'000	2009 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	4A	587	1,435
Trade and other receivables	4B	33,691	32,308
Total financial assets		34,278	33,743
NON-FINANCIAL ASSETS			
Land and buildings	5A	11,510	7,948
Infrastructure, plant and equipment	5B	9,326	9,269
Intangibles	5C	1,621	1,534
Other non-financial assets	5E	1,679	1,406
Total non-financial assets		24,136	20,157
Total Assets		58,414	53,900
LIABILITIES			
Payables			
Suppliers	6A	5,994	1,985
Other Payables	6B	1,030	810
Total payables		7,024	2,795
INTEREST BEARING LIABILITIES			
Leases	7	83	243
Total interest bearing liabilities		83	243
PROVISIONS			
Judge and employee provisions	8	16,296	16,046
Total provisions		16,296	16,046
Total Liabilities		23,403	19,084
Net Assets		35,011	34,816
EQUITY			
Contributed equity		9,719	9,719
Reserves		1,289	1,289
Retained surplus		24,003	23,808
Total Equity		35,011	34,816

FEDERAL COURT OF AUSTRALIA

STATEMENT of CHANGES in EQUITY

for the period ended 30 June 2010

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
Opening balance	23,808	25,646	1,289	1,289	9,719	9,719	34,816	36,654
Comprehensive Income								
Surplus (Deficit) for period	1,242	(1,838)	-	-	-	-	1,242	(1,838)
Total comprehensive income	1,242	(1,838)	-	-	-	-	1,242	(1,838)
of which: Attributable to the Australian Government	1,242	(1,838)	-	-	-	-	1,242	(1,838)
Transactions with owners								
Distribution to owners								
Return of prior years' unspent appropriation	(1,047)	-	-	-	-	-	(1,047)	
Sub-total transactions with owners	(1,047)	-	-	-	-	-	(1,047)	
Closing balance as at 30 June	24,003	23,808	1,289	1,289	9,719	9,719	35,011	34,816
Closing balance attributable to the Australian Government	24,003	23,808	1,289	1,289	9,719	9,719	35,011	34,816

FEDERAL COURT OF AUSTRALIA

CASH FLOW STATEMENT

for the period ended 30 June 2010

	Notes	2010 \$'000	2009 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		6,590	10,753
Appropriations		87,292	77,762
Refunds credited		44	31
Total cash received		93,926	88,546
Cash used			
Judges and employees		49,108	49,598
Suppliers		38,321	37,543
Net GST paid		223	15
Borrowing costs		13	31
Total cash used		87,666	87,187
Net cash from operating activities	9	6,261	1,359
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		20	22
Total cash received		20	22
Cash used			
Purchase of property, plant and equipment		5,819	2,373
Purchase of intangibles		103	701
Total cash used		5,922	3,074
Net cash (used by) investing activities		(5,902)	(3,052)
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		-	187
Total cash received		-	187
Cash used			
Other – Return of Appropriation		1,047	-
Payment of finance lease liabilities		160	389
		1,207	389
Net cash (used by) financing activities		(1,207)	(202)
Net increase (decrease) in cash held		(848)	(1,895)
Cash at the beginning of the reporting period		1,435	3,330
Cash at the end of the reporting period	4A	587	1,435

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF COMMITMENTS

as at 30 June 2010

	2010 \$'000	2009 \$'000
BY TYPE		
Commitments receivable		
GST recoverable on commitments	(14,214)	(14,833)
Total commitments receivable	(14,214)	(14,833)
Commitments payable		
Capital commitments		
Infrastructure, plant and equipment ¹	1,842	209
Total capital commitments	1,842	209
Other commitments		
Operating leases ²	154,474	162,510
Other ³	34	450
Total other commitments	154,508	162,960
Net commitments by type	142,136	148,336
BY MATURITY		
Commitments receivable		
One year or less	(1,487)	(1,454)
From one to five years	(5,336)	(5,662)
Over five years	(7,391)	(7,717)
Total commitments receivable	(14,214)	(14,833)
Capital commitments		
One year or less	1,842	209
Total capital commitments	1,842	209
Operating lease commitments		
One year or less	14,485	15,334
From one to five years	58,694	62,285
Over five years	81,295	84,891
Total operating lease commitments	154,474	162,510
Other commitments		
One year or less	34	450
Total other commitments	34	450
Net Commitments by Maturity	142,136	148,336

NB: Commitments are GST inclusive where relevant.

1. Plant and equipment commitments are primarily contracts for the purchase of furniture and fittings.

Nature of leases/General description

2. Operating leases included are effectively non-cancellable and comprise:

Leases for judicial and other accommodation.

These commitments are mainly for rental of special purpose court buildings which are occupied by the Court's registries. The court buildings are owned by the Commonwealth of Australia, except for the New South Wales court building, which is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments.

FEDERAL COURT OF AUSTRALIA***Agreements for the provision of motor vehicles to judges and senior officers.***

The Court leases motor vehicles from Lease Plan under the terms of a contract that is operative until January 2012. These vehicles are leased under individual operating leases.

3. Other commitments - The Court has entered into commitments for the provision of information technology and library goods and services.

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF CONTINGENCIES

as at 30 June 2010

There were no contingent losses or gains as at 30 June 2010 (2009: nil).

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ASSET ADDITIONS

for the period ended 30 June 2010

The following non-financial non-current assets were added in 2009–10:

	Buildings	Other property, plant & equipment	Intangibles	Total
By purchase – appropriation equity	2,154	-	-	2,154
By purchase – appropriation ordinary annual services	2,465	1,221	224	3,910
Total additions	4,619	1,221	224	6,064

The following non-financial non-current assets were added in 2008–09:

	Buildings	Other property, plant & equipment	Intangibles	Total
By purchase – appropriation equity	187	-	-	187
By purchase – appropriation ordinary annual services	1,197	1,049	822	3,068
Total additions	1,384	1,049	822	3,255

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS

	Notes	2010 \$'000	2009 \$'000
Income administered on behalf of Government			
<i>for the period ended 30 June 2010</i>			
Revenue			
Non Taxation Revenue			
Fees (filing and hearing fees)	13	6,961	6,712
Fines	13	785	142
Other revenue	13	145	135
Total revenue administered on behalf of Government		7,891	6,989
Total income administered on behalf of Government		7,891	6,989
Expenses administered on behalf of Government			
<i>for the period ended 30 June 2010</i>			
Fees and fines – provision for doubtful debts	14	22	14
Total expenses administered on behalf of Government		22	14
Assets administered on behalf of Government			
<i>as at 30 June 2010</i>			
Financial assets			
Cash and cash equivalents	15A	40	55
Receivables	15B	369	248
Total assets administered on behalf of Government		409	303

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS (Continued)

	Notes	2010 \$'000	2009 \$'000
Administered cash flows <i>for the period ended 30 June 2010</i>			
OPERATING ACTIVITIES			
Cash received			
Fees		7,011	6,856
Fines		857	142
Other		146	135
Total cash received		<u>8,014</u>	<u>7,133</u>
Cash used			
Refund of court fees and fines		(266)	(109)
Total cash used		<u>(266)</u>	<u>(109)</u>
Net cash flows from operating activities		<u>7,748</u>	<u>7,024</u>
Net Increase in cash held		<u>7,748</u>	<u>7,024</u>
Cash at the beginning of the reporting period		55	44
Cash from Official Public Account for:			
- Appropriations		265	115
		<u>265</u>	<u>115</u>
Cash to Official Public Account		<u>(8,028)</u>	<u>(7,128)</u>
		<u>(8,028)</u>	<u>(7,128)</u>
Cash at the end of the reporting period	17A	<u>40</u>	<u>55</u>

ADMINISTERED COMMITMENTS *as at 30 June 2010*

There were no Administered commitments as at 30 June 2010. (2009: nil)

ADMINISTERED CONTINGENCIES *as at 30 June 2010*

There were no Administered contingent losses or gains as at 30 June 2010. (2009: nil)

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

- Note 1: Summary of Significant Accounting Policies
- Note 2: Operating Expenses
- Note 3: Income
- Note 4: Financial Assets
- Note 5: Non-Financial Assets
- Note 6: Payables
- Note 7: Interest Bearing Liabilities
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Executive Remuneration
- Note 11: Remuneration of Auditors
- Note 12: Financial Instruments
- Note 13: Income Administered on Behalf of Government
- Note 14: Expenses Administered on Behalf of Government
- Note 15: Assets Administered on Behalf of Government
- Note 16: Administered Reconciliation Table
- Note 17: Administered Financial Instruments
- Note 18: Appropriations
- Note 19: Special Accounts
- Note 20: Compensation and Debt Relief
- Note 21: Reporting of Outcomes

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the Court

The Federal Court of Australia is an Australian Government controlled entity. The objectives of the Court are to:

- decide disputes according to law promptly, courteously and effectively; and in so doing to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the Constitution;
- provide an effective registry service to the community; and
- manage the resources allotted by Parliament efficiently.

The Court is structured to meet one Outcome:

Outcome: To apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.

The Court's activities contributing toward this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenue and expenses controlled or incurred by the Court in its own right. Administered activities involve the management or oversight by the Court, on behalf of the Government, of items controlled or incurred by the Government.

The Court conducts the following administered activity: The collection of fees and fines on behalf of the Government.

The continued existence of the Court in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Court's administration and programs.

1.2 Basis of Preparation of the Financial Statements

The financial statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general-purpose financial report.

The financial statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs), for reporting periods ending on or after 1 July 2009; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the Court and the amounts of assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Income Statement only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 Changes in Australian Accounting Standards

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. No new accounting standards, amendments to standards and interpretations issued by the Australian accounting standards Board that are applicable in the current period have had a material financial affect on the Court.

Future Australian Accounting Standard requirements

New standards, amendments to standards, and interpretations that are applicable to future periods have been issued by the Australian Accounting Standards Board. It is estimated that adopting these pronouncements, when effective, will have no material impact on future reporting periods.

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Court gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

In the 2009–10 Budget, the Australian Government agreed to a restructure of the federal courts. This resulted in the reallocation of funding from the Federal Magistrates Court of Australia (FMC) to the Federal Court of Australia (FCA) and the Family Court of Australia (FCoA) from 1 January 2010.

The restructure has been delayed. The government is considering the implications of the High Court's decision in *Lane v Morrison* for the proposed restructure of the Federal Courts, and the formulation of proposals for an appropriate jurisdiction to determine military justice matters, including the involvement of Chapter III courts.

Funding that was transferred from the FMC to the FCA and the FCoA respectively will be invoiced back by the FMC for the period 1 January 2010 to 30 June 2011. This arrangement is reflected in the FCA's budgeted financial statements for 2010–11, as reported in the PBS and as described in the 2009–10 PAES.

The invoicing arrangements are reflective of the integrated federal court system with overlapping jurisdiction and avenues for transfer between the various courts noting that the FMC was established to ease the workload of both the FCA and the FCoA by having the FMC hear matters of a less complex nature, which would otherwise have been heard in the 'senior' courts.

Appropriations receivable are recognised at their nominal amounts.

Other Types of Revenue

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits with the transaction have flowed to the Court.

Receivables for services, which have 30 day terms, are recognised at the nominal amounts due less any

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

impairment allowance account. Collection of debts is reviewed at balance date. Allowances are made when collection of the debt is no longer probable.

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of these resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructure of administrative arrangements.

Resources received free of charge are recognised as either revenue or gains depending on their nature.

Sale of Assets

Gains from disposal of non-current assets are recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner

EQUITY INJECTIONS

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in Contributed Equity in that year.

Other Distributions to owners

The FMO require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2009–10, by agreement with the Department of Finance and Deregulation, the Court returned \$1,047,000 of unspent appropriation to the Department. This appropriation related to previous financial years.

1.8 Judge and Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 Employee Benefits) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other judge and employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by judges and employees up to the reporting date.

LEAVE

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Court is estimated to be less than the annual entitlement for sick leave.

The long service leave provision is based on the Court's estimated liability at balance date. Court staff employed under the Public Service Act accrue 3 months long service leave after 10 years service, and proportionally thereafter. The estimate of the present liability takes into account attrition rates and pay increases through promotion and inflation. Judges accrue 6 months long leave after 5 years of service. In recognition of the nature of Judges' tenure, a provision is accrued from the first year of service.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken. This includes the Court's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Superannuation

Staff of the Court are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap). Some staff members elect to have contributions made to another superannuation fund of their choice.

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Court makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Court's employees. The Court accounts for the contributions as if they were contributions to defined contribution plans. For those staff members who have elected to have contributions made to a scheme of their choice, the Court makes payments of the amount required under Commonwealth legislation.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

Judges' Pension

Under the *Judges' Pension Act 1968*, Federal Court Judges are entitled to a non-contributory pension upon retirement after 6 years service. Where entitlements are not available under the *Judges Pension Act 1968*, entitlements are available under the *Superannuation (Productivity Benefit) Act 1988*. As the liability for these pension payments is assumed by the Australian Government, the Court has not recognised a liability for unfunded superannuation liability. The Court does, however, recognise an expense and a corresponding revenue item, "Liabilities assumed by other agencies", in respect of the notional amount of the employer contributions to Judges' pensions for the reporting period amounting to \$9,394,987 (2008–09: \$9,069,070). The contribution rate has been provided by the Australian Government Actuary.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Cash

Cash means notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial Assets

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non-current assets. The Court does not have any loans at the balance sheet date.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial assets held at nominal cost* – If there is objective evidence that an impairment loss has been incurred for receivables, the carrying amount is reduced by way of an allowance account. The loss is recognised in the income statement.

1.12 Financial Liabilities**Supplier and other payables**

Supplier and other payables are recognised at nominal cost. Liabilities are recognised to the extent that the goods or services have been received, irrespective of having been invoiced.

1.13 Acquisition of assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

1.14 Property, Plant and Equipment**Asset Recognition Threshold**

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases of:

- assets other than information technology equipment costing less than \$2,000; and
- information technology equipment costing less than \$1,500;

which are expensed in the year of acquisition other than where they form part of a group of similar items, which are significant in total.

Revaluations

Fair values for each class of asset are determined as shown below:

Asset Class	Fair value measured at
Buildings	Market appraisal
Leasehold improvements	Depreciated replacement cost
Plant & Equipment	Market appraisal

Following initial recognition at cost, buildings, infrastructure, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class previously recognised through the Income Statement. Revaluation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the valuation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Court using, in all cases, the straight-line method of depreciation. Leasehold improvements are depreciated over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation and amortisation rates for each class of depreciable asset are based on the following useful lives:

	<u>2010</u>	<u>2009</u>
Leasehold improvements	10 years or Lease term	10 years or Lease term
Plant and equipment – excluding library materials	3 to 10 years	3 to 10 years
Plant and equipment – library materials	5 to 40 years	5 to 40 years

Impairment

All assets are assessed for impairment at 30 June. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Court were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

1.15 Intangibles

The Court's intangibles comprise externally and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment loss.

Software is amortised on a straight line basis over its anticipated useful life of 5 years (2008–09: 5 years).

All software assets were assessed for indications of impairment at 30 June 2010.

1.16 Taxation

The Court is exempt from all forms of taxation except fringe benefits tax (FBT) and goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable; and
- except for receivables and payables.

1.17 Other expenses – payments to FMC

The Court made a contribution of \$6.869m to the Federal Magistrates Court. The contribution reflects the funding that was reallocated from the FMC to the Court, from 1 January 2010, in accordance with the proposed Federal Courts restructure, as announced in the 2009–10 Federal Budget.

The restructure has been delayed and the funding provided to the Court to 30 June 2010 has been invoiced back by the Federal Magistrates Court. Refer to Note 1.5 Revenue from Government.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

1.18 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where stated below, administered items are accounted for on the same basis and using the same policies as the Court, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from Official Public Account

Revenue collected by the Court for use by the Government rather than the Court is administered revenue. Collections are transferred to the Official Public Account maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government.

These transfers to and from the OPA are adjustments to the administered cash held by the Court on behalf of the Government and reported as Administered Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 16: Administered Reconciliation Table. Thus, the Schedule of Administered Items reflects the Government's transactions, through the Court, with parties outside the Government.

Revenue

All administered revenues are revenues relating to the course of ordinary activities performed by the Court on behalf of the Australian Government.

Fees are charged for services provided by the Court to litigants under the Federal Court Regulations.

Revenue from fees is recognised at the time the services are performed. The services are performed at the same time as, or within two days of, the fees becoming due and payable. It is recognised at its nominal amount due less any provision for bad or doubtful debts. Debts are reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely. Revenue from fines is recognised in the period in which the invoice for the fine is raised.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 2: Expenses

2010	2009
\$'000	\$'000

Note 2A: Judge and Employee benefits

Judge remuneration	17,396	17,148
Judge notional superannuation	9,395	9,069
	<u>26,791</u>	<u>26,217</u>
Employee wage & salaries	26,986	27,494
Employee superannuation	3,799	3,986
Employee separation and redundancies	1,230	594
	<u>32,015</u>	<u>32,074</u>
Total judge and employee benefits	<u>58,806</u>	<u>58,291</u>

Note 2B: Suppliers

GOODS AND SERVICES

Property operating costs	7,351	7,051
Library purchases	2,491	2,984
Information technology expenditure	3,123	3,444
Travel expenditure	2,715	2,715
Contractors and consultants	1,635	2,067
Other goods and services	3,107	3,468
Total goods and services	<u>20,422</u>	<u>21,729</u>

Goods and services are made up of:

Provision of goods - external parties	1,913	2,602
Rendering of services - related entities	1,459	1,874
Rendering of services - external parties	17,050	17,253
Total goods and services	<u>20,422</u>	<u>21,729</u>

Other supplier expenses

Operating lease rentals:		
Minimum Lease Payments	24,886	22,235
Workers compensation premiums	156	190
Total other supplier expenses	<u>25,042</u>	<u>22,425</u>
Total supplier expenses	<u>45,464</u>	<u>44,154</u>

Note 2C: Depreciation and Amortisation

DEPRECIATION:

Buildings	1,057	1,384
Infrastructure, plant and equipment	1,002	913
Total depreciation	<u>2,059</u>	<u>2,297</u>

Assets held under finance leases

Amortisation:

Intangibles:		
Computer Software	137	130
Leased plant and equipment	149	372
Total amortisation	<u>286</u>	<u>502</u>
Total depreciation and amortisation	<u>2,345</u>	<u>2,799</u>

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2010 \$'000	2009 \$'000
Note 2D: Finance costs		
Finance leases	13	31
Total finance costs	13	31
Note 2E Write-down and impairment of assets		
Non-financial assets		
Impairment of plant & equipment	13	279
Total write-down and impairment of assets	13	279
Note 2F Other payments to FMC		
Other	735	-
Total other payments to FMC	735	-
Note 2G Contribution to FMC		
Contribution to FMC	6,869	-
Total contribution to FMC	6,869	-

This contribution relates to appropriation that was given to the Federal Court of Australia on the assumption that the Federal Magistrates Court of Australia would cease operation as a prescribed agency from 1 January 2010. However, as this did not happen, the funding received by the Federal Court has been contributed back to the Federal Magistrates Court. See Note 1.5 Revenue from Government for further information.

Note 3: Income**Revenue****Note 3A: Sale of goods and rendering of services**

Rendering of services – related entities	1,934	1,653
Rendering of services – external entities	725	570
Total sale of goods and rendering of services	2,659	2,223

Note 3B: Other revenue – FMC

Other FMC	8,721	8,028
Total other revenue FMC	8,721	8,028

Gains**Note 3C: Sale of Assets**

Infrastructure, plant and equipment:		
Proceeds from sale	3	2
Carrying value of assets sold	-	(1)
Net gain (loss) from sale of assets	3	1

Note 3D: Other gains

Liabilities assumed by other agencies	9,395	9,069
Resources received free of charge	6,299	6,189
	15,694	15,258

Note 3E: Revenue from Government

Appropriation:		
Departmental outputs	88,410	78,206
Total revenue from Government	88,410	78,206

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Resources received free of charge includes an amount of \$5,547,582 (2008–09: \$5,547,582) in respect of rent and outgoings associated with the accommodation occupied by the Court in the Law Courts Building located in Sydney, New South Wales. This building is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments.

Note 4: Financial Assets

2010 \$'000	2009 \$'000
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Note 4A: Cash and cash equivalents

Cash on hand or on deposit	587	1,435
Total cash and cash equivalents	587	1,435

Note 4B: Trade and other receivables

Goods and services	186	600
Appropriations receivable:		
for existing outputs	28,735	31,361
accrued appropriations	3,744	-
GST receivable from the Australian Taxation Office	1,026	347
Total trade and other receivables (gross)	33,691	32,308
Less impairment allowance account		
Goods and Services	-	-
Total trade and other receivables (net)	33,691	32,308
Receivables are aged as follows:		
Not overdue	33,657	32,290
Overdue by:		
Less than 30 days	4	1
30 to 60 days	3	3
61 to 90 days	-	5
More than 90 days	27	9
	34	18
Total receivables (gross)	33,691	32,308

All receivables are current. Credit terms are net 30 days (2009: 30 days).

Reconciliation of the impairment allowance account:

Opening balance	-	(51)
Amounts written off	-	51
Increase/decrease recognised in net surplus	-	-
Closing balance	-	-

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2010 \$'000	2009 \$'000
Note 5: Non-Financial Assets		
Note 5A: Land and buildings		
LEASEHOLD IMPROVEMENTS		
fair value	14,937	10,449
accumulated depreciation	(3,427)	(2,501)
Total leasehold improvements	11,510	7,948
Total land and buildings (non-current)	11,510	7,948

No indications of impairment were found for land and buildings

Note 5B: Infrastructure, plant and equipment**INFRASTRUCTURE, PLANT AND EQUIPMENT**

Fair value	13,956	12,837
Accumulated depreciation	(4,630)	(3,568)
Total infrastructure, plant and equipment	9,326	9,269
Total infrastructure, plant and equipment (non-current)	9,326	9,269

All revaluations are conducted in accordance with the valuation policy stated in Note 1.

In 2007–08, formal valuations were conducted by an independent valuer, the Australian Valuation Office.

No indications of impairment were found for infrastructure, plant and equipment.

Note 5C: Intangible Assets**COMPUTER SOFTWARE AT COST**

Internally developed – in progress	170	1,285
Internally developed – in use	1,291	-
Purchased – in use	2,121	2,073
Total Computer Software	3,582	3,358
Accumulated amortisation	(1,961)	(1,824)
Total intangibles (non-current)	1,621	1,534

No indication of impairment was found for intangibles.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 5D: Analysis of infrastructure, property, plant, and equipment

TABLE A

- Reconciliation of the opening and closing balances of property, plant, and equipment (2009–10)

Item	Leasehold improvement – Total land and buildings \$'000	Infrastructure, plant and equipment \$'000	Computer Software – Intangibles \$'000	Total \$'000
As at 1 July 2009				
Gross book value	10,449	12,837	3,358	26,644
Accumulated depreciation/amortisation	(2,501)	(3,568)	(1,824)	(7,893)
Net book value 1 July 2009	7,948	9,269	1,534	18,751
Additions:				
by purchase	4,619	1,221	224	6,064
Depreciation/amortisation expense	(1,057)	(1,151)	(137)	(2,345)
Disposals:				
Other disposals	-	(13)	-	(13)
Net book value 30 June 2010	11,510	9,326	1,621	22,457
Net book value as of 30 June 2010 represented by:				
Gross book value	14,937	13,956	3,582	32,475
Accumulated depreciation/amortisation	(3,427)	(4,630)	(1,961)	(10,018)
	11,510	9,326	1,621	22,457

TABLE A

- Reconciliation of the opening and closing balances of property, plant, and equipment (2008–09)

Item	Leasehold improvement – Total land and buildings \$'000	Infrastructure, plant and equipment \$'000	Computer Software – Intangibles \$'000	Total \$'000
As at 1 July 2008				
Gross book value	9,783	12,204	2,537	24,524
Accumulated depreciation/amortisation	(1,575)	(2,772)	(1,695)	(6,042)
Net book value 1 July 2008	8,208	9,432	842	18,482
Additions:				
by purchase	1,384	1,049	822	3,255
Re-classification	-	92	-	92
Depreciation/amortisation expense	(1,384)	(1,285)	(130)	(2,799)
Disposals:				
Other disposals	(260)	(19)	-	(279)
Net book value 30 June 2009	7,948	9,269	1,534	18,751
Net book value as of 30 June 2009 represented by:				
Gross book value	10,449	12,837	3,358	26,644
Accumulated depreciation/amortisation	(2,501)	(3,568)	(1,824)	(7,893)
	7,948	9,269	1,534	18,751

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2010 \$'000	2009 \$'000
Note 5E: Other Non-financial assets		
Prepayments	1,679	1,406
Total other non-financial assets	1,679	1,406

Note 6: Payables**Note 6A: Suppliers**

Trade creditors and accruals	5,590	1,028
Deferred Revenue	404	957
Total supplier payables	5,994	1,985

Supplier payables are all current.
Settlement is usually made net 30 days.

Note 6B: Other Payables

Salaries and wages	585	418
Superannuation	281	319
Separations and redundancies	164	73
Total other payables	1,030	810

Note 7: Interest Bearing Liabilities**Note 7: Leases**

Finance leases	83	243
Total finance leases	83	243
Payable		
Within one year:		
Minimum lease payments	78	173
Less future finance charges	(4)	(13)
In one to five years:		
Minimum lease payments	9	87
Less future finance charges	-	(4)
Finance lease recognised on the balance sheet	83	243

Finance leases are for certain major IT equipment assets and some office equipment. The leases are non-cancellable and for fixed terms averaging three years, with a maximum of five years. The interest rate implicit in the leases averaged 6.40% (2009: 5.80%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

Note 8: Provisions**Note 8A: Judges & Employee provisions**

Long Leave (Judges)	10,096	9,111
Leave	6,200	6,935
Total judge and employee provisions	16,296	16,046
Employee provisions are expected to be settled in:		
No more than 12 months	4,006	4,143
More than 12 months	12,290	11,903
Total judges and employee provisions	16,296	16,046

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 9: Cash flow reconciliation

Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement	2010 \$'000	2009 \$'000
Report cash and cash equivalents as per:		
Cash Flow Statement	587	1,435
Balance Sheet	587	1,435
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(87,168)	(80,044)
Add revenue from Government	88,410	78,206
Adjustments for non-cash items		
Depreciation/amortisation	2,345	2,799
Net write down of non-financial assets	13	279
(Gain)/Loss on disposal of assets	(3)	(1)
Assets not previously recognised	-	(10)
Other asset adjustments	-	(82)
Changes in assets/liabilities		
(Increase)/decrease in net receivables	(1,334)	(333)
(Increase)/decrease in prepayments	(273)	357
Increase/(decrease) in suppliers payables	4,009	863
Increase/(decrease) in judge and employee provisions	421	(285)
Increase/(decrease) in other liabilities	(159)	(390)
Net cash from/(used by) operating activities	6,261	1,359

Note 10: Senior Executive Remuneration

	2010	2009
Note 10A: Actual Remuneration Paid to Senior Executives		
The number of senior executives who received:		
\$190,000 to \$204,999	-	1
\$205,000 to \$219,999	2	2
\$220,000 to \$234,999	1	1
\$235,000 to \$249,999	2	4
\$250,000 to \$264,999	1	1
\$265,000 to \$279,999	3	1
\$310,000 to \$324,999	1	1
Total	10	11
Excluding acting arrangements and part year service		

Total expense recognised in relation to Senior Executive employment

Short-term employee benefits:	\$	\$
Salary (including annual leave taken)	2,064,557	2,160,847
Changes in annual leave provisions	70,772	61,283
Performance bonus	-	-
Other ¹	116,818	116,120
Total Short-term employee benefits	2,252,147	-
Superannuation (post-employment benefits)	257,938	322,583
Other long-term benefits	-	-
Total	2,510,085	2,660,833

During the year the Court paid \$126,091 in termination benefits to senior executives (2009: Nil)

Notes 1. "Other" includes motor vehicle allowances and other allowances.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 10B: Salary Packages for Senior Executives

Average annualised remuneration packages for substantive Senior Executives

	As at 30 June 2010			As at 30 June 2009		
	No. SES	Base salary (including annual leave)	Total remuneration package ¹	No. SES	Base salary (including annual leave)	Total remuneration package ¹
Total remuneration:						
\$190,000 to \$204,999	-	-	-	1	\$160,471	\$196,604
\$205,000 to \$219,999	2	\$176,392	\$211,244	2	\$173,581	\$217,912
\$220,000 to \$234,999	1	\$181,826	\$222,997	1	\$185,958	\$234,318
\$235,000 to \$249,999	2	\$196,103	\$237,287	4	\$201,572	\$239,901
\$250,000 to \$264,999	1	\$211,881	\$261,521	1	\$219,004	\$250,516
\$265,000 to \$279,999	3	\$235,704	\$270,019	1	\$219,330	\$268,339
\$310,000 to \$324,999	1	\$289,517	\$318,449	1	\$279,714	\$315,628
Total	10			11		

* Excluding acting arrangements and part-year service.

Notes

1. Non-Salary elements available to Senior Executives include:

(a) Motor vehicle allowance

(b) Superannuation

2. The remuneration package includes a provision for long service leave

	\$	\$
The aggregate amount of total remuneration of executives shown above:	2,510,085	2,660,833

Note 11: Remuneration of Auditors

Financial statement audit services are provided free of charge to the Court.

The fair value of the services provided was:

2010	2009
\$	\$
130,000	100,000

No other services were provided by the Auditor-General.

Note 12: Financial Instruments

Note 12A Categories of financial instrument

	2010 \$'000	2009 \$'000
LOANS AND RECEIVABLES		
Cash and cash equivalents	587	1,435
Trade receivables	186	600
Carrying amount of financial assets	773	2,035
Financial Liabilities		
Other Liabilities		
Finance leases	83	243
Payables - suppliers	5,994	1,985
Carrying amount of financial liabilities	6,077	2,228

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 12B: Fair value of financial instruments

	Carrying amount 2010 \$'000	Fair value 2010 \$'000	Carrying amount 2009 \$'000	Fair value 2009 \$'000
FINANCIAL LIABILITIES				
Other Liabilities				
Finance leases	83	83	243	243
Total	83	83	243	243

Fair value measurements categorized by fair value hierarchy

	Level 2 Market Inputs	
FINANCIAL LIABILITIES AT FAIR VALUE	2010 \$'000	2009 \$'000
Finance Leases	83	243

Reconciliation of Level 2 fair value hierarchy

	Finance Leases	
	2010 \$'000	2009 \$'000
Opening Balance	243	633
Settlements	160	390
Closing Balance	83	243
Total	83	243

Note 12C Credit Risk

The Court is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2010: \$186,106 and 2009: \$599,996). The Court has assessed the risk of default on payment and has allocated nil in 2010 (2009: nil) to an allowance for doubtful debts account.

The Court manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Court has policies and procedures that are to be applied by employees who perform debt recovery duties.

The Court holds no collateral to mitigate credit risk.

Credit quality of financial instruments not past due or individually determined as impaired.

	Not past due nor impaired 2010 \$'000	Not past due nor impaired 2009 \$'000	Past due or impaired 2010 \$'000	Past due or impaired 2009 \$'000
LOANS AND RECEIVABLES				
Cash	587	1,435	-	-
Trade receivables	152	582	34	18
Total	739	2,017	34	18

Ageing of financial assets that are past due but not impaired for 2010

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
LOANS AND RECEIVABLES					
Trade receivables	4	3	-	27	34
Total	4	3	-	27	34

Ageing of financial assets that are past due but not impaired for 2009

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
LOANS AND RECEIVABLES					
Trade receivables	1	3	5	9	18
Total	1	3	5	9	18

Note 12D Liquidity Risk

The Court's financial liabilities are payables, loans from government, finance leases and other interest bearing liabilities. The exposure to liquidity risk is based on the notion that the Court will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Court and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

Maturities for non-derivative financial liabilities 2010

	On demand 2010 \$'000	Within 1 year 2010 \$'000	1 to 5 years 2010 \$'000	Total 2010 \$'000
OTHER LIABILITIES				
Payables - Suppliers	-	5,994	-	5,994
Finance leases	-	9	74	83
Total	-	6,003	74	6,077

Maturities for non-derivative financial liabilities 2009

	On demand 2009 \$'000	Within 1 year 2009 \$'000	1 to 5 years 2009 \$'000	Total 2009 \$'000
OTHER LIABILITIES				
Payables - Suppliers	-	1,985	-	1,985
Finance leases	-	160	83	243
Total	-	2,145	83	2,228

The Court is appropriated funding from the Australian Government. The Court manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due.

This note also applies to the Court's administered financial instruments and is therefore not reproduced at Note 17.

Note 12E Market risk

The Court holds basic financial instruments that do not expose the Agency to certain market risks. The Court is not exposed to currency risk.

INTEREST RATE RISK

The only interest-bearing items on the balance sheet are the 'Finance lease'. All bear interest at a fixed interest rate and will not fluctuate due to changes in the market interest rate.

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 13: Income Administered on Behalf of Government

	2010	2009
	\$'000	\$'000
Fees (filing and hearing fees)	6,961	6,712
Fines	785	142
Other	145	135
Total revenue administered on behalf of government	7,891	6,989

Note 14: Expenses Administered on Behalf of Government

EXPENSES

Fees and fines – provision for doubtful debts	22	14
Total expenses administered on behalf of government	22	14

Note 15: Assets Administered on Behalf of Government

FINANCIAL ASSETS

Note 15A: Cash and cash equivalents

Cash on hand or on deposit	40	55
----------------------------	----	----

Note 15B: Receivables

Fees (filing and hearing fees)	391	307
Less: Allowance for doubtful debts	(22)	(59)
Total receivables (net)	369	248

Receivables are aged as follows:

Not overdue	111	41
Overdue by:		
- Less than 30 days	80	99
- 30 to 60 days	57	40
- 60 to 90 days	19	24
- More than 90 days	124	103
Total receivables (gross)	391	307

All doubtful debts are for receivables more than 90 days overdue.

Receivables are with entities external to the Australian Government. Credit terms are net 30 days (2009: 30 days).

Reconciliation of the impairment allowance accounts:

Opening balance	59	45
Increase/decrease recognised in net surplus	22	14
Amounts written off	(59)	-
Amounts recovered and reversed	-	-
Closing balance	22	59

Note 16: Administered Reconciliation Table

Opening administered assets less administered liabilities as at 1 July	303	341
Plus: Administered income	7,891	6,989
Less: Administered expenses	(22)	(14)
Appropriation transfers from OPA	265	115
Transfers to OPA	(8,028)	(7,128)
Closing administered assets less administered liabilities as at 30 June	409	303

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 17: Administered Financial Instruments

2010	2009
\$'000	\$'000

Note 17A Categories of financial instruments**FINANCIAL ASSETS**

Loans and receivables

Cash	40	55
Trade receivables	391	307

Carrying amount of financial assets

431	362
-----	-----

Note 17B Credit Risk

The administered activities of the Court are not exposed to a high level of credit risk as the majority of financial assets are receivables. The Court has policies and procedures that guide employees who perform debt recovery functions.

The maximum exposure to credit risk is outlined in the table below.

FINANCIAL ASSETS

Loans and receivables

Receivables	391	307
-------------	-----	-----

Total

391	307
-----	-----

The Court has assessed the risk of default on payment and has allocated the following amounts to an allowance for doubtful debts account:

Receivables: **\$22,546** in 2010 (2009: \$58,990)

Credit quality of financial instruments not past due or individually determined as impaired

	Not past due nor impaired 2010 \$'000	Not past due nor impaired 2009 \$'000	Past due or impaired 2010 \$'000	Past due or impaired 2009 \$'000
LOANS AND RECEIVABLES				
Cash	40	55	-	
Trade receivables	111	41	280	266
Total	151	96	280	266

Ageing of financial assets that are past due but not impaired for 2010

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
LOANS AND RECEIVABLES					
Receivables	80	57	19	102	258
Total	80	57	19	102	258

Ageing of financial assets that are past due but not impaired for 2009

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
LOANS AND RECEIVABLES					
Receivables	99	40	24	44	207
Total	99	40	24	44	207

FEDERAL COURT OF AUSTRALIA
Notes to and forming part of the Financial Statements

Note 18: Appropriations

TABLE A - Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

PARTICULARS	Departmental Outputs	
	2010 \$'000	2009 \$'000
Balance carried from previous period	30,641	32,092
<i>Appropriation Act:</i>		
<i>Appropriation Act (No.1 and 3) 2009–10 as passed</i>	84,667	78,206
Departmental adjustments by the Finance Minister (<i>Appropriation Acts</i>)	-	-
Comcover receipts (<i>Appropriation Act s13</i>)	-	-
<i>FMA Act:</i>		
Appropriations to take account of recoverable GST (<i>FMA Act s30A</i>)	3,360	2,944
Repayments to the Commonwealth (<i>FMA Act s30</i>)	44	31
Relevant agency receipts (<i>FMA Act s31</i>)	6,610	10,775
Total appropriations available for payments	125,322	124,048
Cash payments made during the year (GST inclusive)	94,953	93,407
Appropriations returned to DoFD	1,047	-
Appropriations credited to special Accounts (excluding GST)	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	29,322	30 641
Represented by:		
Cash at bank and on hand	587	1,435
Departmental appropriations receivable	28,735	29,206
Total	29,322	30,641

TABLE B - Acquittal of authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations

	Non-operating Equity		Total	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
Balance carried forward from previous period	2,155	2,342	2,155	2,342
Appropriation Act (No.2)	-	-	-	-
Total appropriations available for payments	2,155	2,342	2,155	2,342
Cash payments made during the year (GST inclusive)	2,154	187	2,154	187
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Other Than Ordinary Annual Services Appropriations	1	2,155	1	2,155
Represented by:				
Cash at bank and on hand	-	-	-	-
Departmental appropriations receivable	1	2,155	1	2,155
Total	1	2,155	1	2,155

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 19: Special Accounts

	2010	2009
	\$	\$

OTHER TRUST MONEYS ACCOUNT

Legal authority: *Financial Management and Accountability Act, 1997, section 20*

Purpose: for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. This account is non-interest bearing.

Balance carried from previous period	69,706	31,990
Other receipts	492,749	1,260,011
Total credits	562,455	1,292,001
Payments made	543,022	1,222,295
Balance carried to next period	19,433	69,706
Represented by:		
Cash – held by the Court	19,433	69,706
Total	19,433	69,706

SERVICES FOR OTHER GOVERNMENTS & NON-AGENCY BODIES

Legal authority: *Financial Management and Accountability Act, 1997, section 20*

Purpose: for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies. This account is non-interest bearing.

Balance carried from previous period	10,398	10,398
Other receipts	-	-
Total credits	10,398	10,398
Payments made	10,398	-
Balance carried to next period	-	10,398
Represented by:		
Cash – held by the Court	-	10,398
Total	-	10,398

FEDERAL COURT OF AUSTRALIA LITIGANT'S FUND

Legal Authority: *Financial Management and Accountability Act, 1997, section 20*

Purpose: to hold private moneys for litigants pending acceptance of moneys paid into Court by litigants; security for costs or pursuant to an order of a Federal Court Judge. This account is non-interest bearing.

Balance carried from previous period	2,311,920	1,606,605
Other receipts	48,054,091	7,178,090
Total credits	50,366,011	8,784,695
Payments made	21,234,361	6,472,775
Balance carried to next period	29,131,650	2,311,920
Represented by:		
Cash – held by the Court	29,131,650	2,311,920
Total	29,131,650	2,311,920

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

	2010	2009
	\$	\$
FEDERAL COURT OF AUSTRALIA LITIGANT'S FUND		
Legal authority: <i>Financial Management and Accountability Act, 1997, section 39</i>		
<i>Purpose:</i> to invest private moneys paid by litigants pursuant to an order of a Federal Court Judge, pending an order for payment out by a Federal Court Judge. This account is interest bearing.		
Balance carried from previous period	54,958,400	23,493,476
Other receipts	26,029,624	47,618,484
Total credits	80,988,024	71,111,960
Payments made	49,726,288	16,153,560
Balance carried to next period	31,261,736	54,958,400
Represented by:		
Cash – held by the Court	31,261,736	54,958,400
Total	31,261,736	54,958,400

Note 20: Compensation and Debt Relief

No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the *Financial Management and Accountability Act 1997*.
(2009 No Act of Grace Expenses)

- -

ADMINISTERED

No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the *Financial Management and Accountability Act 1997*.
(2009: No Act of Grace Expenses)

- -

No payments were waived during the reporting period under subsection 34(1) of the *Financial Management and Accountability Act 1997*.
(2009: No Waivers).

- -

2,302 exemptions and waivers of amounts owing to the Commonwealth were made pursuant to sub-regulations 2(4)(a-c), 2A(2)(e-g), 2AA(2)(f-h) of the *Federal Court of Australia Regulations 2004*. (2009: 2,724)

2,132,499 2,343,398

DEPARTMENTAL

No payments were made under the 'Defective Administration Scheme' during 2009–10 (2008–09 nil).

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 21: Reporting of Outcomes

Note 21A: Net Cost of Outcome Delivery

The Court has one Output and Outcome:

To apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.

	2010 \$'000	2009 \$'000
OUTCOME 1		
EXPENSES		
Administered	22	14
Departmental	114,245	105,554
Total	114,267	105,568
INCOME FROM NON-GOVERNMENT SECTOR		
Administered	7,891	6,989
Departmental	725	1,074
Total	8,616	8,063
OTHER EXTERNAL REVENUES		
Administered	-	-
Departmental	10,655	9,177
Total	10,655	9,177
Net cost/(contribution) of outcome delivery	94,996	88,328

FEDERAL COURT OF AUSTRALIA

Notes to and forming part of the Financial Statements

Note 21B: Major Classes of Departmental Expenses, Income, Assets and Liabilities by Outcome

OUTCOME 1	2010 \$'000	2009 \$'000
DEPARTMENTAL EXPENSES		
Judges and Employees	58,806	58,291
Suppliers	45,464	44,154
Depreciation and Amortisation	2,345	2,799
Finance costs	13	31
Other Expenses	13	279
FMC Transfer	7,604	-
Total	114,245	105,554
DEPARTMENTAL INCOME		
Income from government	104,104	93,464
Sale of goods and services	11,383	10,252
Total	115,487	103,716
DEPARTMENTAL ASSETS		
Cash and cash equivalents	587	1,435
Trade and other receivables	33,691	32,308
Property, plant and equipment	20,836	17,217
Intangibles	1,621	1,534
Other non-financial assets	1,679	1,406
Total	58,414	53,900
DEPARTMENTAL LIABILITIES		
Suppliers	5,994	1,985
Leases	83	243
Judge and employee provisions	16,296	16,046
Other payables	1,030	810
Total	23,403	19,084

Note 21C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcome

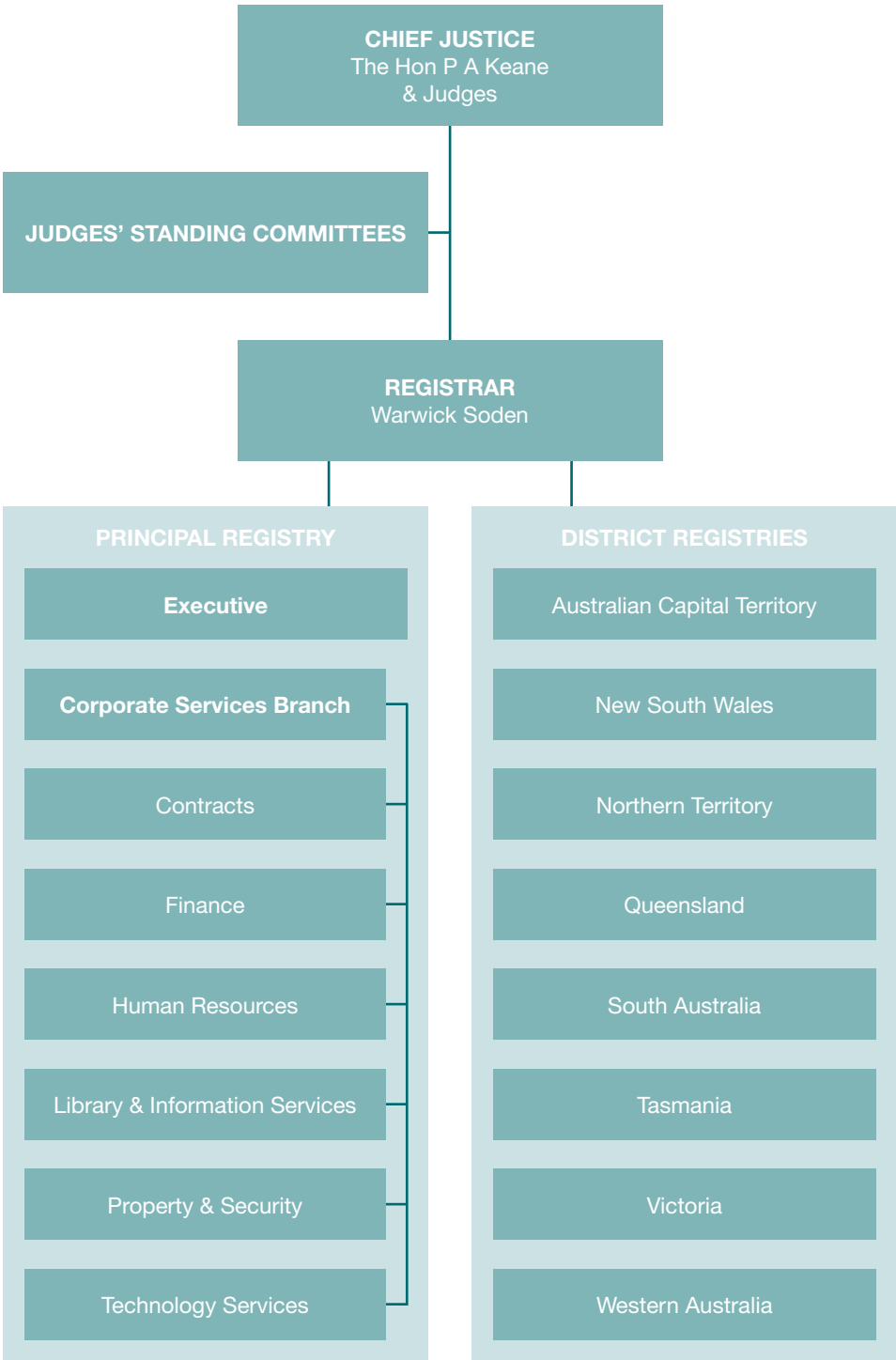
OUTCOME 1	2010 \$'000	2009 \$'000
ADMINISTERED EXPENSES		
Doubtful debts expense	22	14
Total	22	14
ADMINISTERED INCOME		
Non-taxation revenue	7,891	6,989
Total	7,891	6,989
ADMINISTERED ASSETS		
Cash and cash equivalents	40	55
Trade and other receivables	369	248
Total	409	303

APPENDIX 2 – AGENCY RESOURCE STATEMENT

	Actual Available Appropriations for 2009–10 \$'000	Payments Made 2009–10 \$'000	Balance Remaining \$'000
ORDINARY ANNUAL SERVICES ¹			
Departmental			
Prior year departmental appropriation	32,092	32,092	–
Departmental appropriation	78,206	47,565	30,641
S 31 relevant agency receipts	10,251	10,251	–
Total	120,549	89,908	30,641
Total ordinary annual services	120,549	89,908	30,641
OTHER SERVICES			
Departmental non-operating			
Equity injections	2,342	187	2,155
Previous years' outputs			
Total	2,342	187	2,155
Total other services	2,342	187	2,155
Total Resourcing and Payments	122,891	90,095	32,796

¹ Appropriation Bill (No. 1) 2009-10 and Appropriation Bill (No. 3) 2009-10

APPENDIX 3 – FEDERAL COURT MANAGEMENT STRUCTURE



APPENDIX 4 – REGISTRARS OF THE COURT

(as at 30 June 2010)

Registry	Name	Appointments under other Acts
Principal Registry		
Registrar	Warwick Soden	
Deputy Registrars	Philip Kellow	A Registrar, Federal Magistrates Court
	Louise Anderson	Deputy Registrar
	John Mathieson	Deputy Registrar
		A Registrar, Federal Magistrates Court
Sheriff of the Federal Court of Australia	David Priddle	
New South Wales		
District Registrar	Michael Wall	Registrar, Copyright Tribunal
		A Registrar, Federal Magistrates Court
Deputy District Registrars	Jennifer Hedge	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Geoffrey Segal	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero	A Registrar, Federal Magistrates Court
	Stephanie Kavallaris	A Registrar, Federal Magistrates Court
	Kim Lackenby	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Paddy Hannigan	A Registrar, Federal Magistrates Court
	Chuan Ng	A Registrar, Federal Magistrates Court Deputy Registrar, Supreme Court of Norfolk Island
	Thomas Morgan	A Registrar, Federal Magistrates Court
Victoria		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal Tribunal Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Daniel Caporale	A Registrar, Federal Magistrates Court Deputy Registrar, Supreme Court of Norfolk Island

Registry	Name	Appointments under other Acts
	Timothy Luxton	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Adam Moore	A Registrar, Federal Magistrates Court
	Ian Irving	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Native Title
	Julian Hetyey	A Registrar, Federal Magistrates Court
	Rupert Burns	A Registrar, Federal Magistrates Court
	Phillip Allaway	A Registrar, Federal Magistrates Court
	David Pringle	A Registrar, Federal Magistrates Court
Queensland		
District Registrar	Vacant	
Deputy District Registrars	Christine Fewings	
	Murray Belcher	A Registrar, Federal Magistrates Court
	Heather Baldwin	A Registrar, Federal Magistrates Court
Western Australia		
District Registrar	Martin Jan PSM	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Elizabeth Stanley	A Registrar, Federal Magistrates Court
	June Eaton	A Registrar, Federal Magistrates Court
	Rainer Gilich	A Registrar, Federal Magistrates Court
South Australia		
District Registrar	Patricia Christie	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrar	Katrina Bochner	A Registrar, Federal Magistrates Court

Registry	Name	Appointments under other Acts
Tasmania		
District Registrar	Catherine Scott	Deputy District Registrar, Administrative Appeals Tribunal A Registrar, Federal Magistrates Court
Australian Capital Territory		
District Registrar	Michael Wall (Based in Sydney)	Registrar, Copyright Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Jennifer Hedge (Based in Sydney)	Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
	Geoffrey Segal (Based in Sydney)	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero (Based in Sydney)	A Registrar, Federal Magistrates Court
	Stephanie Kavallaris (Based in Sydney)	A Registrar, Federal Magistrates Court
	Kim Lackenby (Based in Sydney and Canberra)	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Chuan Ng (Based in Sydney)	A Registrar, Federal Magistrates Court Deputy Registrar, Supreme Court of Norfolk Island
Northern Territory		
District Registrar	Patricia Christie (Based in Adelaide)	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court

APPENDIX 5 – STATUTES OF THE COURT

(as at 30 June 2010)

[Only Principal Acts are included]

Aboriginal and Torres Strait Islander Act 2005

Aboriginal and Torres Strait Islander Heritage Protection Act 1984

Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987

Aboriginal Land Rights (Northern Territory) Act 1976

ACIS Administration Act 1999

Administrative Appeals Tribunal Act 1975

Administrative Decisions (Judicial Review) Act 1977

Admiralty Act 1988

Advance Australia Logo Protection Act 1984

Age Discrimination Act 2004

Aged Care Act 1997

Agricultural and Veterinary Chemicals Act 1994

Air Navigation Act 1920

Airports Act 1996

Anti-Money Laundering and Counter-Terrorism Financing Act 2006

Anti-Personnel Mines Convention Act 1998

Australian Crime Commission Act 2002

Australian Energy Market Act 2004

Australian Federal Police Act 1979

Australian Human Rights Commission Act 1986

Australian Industry Development Corporation Act 1970

Australian National Railways Commission Sale Act 1997

Australian Postal Corporation Act 1989

Australian Radiation Protection and Nuclear Safety Act 1998

Australian Securities and Investments Commission Act 2001

Australian Sports Anti-Doping Authority Act 2006

Australian Wine and Brandy Corporation Act 1980

Aviation Transport Security Act 2004

Banking Act 1959

Bankruptcy Act 1966

Broadcasting Services Act 1992

Building and Construction Industry Improvement Act 2005

Building Industry Act 1985

Charter of the United Nations Act 1945

Child Support (Registration and Collection) Act 1988

Circuit Layouts Act 1989

Civil Aviation (Carriers' Liability) Act 1959

Coal Industry Repeal Act 2001

Commonwealth Authorities and Companies Act 1997

Commonwealth Electoral Act 1918

Commonwealth Places (Mirror Taxes) Act 1998

Commonwealth Serum Laboratories Act 1961

Copyright Act 1968

Corporations (Aboriginal and Torres Strait Islander) Act 2006

Corporations Act 2001

Crimes Act 1914

Criminal Code Act 1995

Cross-Border Insolvency Act 2008

CSL Sale Act 1993

Customs Act 1901

Dairy Industry Service Reform Act 2003

Dairy Produce Act 1986

Defence Act 1903

Defence Force Discipline Appeals Act 1955

Defence Reserve Service (Protection) Act 2001

Designs Act 2003

Diplomatic and Consular Missions Act 1978

Disability Discrimination Act 1992

Education Services for Overseas Students Act 2000
Egg Industry Service Provision Act 2002
Environment Protection and Biodiversity Conservation Act 1999
Evidence Act 1995
Evidence and Procedure (New Zealand) Act 1994
Excise Act 1901
Export Market Development Grants Act 1997
Extradition Act 1988
Fair Work Act 2009
Fair Work (Registered Organisations) Act 2009
Federal Court of Australia Act 1976
Federal Court of Australia (Consequential Provisions) Act 1976
Federal Proceedings (Costs) Act 1981
Financial Sector (Collection of Data) Act 2001
Financial Sector (Shareholdings) Act 1998
Financial Sector (Business Transfer and Group Restructure) Act 1999
Financial Transaction Reports Act 1988
First Home Saver Account Act 2008
Fisheries Management Act 1991
Foreign Acquisitions and Takeovers Act 1975
Foreign Evidence Act 1994
Foreign Judgments Act 1991
Foreign Proceedings (Excess of Jurisdiction) Act 1984
Foreign States Immunities Act 1985
Freedom of Information Act 1982
Freedom of Information (Removal of Conclusive Certificates and Other Measures) Act 2009
Fringe Benefits Tax Assessment Act 1986
Fuel Quality Standards Act 2000
Gene Technology Act 2000
Great Barrier Reef Marine Park Act 1975
Hazardous Waste (Regulation of Exports and Imports) Act 1989

Health Insurance Act 1973
Health Insurance Commission (Reform and Separation of Functions) Act 1997
Hearing Services Administration Act 1997
Hearing Services and AGHS Reform Act 1997
Horticulture Marketing and Research and Development Services Act 2000
Income Tax Assessment Act 1936
Independent Contractors Act 2006
Industrial Chemicals (Notification and Assessment) Act 1989
Industrial Relations Reform Act 1993
Insurance Acquisition and Takeovers Act 1991
Insurance Act 1973
Interactive Gambling Act 2001
International Criminal Court Act 2002
International War Crimes Tribunals Act 1995
Judiciary Act 1903
Jurisdiction of Courts (Cross-vesting) Act 1987
Lands Acquisition Act 1989
Law Enforcement Integrity Commissioner Act 2006
Life Insurance Act 1995
Liquid Fuel Emergency Act 1984
Maritime Transport and Offshore Facilities Security Act 2003
Medibank Private Sale Act 2006
Medical Indemnity (Prudential Supervision and Product Standards) Act 2003
Members of Parliament (Life Gold Pass) Act 2002
Migration Act 1958
Military Rehabilitation and Compensation Act 2004
Moomba-Sydney Pipeline System Sale Act 1994
Motor Vehicle Standards Act 1989
National Greenhouse and Energy Reporting Act 2007
National Environment Protection Measures (Implementation) Act 1998

<i>National Health Act 1953</i>	<i>Retirement Savings Accounts Act 1997</i>
<i>National Health Security Act 2007</i>	<i>Royal Commissions Act 1902</i>
<i>National Measurement Act 1960</i>	<i>Safety, Rehabilitation and Compensation Act 1988</i>
<i>National Rental Affordability Scheme Act 2008</i>	<i>Service and Execution of Process Act 1992</i>
<i>National Security Information (Criminal Proceedings) Act 2004</i>	<i>Shipping Registration Act 1981</i>
<i>National Transmission Network Sale Act 1998</i>	<i>Snowy Hydro Corporatisation Act 1997</i>
<i>Native Title Act 1993</i>	<i>Space Activities Act 1998</i>
<i>Navigation Act 1912</i>	<i>Spam Act 2003</i>
<i>Northern Territory National Emergency Response Act 2007</i>	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
<i>Nuclear Non Proliferation (Safeguards) Act 1987</i>	<i>Superannuation Industry (Supervision) Act 1993</i>
<i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i>	<i>Superannuation (Resolution of Complaints) Act 1993</i>
<i>Olympic Insignia Protection Act 1987</i>	<i>Surveillance Devices Act 2004</i>
<i>Ombudsman Act 1976</i>	<i>Sydney Airport Demand Management Act 1997</i>
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	<i>Tax Agent Services Act 2009</i>
<i>Parliamentary Privileges Act 1987</i>	<i>Taxation Administration Act 1953</i>
<i>Patents Act 1990</i>	<i>Telecommunications Act 1997</i>
<i>Payment Systems (Regulation) Act 1998</i>	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	<i>Telecommunications (Interception and Access) Act 1979</i>
<i>Pig Industry Act 2001</i>	<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>
<i>Plant Breeder's Rights Act 1994</i>	<i>Telstra Corporation Act 1991</i>
<i>Privacy Act 1988</i>	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>
<i>Private Health Insurance Act 2007</i>	<i>Therapeutic Goods Act 1989</i>
<i>Proceeds of Crime Act 2002</i>	<i>Trade Marks Act 1995</i>
<i>Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008</i>	<i>Trade Practices Act 1974</i>
<i>Protection of the Sea (Harmful Anti-fouling Systems) Act 2006</i>	<i>Transport Safety Investigation Act 2003</i>
<i>Protection of the Sea (Oil Pollution Compensation Funds) Act 1993</i>	<i>Treasury Bills Act 1914</i>
<i>Qantas Sale Act 1992</i>	<i>Veterans' Entitlements Act 1986</i>
<i>Radiocommunications Act 1992</i>	<i>Water Act 2007</i>
<i>Referendum (Machinery Provisions) Act 1984</i>	<i>Water Efficiency Labelling and Standards Act 2005</i>
<i>Removal of Prisoners (Territories) Act 1923</i>	<i>Wool International Privatisation Act 1999</i>
<i>Renewable Energy (Electricity) Act 2000</i>	<i>Wool Services Privatisation Act 2000</i>
<i>Resale Royalty Rights for Visual Artists 2009</i>	

APPENDIX 6 – WORKLOAD STATISTICS

The statistics in this appendix provide comparative historical information on the work of the Court, including in certain areas of the Court's jurisdiction.

When considering the statistics it is important to note that matters vary according to the nature and complexity of the issues in dispute.

It should also be noted that the figures reported in this report may differ from figures reported in previous years. The variations have occurred through refinements or enhancements to the Casetrack database which necessitated the checking or verification and possible variation of data previously entered.

Casetrack records matters in the Court classified according to eleven main categories, described as 'causes of action' (COA). The Court presently reports on filings by major COA. This is an under representation of the workload as it does not include filings of supplementary COA's (cross appeals and cross claims), interlocutory applications (initiated by the filing of a notice of motion) or Native Title joinder of party applications. In 2007–08 the Court started to count and report on notices of motion in appellate proceedings in order to provide the most accurate possible picture of the Court's appellate workload. From 2008–09 the Court has counted all forms of this additional workload in both its original and appellate jurisdictions.

Table 6.4 on page 118 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of notices of motion (because they are recorded in the Court's case management system as a document filed rather than a specific COA). Because of this, detailed reporting of these matters has been restricted to the information about appeals in Chapter 3 and Table 6.4. All other tables and figures in this Appendix and through the Report are based on major COA.

**Table 6.1 – Summary of Workload Statistics –
Original and Appellate Jurisdiction**

Filings of Major COAs (including Appeals and Related Actions)					
Cause of Action	2005–06	2006–07	2007–08	2008–09	2009–10
Total COAs					
Filed	6157	4925	4428	3862	3642
Finalised	6237	5225	4735	4124	3519
Current	3520	3220	2913	2651	2774
Corporations					
Filed	2909	1926	1695	1673	1676
Finalised	2716	2086	1680	1744	1392
Current	678	518	533	462	746
Bankruptcy					
Filed	390	282	247	208	187
Finalised	412	343	264	235	159
Current	181	120	103	76	104
Native Title					
Filed	67	66	33	42	36
Finalised	81	93	73	91	70
Current	614	587	547	498	464
Total COAs (excluding Corporations, Bankruptcy & Native Title)					
Filed	2791	2651	2453	1936	1743
Finalised	3028	2703	2718	2054	1898
Current	2047	1995	1730	1615	1460

Table 6.2 – Summary of Workload Statistics – Excluding Appeals and related actions

Cause of Action	2005–06	2006–07	2007–08	2008–09	2009–10
Total COAs (ex. Appeals & Related Actions)					
Filed	4826	3543	3074	2988	2949
Finalised	4871	3842	3255	3197	2758
Current	2992	2693	2512	2303	2494
Corporations (ex. Appeals & Related Actions)					
Filed	2897	1903	1678	1636	1642
Finalised	2709	2064	1660	1716	1362
Current	667	506	524	444	724
Bankruptcy (ex. Appeals & Related Actions)					
Filed	332	223	201	148	127
Finalised	355	289	206	171	115
Current	153	87	82	59	71
Native Title (ex. Appeals & Related Actions)					
Filed	60	50	27	37	33
Finalised	78	80	63	86	65
Current	607	577	541	492	460
Total COAs (excl. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	1537	1367	1168	1161	1147
Finalised	1729	1409	1326	1224	1216
Current	1565	1523	1365	1308	1239

Table 6.3 – Summary of Workload Statistics – Appeals and Related Actions only

Cause of Action	2005–06	2006–07	2007–08	2008–09	2009–10
Total Appeals & Related Actions					
Filed	1331	1382	1354	874	693
Finalised	1366	1383	1480	927	761
Current	528	527	401	348	280
Corporations Appeals & Related Actions					
Filed	12	23	17	37	34
Finalised	7	22	20	28	30
Current	11	12	9	18	22
Migration Appeals & Related Actions					
Filed	1028	1050	997	515	376
Finalised	1009	1079	1099	616	423
Current	370	341	239	138	91
Native Title Appeals & Related Actions					
Filed	7	16	6	5	3
Finalised	3	13	10	5	5
Current	7	10	6	6	4
Total Appeals & Related Actions – (excl. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	284	293	334	320	280
Finalised	347	269	351	278	303
Current	140	164	147	186	163

Table 6.4 – Summary of supplementary workload statistics

Filings of supplementary causes of action					
	2005–06	2006–07	2007–08	2008–09	2009–10
Total actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	3	11	2	5	6
Cross Claims	216	198	177	190	205
Notices of Motion	1,674	1,809	1,592	1,605	1,592
Native Title (NT) Joinder of party applications	377	89	135	482	364
Appeals & Related Actions					
Cross Appeals	22	15	18	21	15
Notices of Motion	165	145	156	175	152
Total actions (including Appeals & Related Actions)					
Cross Appeals	25	26	20	26	21
Cross Claims	216	198	177	190	205
Notices of Motion	1,839	1,954	1,748	1,780	1,744
NT Joinder of party applications	377	89	135	482	364
Totals	2,457	2,267	2,080	2,478	2,334

Finalisations of supplementary causes of action					
	2005–06	2006–07	2007–08	2008–09	2009–10
Total Actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	0	5	8	1	5
Cross Claims	106	208	215	165	159
NT Joinder of party applications	377	89	135	482	364
Appeals & Related Actions					
Cross Appeals	18	16	20	23	9
Total actions (including Appeals & Related Actions)					
Cross Appeals	18	21	28	24	14
Cross Claims	107	208	215	165	159
NT Joinder of party applications	377	89	135	482	364
Totals	502	318	378	671	537

Current Cross Appeals & Cross Claims as at 30 June 2010	
Appeals & Related Actions	
Cross Appeals	20
Total Supplementary COAs (excluding Appeals & Related Actions)	
Cross Appeals (original jurisdiction)	8
Cross Claims	290
Total Supplementary COAs (including Appeals & Related Actions)	
Cross Appeals	28
Cross Claims	290
Totals	318

Note: Table 6.4 has been refined and now includes notices of motion for interim applications in bankruptcy in the Court's original jurisdiction. These statistics were not counted in the 2008–09 Annual Report and, therefore, the notices of motion figures in the original jurisdiction are higher than reported last year.

Figure 6.1 – Matters filed 2005–06 to 2009–10

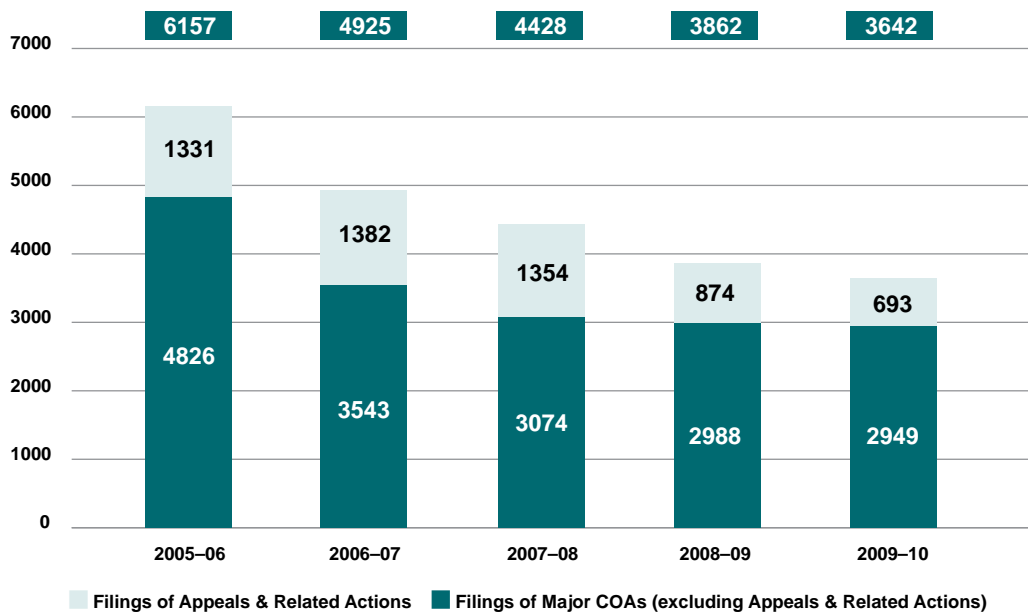
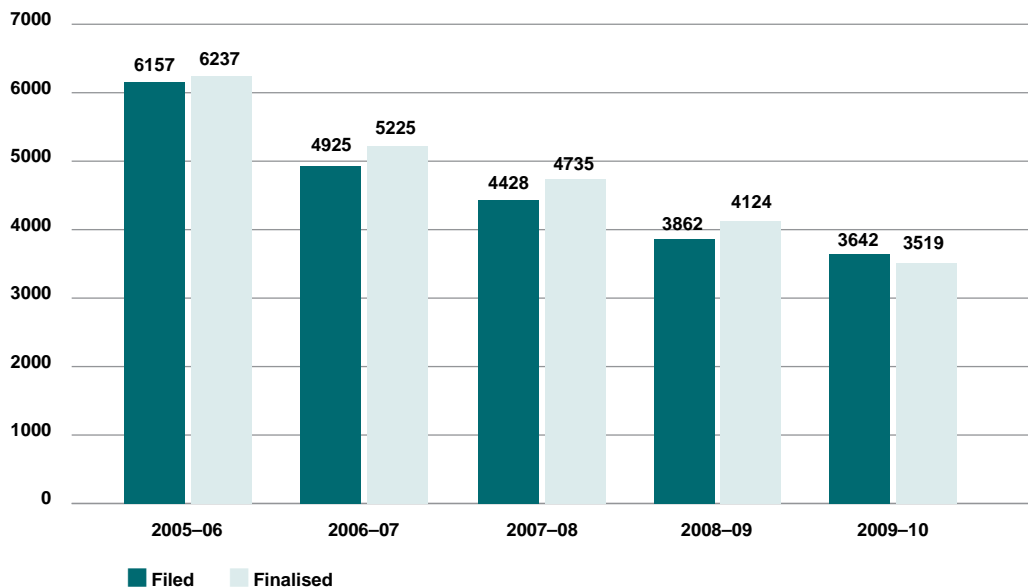
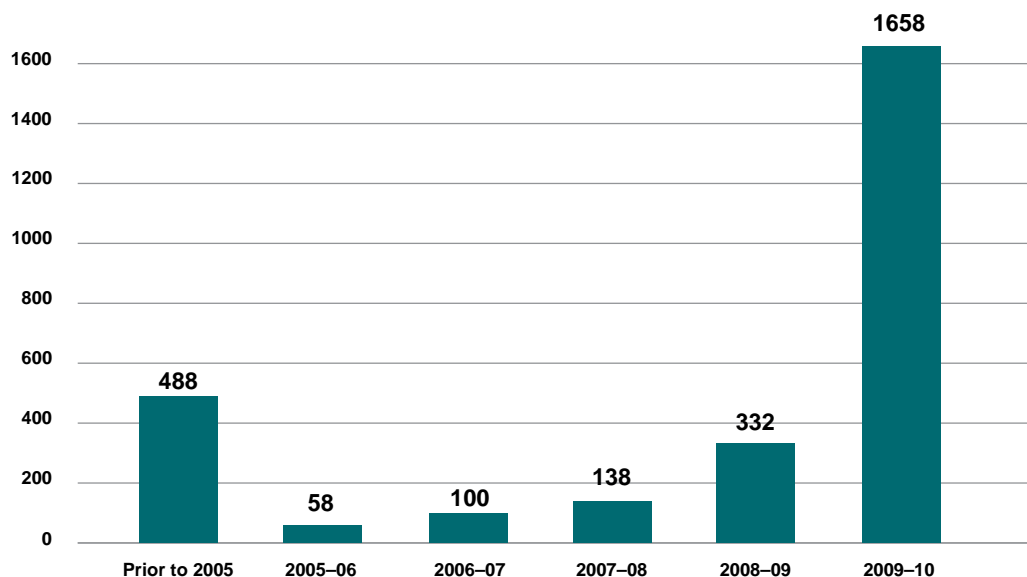


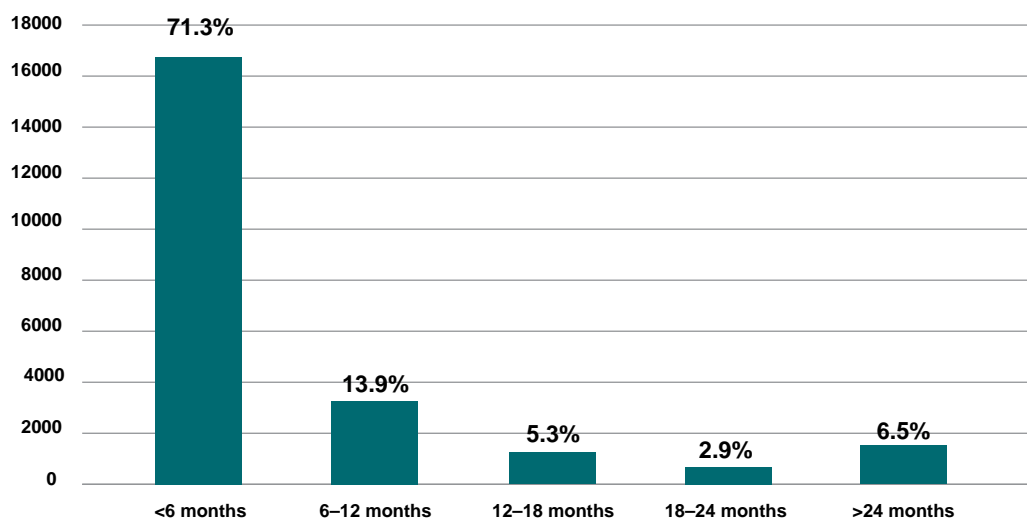
Figure 6.2 - Matters filed and finalised 2005–06 to 2009–10



The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

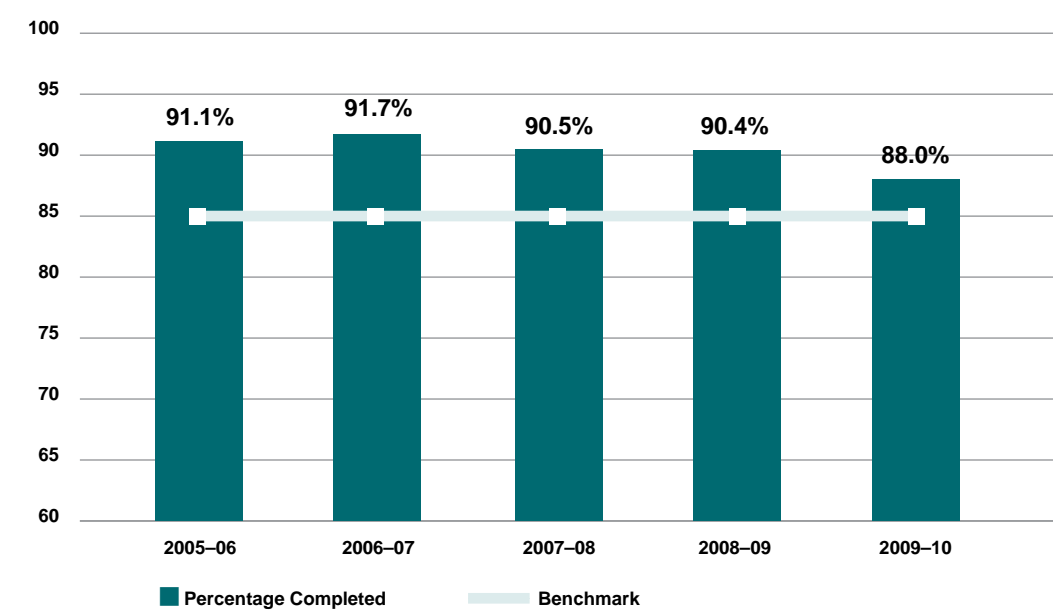
Figure 6.3 - Age and number of current matters at 30 June 2010

A total of 2,774 matters remain current at 30 June 2010. There were 488 applications still current relating to periods before those shown in the graph. Over 73% of cases prior to 2005 are native title matters.

Figure 6.4 - Time span to complete - Matters completed (excl. native title) in the period 1 July 2005 to 30 June 2010

A total of 23,468 matters were completed during the five year period ending 30 June 2010, excluding native title matters. The time span, from filing to disposition of these matters, is shown in the graph above.

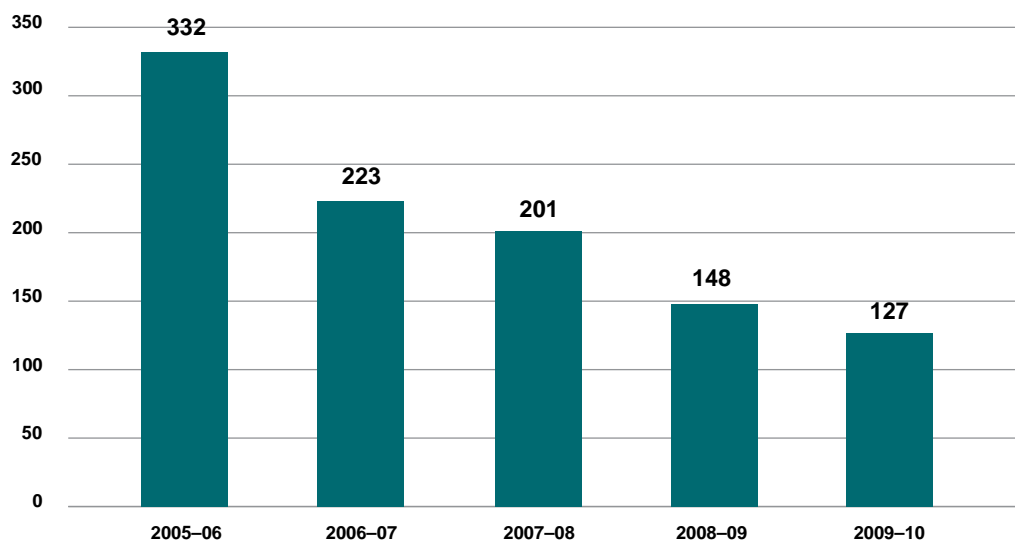
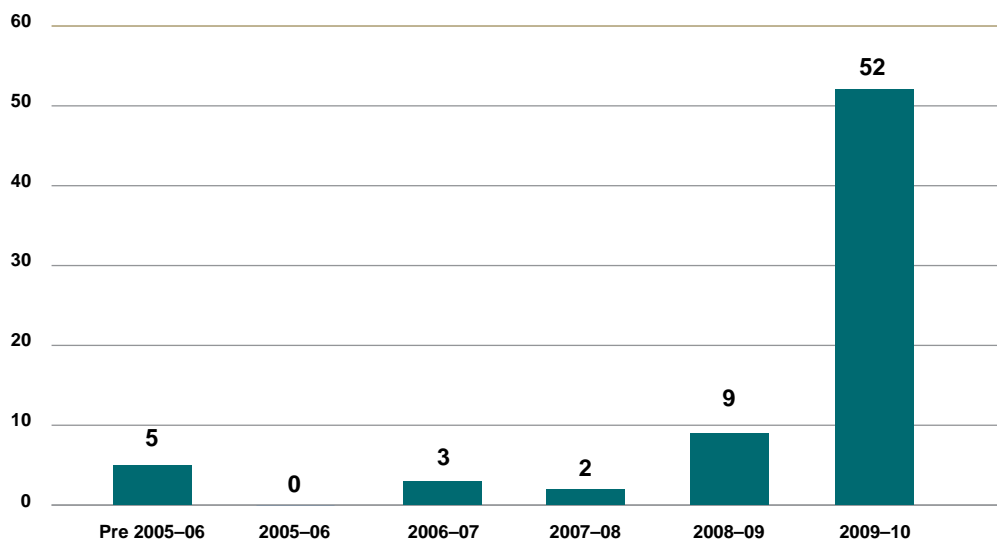
Figure 6.5 - Time span to complete benchmark (excl. native title) 2005–06 to 2009–10



The total number of matters (including appeals but excluding Native Title) completed for each of the last five years and the time span for completion are shown below.

Table 6.5 - Finalisation of major COAs in accordance with 85% benchmark (incl. appeals and related actions and excluding native title matters)

Percentage completed		2005–06	2006–07	2007–08	2008–09	2009–10
Under 18 months		5612	4717	4226	3651	3041
	% of Total	91.1%	91.7%	90.5%	90.4%	88.0%
Over 18 months		547	428	446	387	413
	% of Total	8.9%	8.3%	9.5%	9.6%	12.0%
Total COAs		6159	5145	4672	4038	3454

Figure 6.6 - Bankruptcy Act matters (excl. appeals) filed 2005–06 to 2009–10**Figure 6.6.1 - Current Bankruptcy matters (excl. appeals) by year of filing**

A total of 71 Bankruptcy Act matters remain current as at 30 June 2010.

Figure 6.7 - Corporations Act matters (excl. appeals) filed 2005–06 to 2009–10

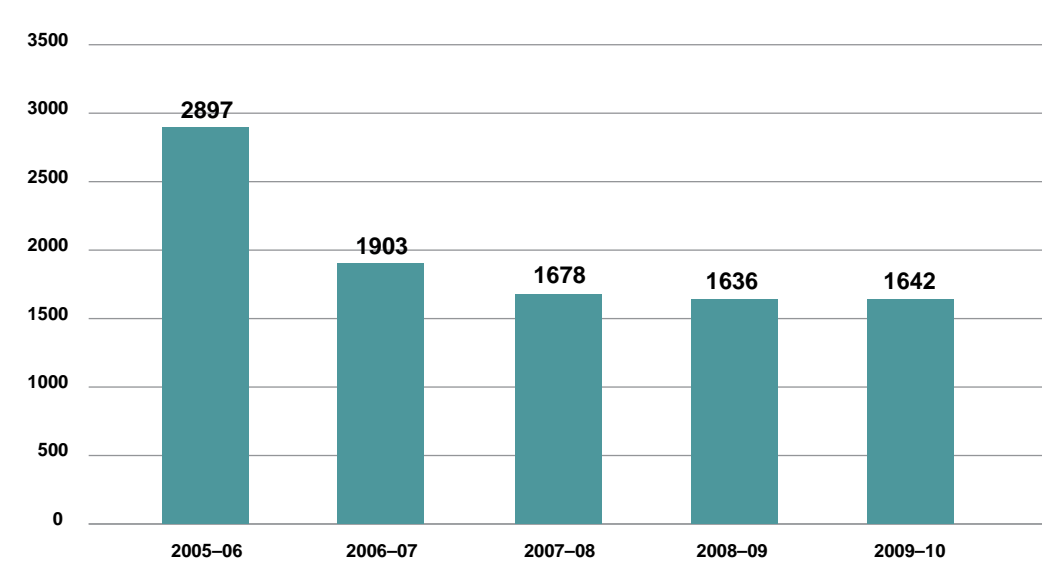
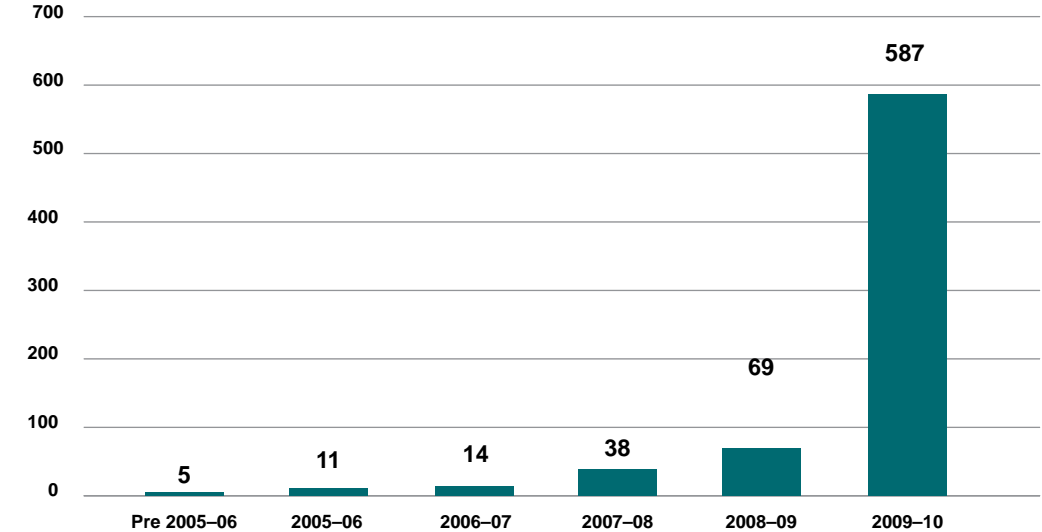


Figure 6.7.1 - Current Corporations Act matters (excl. appeals) by year of filing



A total of 724 Corporations Act matters remain current as at 30 June 2010.

Figure 6.8 - Trade Practices Act matters (excl. competition law and appeals) filed 2005-06 to 2009-10

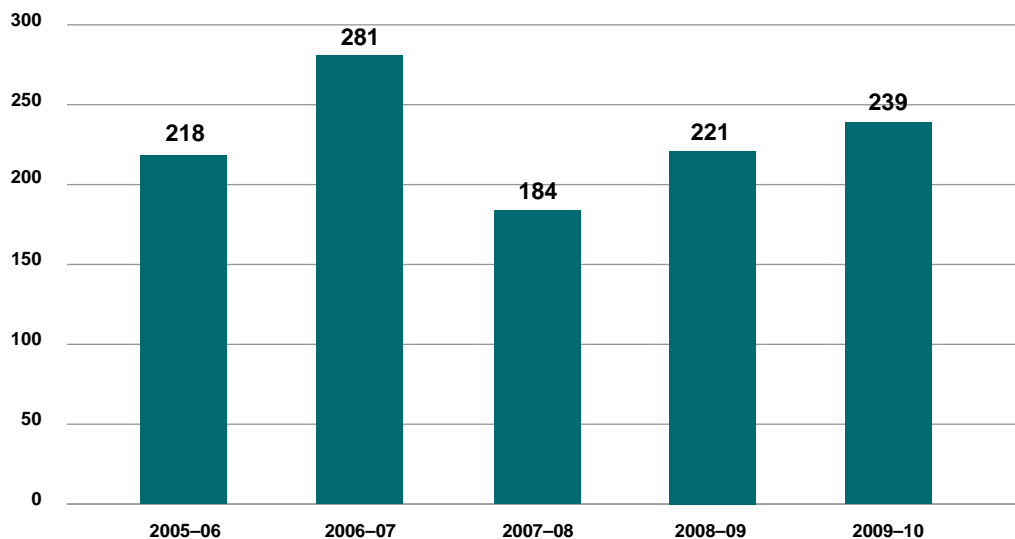
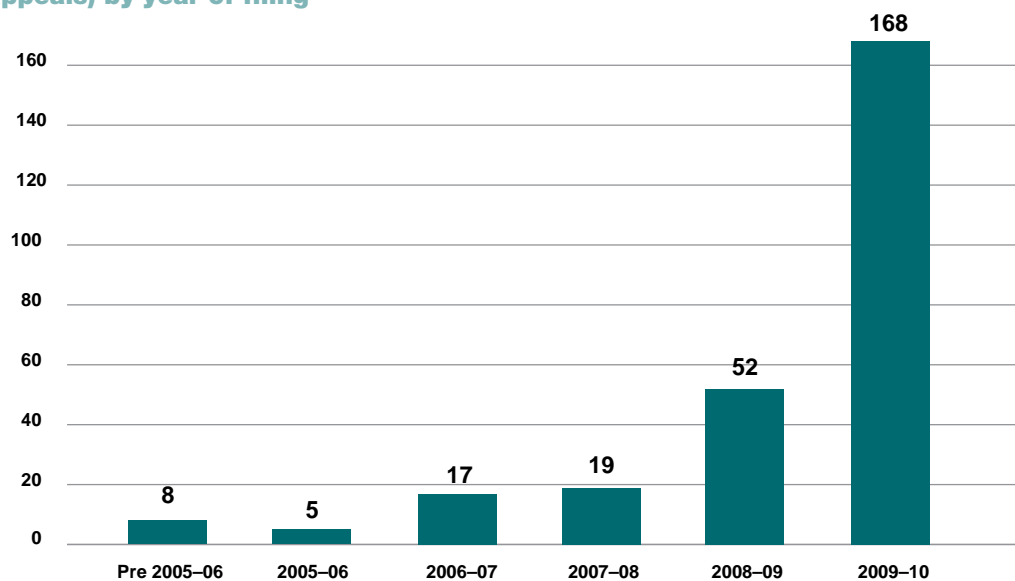
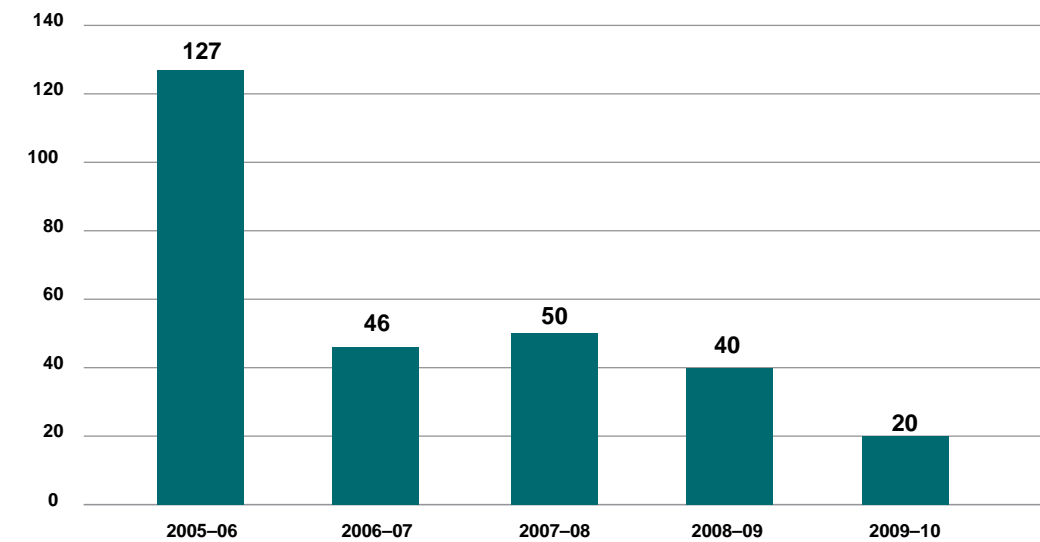


Figure 6.8.1 - Current Trade Practices Act matters (excl. competition law and appeals) by year of filing



A total of 269 non-competition law Trade Practices Act matters remain current as at 30 June 2010.

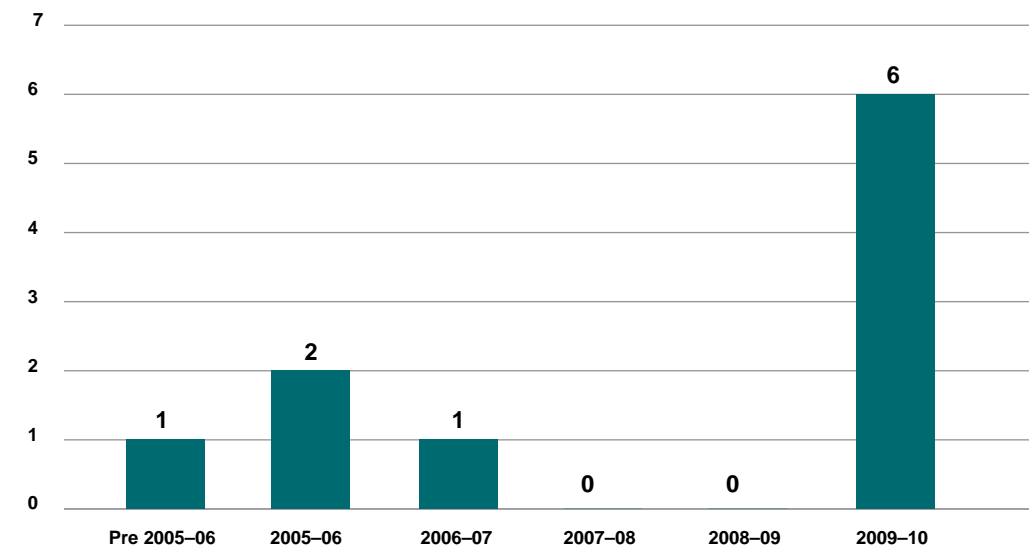
Figure 6.9 - Migration Act matters (excl. appeals) filed 2005–06 to 2009–10



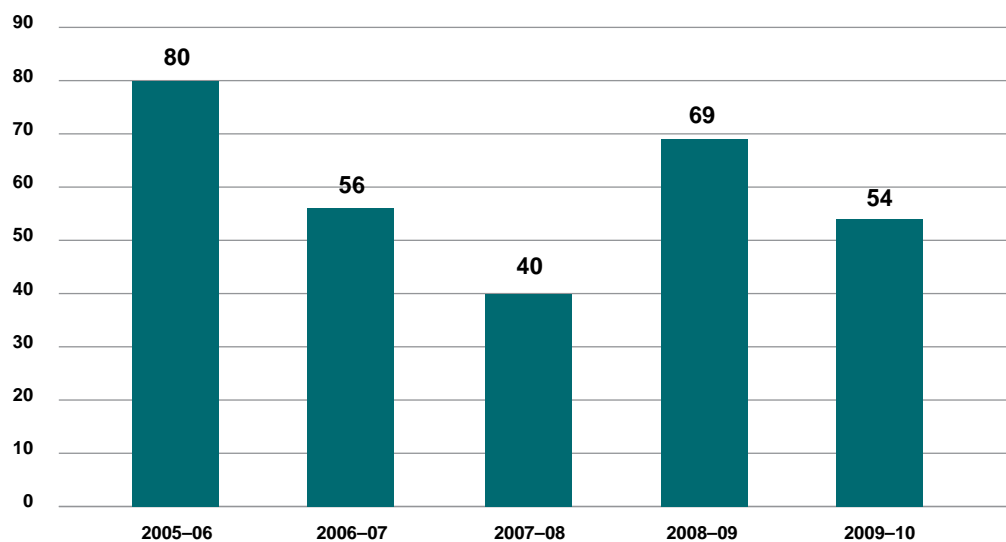
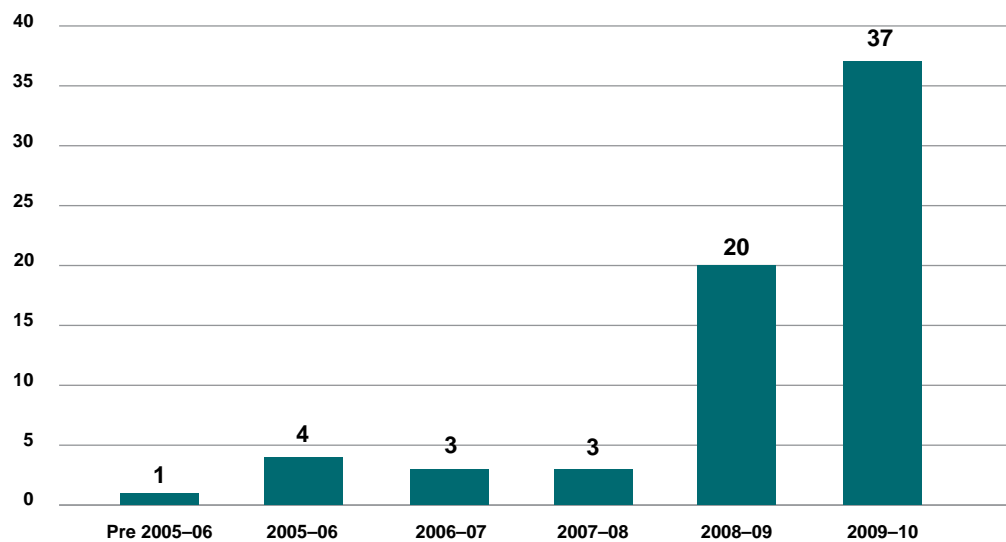
These figures include migration applications filed under the Judiciary Act, Administrative Decisions (Judicial Review) Act and Migration Act.

Since 1 December 2005, when the Migration Litigation Reform Act commenced, almost all first instance migration cases have been filed in the Federal Magistrates Court.

Figure 6.9.1 Current Migration Act matters (excl. appeals) by year of filing



A total of 10 Migration Act matters remain current as at 30 June 2010.

Figure 6.10 - Admiralty Act matters (excl. appeals) filed 2005-06 to 2009-10**Figure 6.10.1 - Current Admiralty matters (excl. appeals) by year of filing**

A total of 68 Admiralty Act matters remain current as at 30 June 2010.

Figure 6.11 - Native Title Act matters (excl. appeals) filed 2005–06 to 2009–10

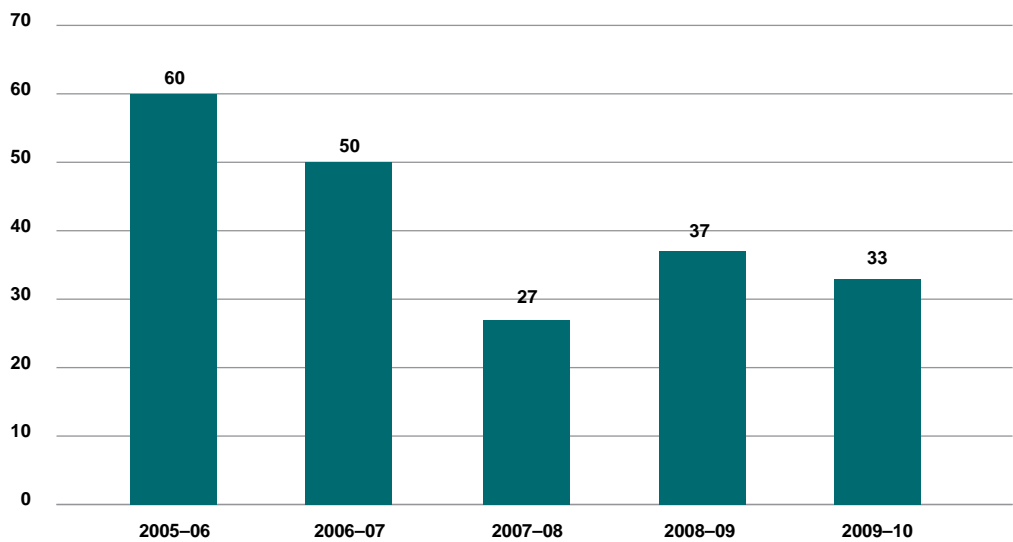
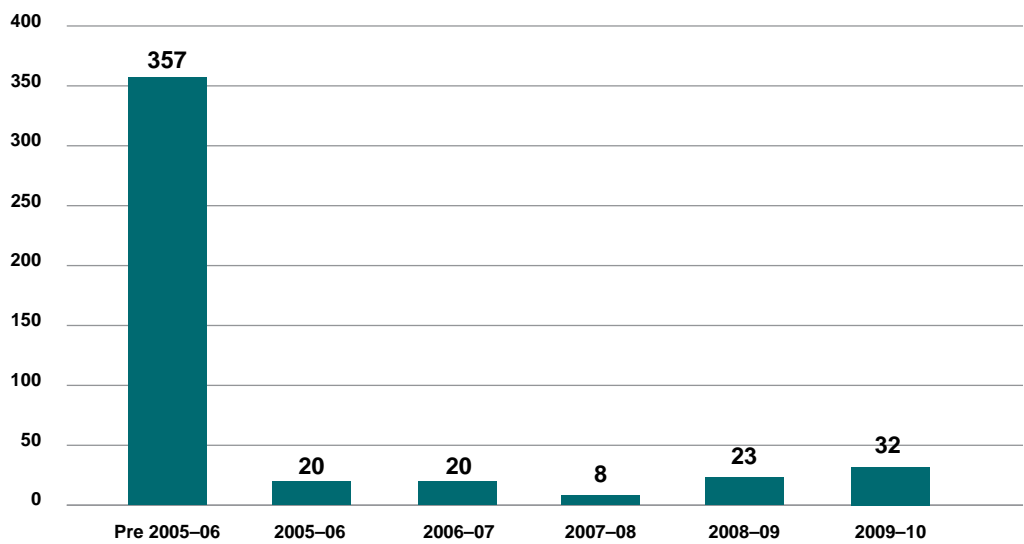


Figure 6.11.1 – Current Native Title matters (excl. appeals) by year of filing



A total of 460 Native Title matters remain current as at 30 June 2010.

Figure 6.12 - Workplace Relations/Fair Work matters (excl. appeals) filed 2005-06 to 2009-10

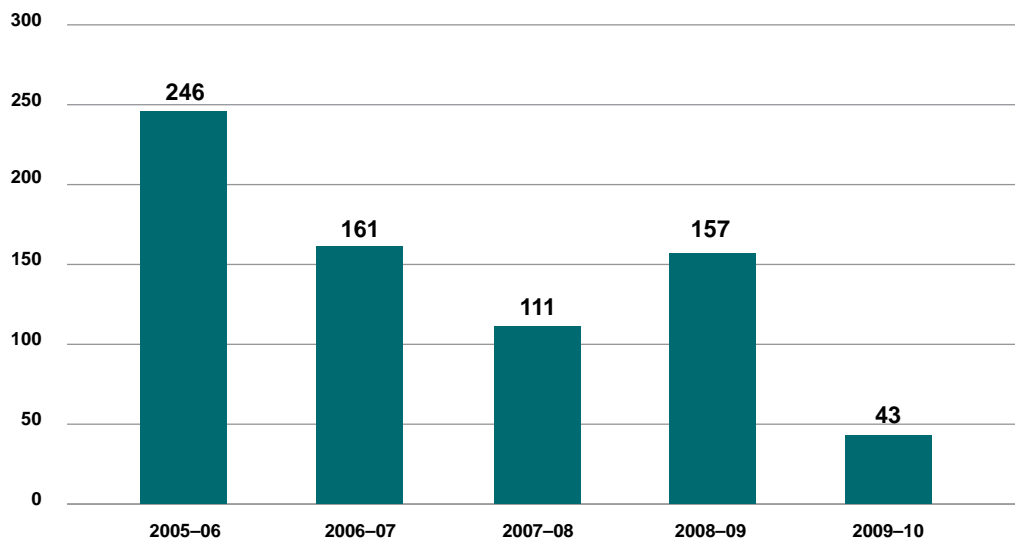
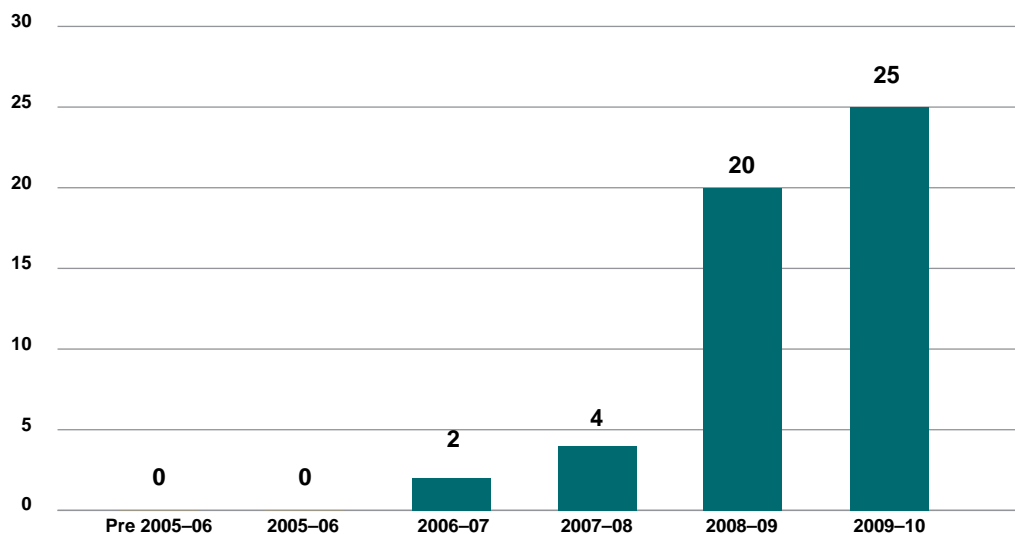


Figure 6.12.1 Current Workplace Relations/Fair Work matters (excl. appeals) by year of filing



A total of 51 Workplace Relations/Fair Work cases remain current as at 30 June 2010.

Figure 6.13 Taxation matters (excl. appeals) filed 2005–06 to 2009–10

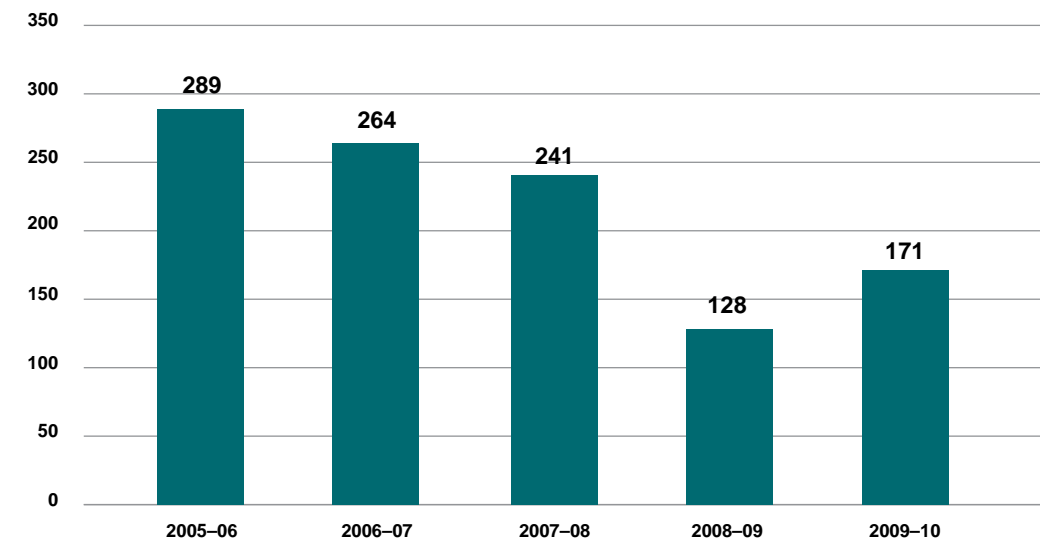
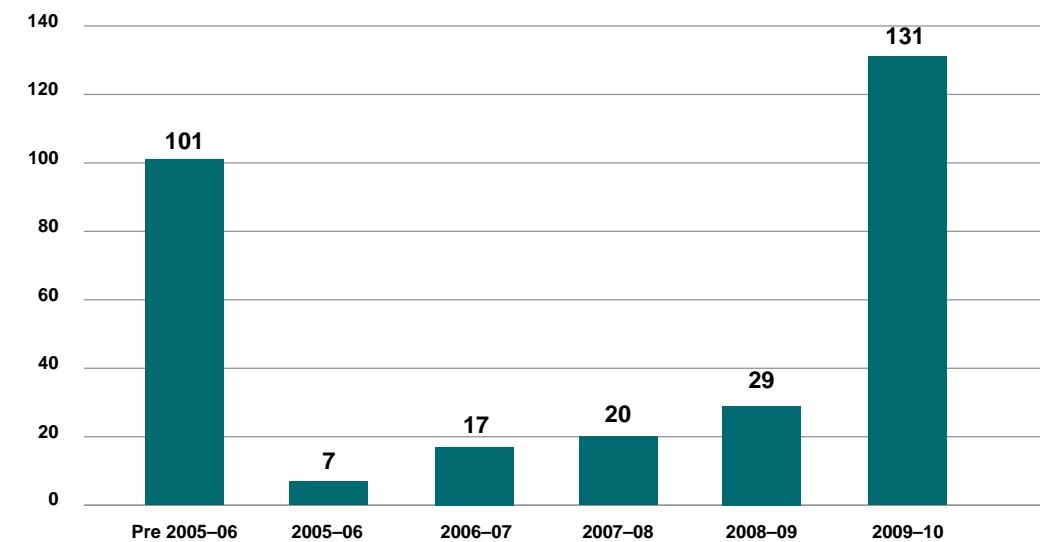


Figure 6.13.1 Current taxation matters (excl. appeals) by year of filing



A total of 305 taxation cases remain current as at 30 June 2010.

Figure 6.14 - Intellectual Property Matters (excl. appeals) filed 2005–06 to 2009–10

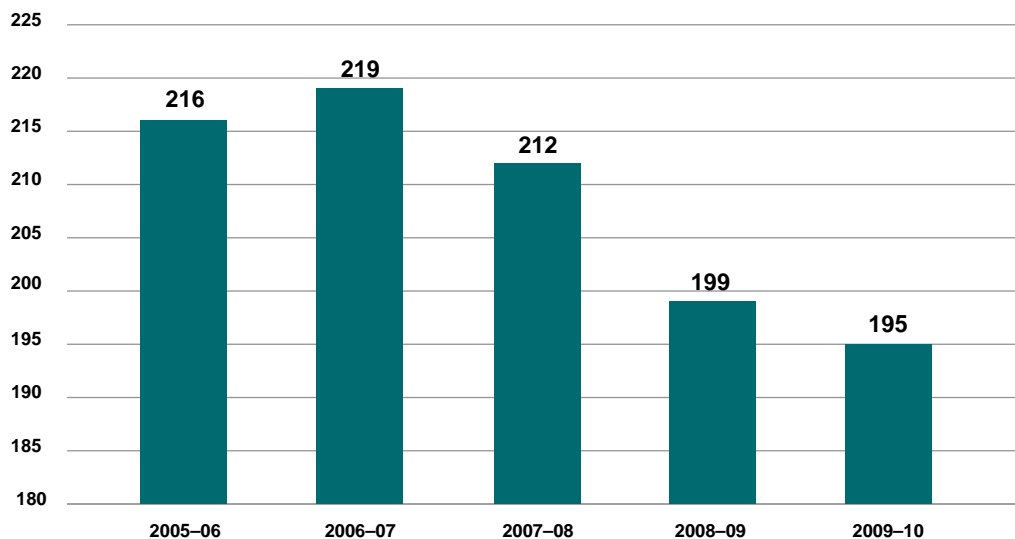
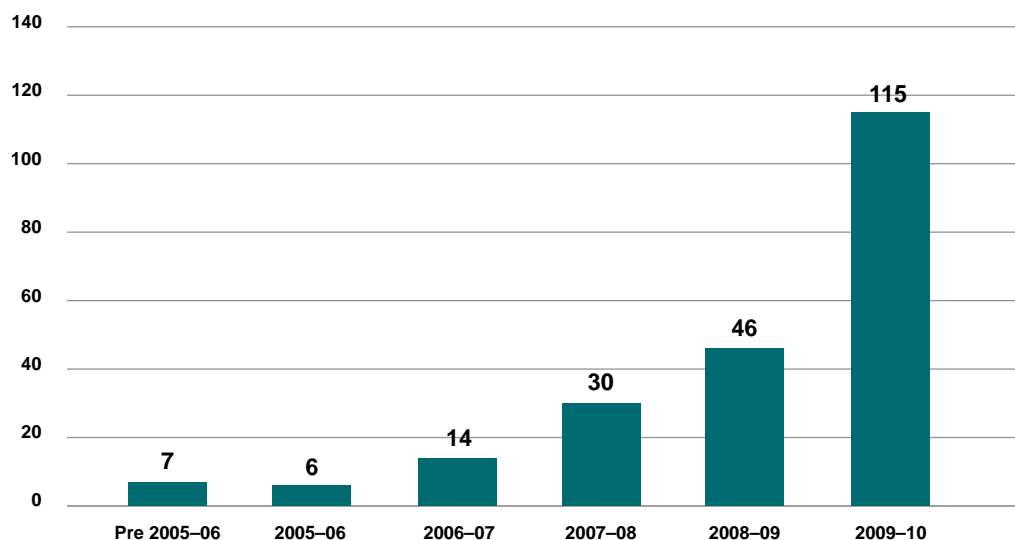


Figure 6.14.1 - Current Intellectual Property matters (excl. appeals) by year of filing



A total of 218 intellectual property cases remain current as at 30 June 2010.

Figure 6.15 - Appeals and Related Actions filed 2005–06 to 2009–10

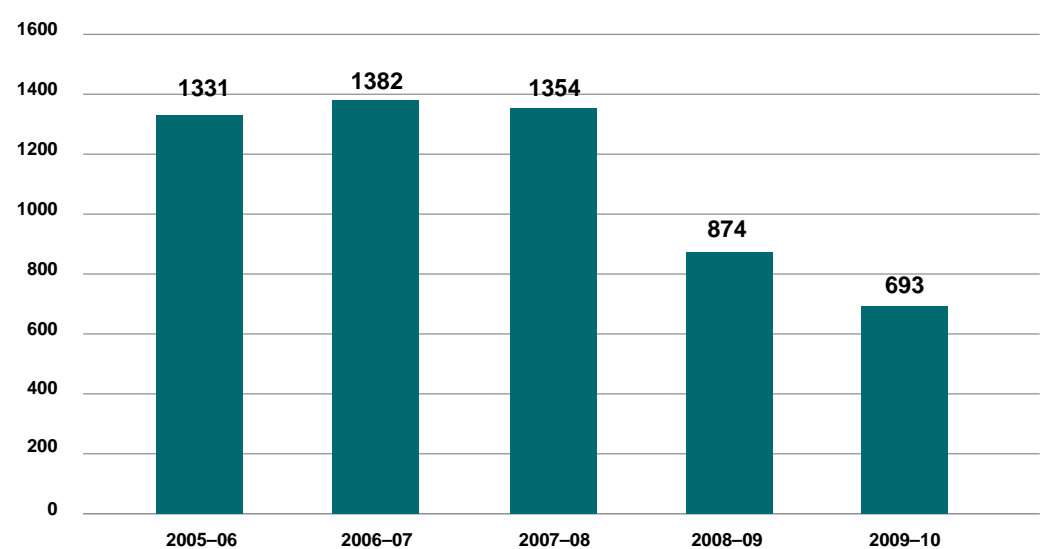
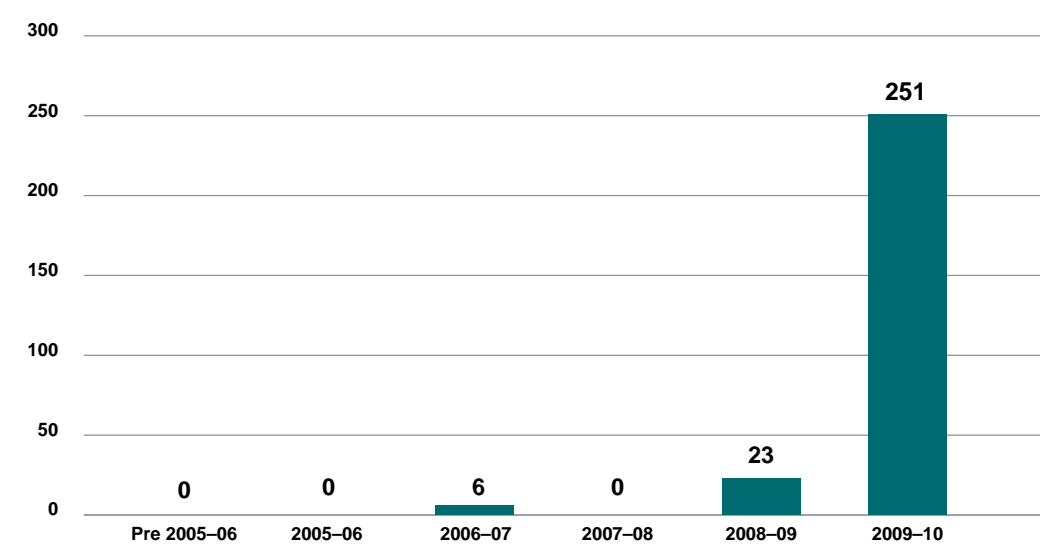
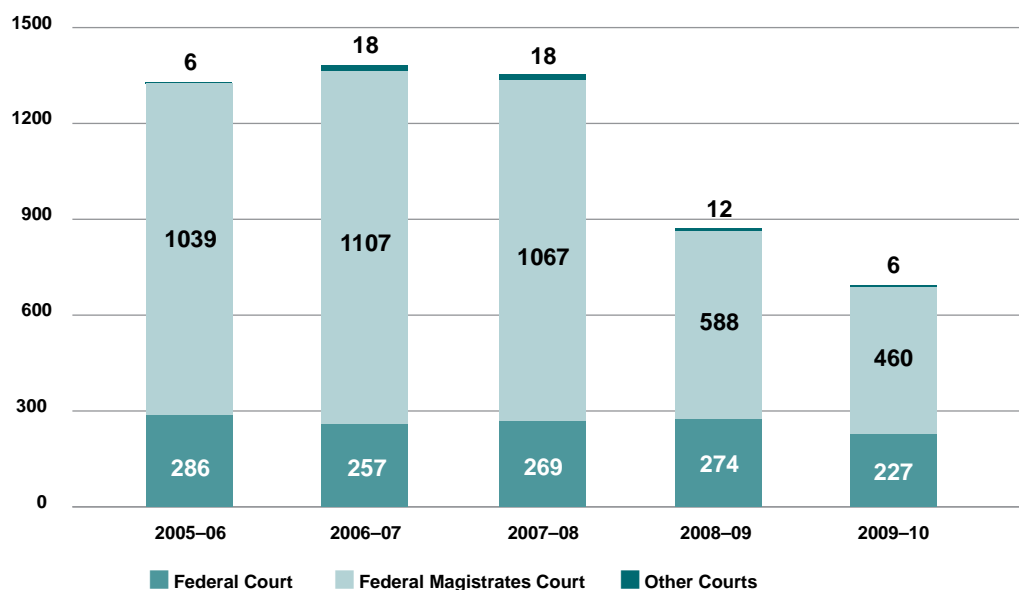


Figure 6.15.1 - Current Appeals and Related Actions by date filed



A total of 280 Appeals and Related Actions remain current as at 30 June 2010.

Figure 6.16 - Source of Appeals and Related Actions 2005–06 to 2009–10**Table 6.6 – Appeals and Related Actions**

Source	2005–06		2006–07		2007–08		2008–09		2009–10	
Federal Court	286	21.5%	257	18.6%	269	19.9%	274	31.4%	227	32.8%
Federal Magistrates Court	1039	78.1%	1107	80.1%	1067	78.8%	588	67.3%	460	66.4%
Other Courts	6	0.5%	18	1.3%	18	1.3%	12	1.4%	6	0.9%
Total by Period	1331		1382		1354		874		693	

APPENDIX 7 – WORK OF TRIBUNALS

The following summarises the work of the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal during the reporting year.

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 1974* to hear applications for the review of:

- determinations by the Australian Competition and Consumer Commission ('ACCC') in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Trade Practices Act for being anti-competitive.
- decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines.
- determinations by the ACCC in relation to notices issued under section 93 of the Trade Practices Act in relation to exclusive dealing.

A review by the Tribunal is a re-hearing of a matter and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of the review. It can affirm, set aside or vary the decision under review. The Minister may also refer to the Tribunal, for inquiry and report, issues concerning certain practices by ocean cargo carriers. The *Trade Practices Legislation Amendment Act (No 1) 2006* came into effect, granting the Tribunal the authority to decide merger authorisations and to review the ACCC decisions in relation to merger clearance applications.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Trade Practices Act and regulations within the discretion of the Tribunal. The Trade Practices Regulations 1974 sets out some procedural requirements in relation to the making and hearing of review applications.

Proceedings are conducted with as little formality and technicality and with as much expedition as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

The Tribunal has been given additional jurisdiction to review 'reviewable regulatory decisions' of the Australian Energy Regulator (AER): National Electricity Law, s 71B(1), and 71A (definitions). These reviewable regulatory decisions include:

- a network revenue or pricing determination that sets a regulatory period or
- any other determination (including a distribution determination or transmission determination) or decision of the AER under the National Electricity Rules that is prescribed by the Regulations.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. During 2009–10 there were the following changes to the membership:

Members: (all appointed part-time)

Mr Brian Francis Keane – Term expired 4 August 2009

Dr Jill Elizabeth Walker – Term ended 21 September 2009 (due to appointment as Commissioner of the Australian Competition and Consumer Commission)

Dr William John Beerworth – Term expired 15 December 2009

Professor Clifford Walsh – Term expired 15 December 2009. Reappointed for three months from 25 February 2010.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 4 on page 108.

Activities

Twelve review proceedings were current at the start of the reporting year. During the year, six proceedings were commenced and fourteen matters were finalised, four matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Application by Chime Communications Pty Ltd (No 3) [2009] ACompT 4 (24 Aug 2009)

Application by AAPT Limited [2009] ACompT 5 (24 Aug 2009)

Application by EnergyAustralia [2009] ACompT 8 (12 Nov 2009)

Application by EnergyAustralia (No 2) [2009] ACompT 9 (12 Nov 2009)

Application by United Energy Distribution Pty Ltd [2009] ACompT 10 (23 Dec 2009)

Application by Telstra Corporation Limited [2010] ACompT 1 (10 May 2010)

In the matter of Fortescue Metals Group Ltd [2010] ACompT 2 (30 June 2010)

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* to hear applications dealing with four main types of matters:

- to determine the amounts of equitable remuneration payable under statutory licensing schemes
- to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems
- to declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a State
- to determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

The *Copyright Amendment Act 2006*, assented to on 11 December 2006, has given the Tribunal more jurisdiction, including to hear disputes between collecting societies and their members.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Copyright Act and regulations and is also within the discretion of the Tribunal. The Copyright Tribunal (Procedure) Regulations 1969 set out procedural requirements for the making and hearing of applications.

Proceedings are conducted with as little formality and technicality and as quickly as the requirements of the Act, and a proper consideration of the matters before the Tribunal, permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. During 2009-10 the following changes occurred to the membership:

- the appointments for Professor Pearce, Dr Sibley and Dr Smith expired
- Deputy President Driver's appointment expired.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 108.

Activities

Seven matters were current at the start of the reporting year. During the year one matter was commenced and four matters were finalised. Four matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

- Phonographic Performance Company of Australia Limited under section 154(1) of the *Copyright Act 1968* (Cth) [2009] ACopyT 1 (29 October 2009)
- Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners Society Limited [2009] ACopyT 2 (17 December 2009)
- Phonographic Performance Company of Australia Limited (ACN 000680 704) under section 154(1) of the *Copyright Act 1968* [2010] ACopyT 1 (17 May 2010)

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1955* (Cth) (Act). Pursuant to s 20 of the Act, a convicted person may bring an appeal to the Tribunal against his or her conviction and/or against a punishment imposed or court order made in respect of that conviction.

Following the decision of the High Court of Australia in *Lane v Morrison* (2009) 239 CLR 230, the Defence Force Discipline Appeals Act was amended by operation of the *Military Justice (Interim Measures) Act* (No. 1) 2009 (Cth). In the main, references in the Act to the Australian Military Court were replaced with references to courts martial and Defence Force magistrates. Accordingly, appeals to the Tribunal now lie from decisions of courts martial and Defence Force magistrates, rather than from the Australian Military Court.

The Tribunal has the power to hear and determine appeals and questions of law.

Practice and procedure

Formal determination of sitting dates has now been introduced. Under s 14(1) of the Act, the sittings of the Tribunal will be held at places to be further determined on the following dates, subject to the availability of business: 19 and 20 August 2010, 9 and 10 September 2010, 28 and 29 October 2010, 9 and 10 December 2010, 17 and 18 March 2011 and 16 and 17 June 2011.

Otherwise, the procedure of the Tribunal is within its discretion.

Membership and staff

The Tribunal consists of a President, a Deputy President and such other members as are appointed by the Governor-General. There were no changes to the Tribunal's membership during the reporting year.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 108.

Activities

No matters were current at the start of the reporting year. During the year, two matters were commenced and one finalised. There is one matter pending.

There were fewer appeals lodged this year compared with previous years. This may be attributable to changes to the military justice system following the decision of the High Court of Australia in *Lane v Morrison* (2009) 239 CLR 230.

Complaints

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Flynn v Chief of Army [2009] ADFDAT 4

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

ADMINISTRATIVE LAW – Australian Crime Commission Examiner issued notice to health services provider requiring production of medical records of eight female Aboriginal children pursuant to s. 29(1)(b) *Australian Crime Commission Act 2002* (Cth) – whether the best interests of those eight children was a relevant consideration which the Examiner was required to take into account in issuing that notice – whether the Examiner had regard to the best interests of those eight children – consideration of whether the best interests of those children was a ‘primary consideration’

Australian Crime Commission v NTD8

(10 July 2009, Chief Justice Black and Justices Mansfield and Bennett)

An Australian Crime Commission examiner issued a notice under s. 29(1) of the *Australian Crime Commission Act 2002* (Cth) (the Act) to an Aboriginal community-controlled health service provider (NTD8) requiring the production of medical records of eight young female Aboriginal children or teenagers, as well as certain other information. NTD8 provides sexual and reproductive health services, including contraceptive advice and counselling about rights and consent to young women and girls, among its other health services.

NTD8 was concerned that, if it provided those records, the police might interview the eight young girls and their families, who may see that as a breach of trust by NTD8 and its professional staff, and that those children or teenagers, or others, might then be deterred from seeking such medical services. It argued that it was in the best interests of the eight children, and other indigenous children, not to issue the notice. A single judge of the Federal Court quashed the decision of the Examiner to issue the notice requiring those documents because the Examiner did not treat the best interests of the children in question as a primary consideration.

Under the Act, the Examiner is required to be satisfied that it was ‘reasonable in all the circumstances’ to issue the notice, and to record in writing the reasons for it: s. 29(1A) of the Act. There is no express obligation of the Act requiring the Examiner to take into account the best interests of the children. The Full Court held that it is to be implied from the statute that the best interests of the children was a relevant consideration which the Examiner was bound to take into account. Although the Examiner’s reasons were brief and formulaic, they were complemented by reference to a Statement of Facts and Circumstances and the Legal Submissions prepared by an officer of the Australian Crime Commission provided to the Examiner and adopted by him. They specifically referred to the concerns of NTD8 and its staff that the disclosure of the particular documents concerning the eight children may dissuade them and others from seeking medical attention.

The Full Court found the Examiner was required to take into account the best interests of the children when issuing the notice, but that the Examiner had done so. The appeal was therefore allowed.

CONTRACT – implication of terms in law – person employed by university as professor of surgery – express contractual obligations, inter alia, to undertake research, to organise research and generally to stimulate research among the university's staff and students

University of Western Australia v Gray
(3 September 2009, Justices Lindgren, Finn and Bennett)

The appellant, a university, employed the respondent as Professor of Surgery. The appellant claimed it had proprietary interests in inventions it alleged the respondent made in the course of his employment. The inventions, the subject of the dispute, related to the targeted treatment of liver tumours. The respondent's employment contract did not impose on the respondent a duty to invent but did require him to undertake research, organise research and generally to stimulate research among the appellant's staff and students. The basis of the appellant's claimed proprietary interest in the inventions was that it was an implied term of the respondent's employment contract that inventions developed in the course of his employment belonged to the appellant. Such an implication was said to arise by virtue of the respondent's contractual obligation to undertake research.

At first instance, the primary judge rejected the appellant's argument. Absent an express term to the contrary, the duty to research did not signify a duty to invent. There is no presumption at law that the rights to inventions made by academic staff in the course of their employment vest in the employer university. In this case, the relative freedom with which the respondent could undertake his research, publish his findings and secure funding for research from sources external to the university, was inimical to the implication at law of terms of the kind relied on by the appellant. Alternatively, even if such an implication was to be made, the primary judge found that the evidence did not support the conclusion that the respondent made the inventions during the course of his employment.

The Full Court unanimously dismissed the appeal. The Court rejected the appellant's assertion that the primary judge had erred in finding that the respondent's employment contract was not of a class or type of contract that attracted the implied term at law. The Court held that, in determining this threshold question, the primary judge had correctly taken into account the distinctive nature of universities as employers (compared to private sector commercial entities) and of academic employment in universities. Further, the freedom afforded to academic staff in terms of self determination of the nature and scope of their research, the publication of research results and inter-institutional collaboration, operated to negate the implication sought by the appellant.

The Full Court affirmed the primary judge's finding that the inventions were not made in the course of the respondent's employment with the appellant.

CORPORATIONS - deed of company arrangement - *Corporations Act 2001 (Cth)* Pt 5.3A - clauses in deed of company arrangement providing for some creditors to release claims against creditors other than the company under administration

City of Swan v Lehman Brothers Australia Ltd
(25 September 2009, Justices Stone, Rares and Perram)

This case involved local government councils that invested in collateralised debt obligations sold to them by Lehman Australia. On 15 September 2008, Lehman Brothers filed for Chapter 11 Bankruptcy with the US Bankruptcy Court, Southern District Court of New York. On 26 September 2008, administrators were appointed to Lehman Australia.

On 28 May 2009, the administrators proposed to Lehman Australia's creditors a resolution that the company execute a deed of company arrangement (DOCA) in the form as proposed by Lehman Brothers Asia Holdings Limited. The resolution was passed at the meeting with 61 creditors voting in favour of the resolution, representing \$256,237,474.48; and 58 creditors against, representing \$71,802,996.19. Of the 61 creditors who voted in favour of the resolution, 9 of those creditors included Lehman entities which representing \$245,160,674.20 by value of the creditors present.

The effect of the provisions of the DOCA would have been to release not only Lehman Australia but also the other Lehman entities from all claims that any of the creditors of Lehman Australia may have against them. The DOCA would also prevent those creditors from enforcing their rights under policies of insurance that may respond to their claims pursuant to statutory charges. On 28 July 2009, Rares J reserved eight separate questions under s. 25(6) of the *Federal Court of Australia Act 1976* for consideration by the Full Court. The questions concerned first, the proper construction of provisions in the DOCA and, secondly, whether there was power under Pt 5.3A of the *Corporations Act 2001 (Cth)* for a DOCA to include such provisions.

The Full Court concluded that, properly construed, the DOCA purported to extinguish the councils' rights to sue other members of the Lehman Group. In doing so it went beyond what Pt 5.3A permitted a DOCA to achieve. Therefore, the DOCA was held to be invalid and not binding on Lehman Australia's creditors, including the councils. The High Court subsequently dismissed the appeal.

EXTRADITION – function of magistrate in conducting hearing under s. 19 of the *Extradition Act 1988* (Cth) – function of primary judge in conducting review of magistrate decision under s. 21 of the *Extradition Act 1988* – whether magistrate and primary judge were required to determine whether alleged war crime was an extradition offence or whether appellant was an extraditable person – no appellable error – appeal dismissed

Zentai v Republic of Hungary

(8 October 2009, Chief Justice Black and Justices Tracey and Barker)

In July 2005, the Republic of Hungary made a request of the Commonwealth of Australia pursuant to a 1995 Treaty on Extradition between Australia and Hungary for the extradition of the appellant, who was alleged to have committed a war crime in Budapest in 1944.

The appellant was arrested on a provisional arrest warrant under s. 12 of the *Extradition Act 1988* (Cth). The Minister for Justice issued a notice under s. 16(1) notifying a magistrate of the extradition request. A magistrate determined under s. 19 that the appellant was eligible for surrender. The Federal Court dismissed an application for review of the magistrate's decision, pursuant to s. 21. The appellant then appealed to the Full Court of the Federal Court.

The sole issue for determination on the appeal was whether the s. 19 magistrate and the Court were correct in not considering whether the appellant was an 'extraditable person' who had committed an 'extradition offence', having regard to the terms of the Treaty which arguably did not apply to a 'retrospective offence' such as a war crime committed before the Republic of Hungary came into existence.

To the extent that *Director of Public Prosecutions (Cth) v Kainhofer* (1995) 185 CLR 528 appeared to require the approach taken by the magistrate and the Court, the appellant contended that the decision should be read as applying only to challenges that would collaterally seek to deny or qualify some factual, procedural or evidentiary aspects of the allegations made in an extradition request. The Full Court rejected this submission. *Kainhofer* was not stated to be a decision applicable only to such collateral challenges, but was a decision of general application.

The Full Court concluded that, while a s. 19 magistrate must be satisfied that there is a warrant for the arrest of a person for an 'extradition offence' identified by the supporting documents, there is no wider role to be played by the magistrate concerning whether the conduct stated in the supporting documents actually constitutes the offence described in the warrant.

The Full Court recognised that, while in theory it may be possible for a person in the position of the appellant to make representations on the substantive issues with which the appellant was concerned, in this case either before a s. 12 magistrate when an application for a provisional arrest warrant is considered, or to the Attorney General before a notice is issued under s. 16 of the Act, it will not always be the case that such questions are fully considered at that stage. The Court also noted the possible availability of judicial review of the Attorney's decision to issue a notice under s. 16 and the Attorney's final extradition decision under s. 22.

Notwithstanding that those opportunities for review of the substantive issue that the appellant wished to raise might generally be considered limited, the Court held neither the s. 19 magistrate nor the Court erred in the approach they had taken in not considering the retrospective offence issue that the appellant wished to raise. The appeal was dismissed.

CORPORATIONS – Managed investment schemes – whether a funded class action constitutes a managed investment scheme

Brookfield Multiplex Limited v International Litigation Funding Partners Pty Ltd
(20 October 2009, Justices Sundberg, Dowsett and Jacobson)

This was an important decision for those interested in the legality and regulation of class actions which receive litigation funding. The Full Court (Jacobson J dissenting) held that funding and retainer arrangements entered into by group members in class action proceedings against the appellant constituted a managed investment scheme which was required to be registered under s. 601ED of the *Corporations Act 2001* (the Act).

The highly publicised class action proceedings alleged a failure by the appellant to disclose information about the construction of the Wembley National Stadium that would have a material effect on the price or value of its shares. Each representative party and each group member retained Maurice Blackburn to act on their behalf and entered into a funding agreement with the litigation funder.

Section 9 of the Act relevantly defined managed investment scheme as a scheme that has the following features:

- people contribute money or money's worth as consideration to acquire rights (interests) to benefits produced by the scheme;
- any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the members) who hold interests in the scheme; and
- the members do not have day-to-day control over the operation of the scheme.

Multiplex argued, and the majority agreed, that the aggregate of the funding and retainer agreements entered into by group members satisfied each limb of the definition and was required to be registered.

All judges held that group members had contributed money's worth (in the form of contractual undertakings) as consideration for acquiring rights to benefits produced by the scheme. The term 'benefits' was construed broadly and included in this instance: the provision of legal services at no cost to group members; the absence of exposure to any adverse costs order; the benefit of the funder's promises to provide security for costs; and the benefit of contractual rights to participate in the distribution of any settlement or judgment.

The majority further held that the contributions were pooled and used in a common enterprise. These terms should be given their ordinary meaning, and pooling did not require any physical activity. Justice Jacobson dissented on the 'pooled or used in a common enterprise' limb, finding that the absence of any common fund into, or from which, the gains or losses of the members were to be paid meant there was no 'pooling'. In addition, his Honour said there was no 'common enterprise' because the contributions of the members and the funder, consisting of their respective contractual undertakings, were not used in an enterprise where one part was carried out by the members and another by the funder or by Maurice Blackburn, as his Honour considered was required by earlier authority.

This decision had significant implications for class actions which were backed by litigation funding arrangements. On 4 May 2010, the Government announced that it would make regulations exempting representative proceedings from the definition of managed investment scheme in the Act. In the meantime, the Australian Securities and Investments Commission (ASIC) has issued a class order (CO 10/333) providing relief to funded class actions from the requirements of the Act until 30 September 2010.

PROCEDURE – DEFAMATION – jury trial – ss. 39 and 40 *Federal Court of Australia Act 1976* (Cth) usual mode of trial in Federal Court by judge alone unless the Court otherwise orders – proceeding for damages for injury to reputation by reason of publication of defamatory matter together with representations in contravention of s. 53B of *Trade Practices Act 1974* (Cth) — s. 21 of *Defamation Act 2005* (NSW) giving party right to elect for trial by jury unless Court otherwise orders – whether Court should order that trial be heard by a jury

Kwang Suk Ra v Nationwide News Pty Limited
(13 November 2009, Justice Rares)

The case was the first time a jury trial for defamation has been ordered by the Federal Court. Kwang Suk Ra, the applicant, was a brothel owner. She commenced proceedings against the publisher of *The Daily Telegraph* newspaper, Nationwide News Pty Limited, and its associated company, for publishing material in *The Daily Telegraph* and on the internet.

On 3 December 2008 *The Daily Telegraph* published an editorial headed 'Sydney's Own Horror House' which appeared to have been republished on the internet by News Digital on either 3 or 4 December. *The Daily Telegraph* also published on 3 December an article under the headline 'Sex Slave Trade Revealed'. The article had a subheading, 'Brothel Madam Walks Scott Free'. On 4 December 2008 News Digital published an internet article headed 'No Way Out for Women in Debt and Total Despair'.

Ms Ra claimed that each of these publications contravened s. 53B of the *Trade Practices Act 1974* (Cth) because its publisher had engaged in conduct that was liable to mislead persons seeking employment as to the nature, terms or conditions of that employment by making misleading representations in each of the five publications in relation to the employment offered by her. Similarly, Ms Ra argued that each of the publications complained of defamed her by conveying similar meanings to the alleged misleading representations.

The publishers filed a motion seeking an order under s. 40 of the *Federal Court of Australia Act 1976* (Cth) that the issues in the proceedings, other than damages, be tried by a jury. Ms Ra opposed that order, but argued that if a jury were to be summoned, it should be a jury of twelve under s. 20(2) of the *Jury Act 1977* (NSW), rather than a jury of four.

The Court considered ss. 39 and 40 of the *Federal Court Act* and the nature of its power under those sections to direct a trial of issues with a jury. Those sections required the publishers to establish a basis for the exercise of the Court's discretion to order a departure from the usual mode of trial by judge alone. The Court held that, in exercising that discretion, it was appropriate to have regard to the provisions of the relevant State or Territory Defamation Acts.

The Court found that the matter raised issues that required giving effect to significant moral and social values of the community. It was satisfied that a trial by a jury would be a better mode of trial than by judge alone, in order to assess the various claims and defences.

The Court also considered that a jury of twelve was appropriate. This was because the publications were made in a daily newspaper with a large circulation in Sydney, and on the internet, alleging criminal and other serious wrongdoing by Ms Ra. She had a highly contentious occupation of being a brothel owner. The jury would be asked to decide whether the publishers had defamed Ms Ra in each of the five matters complained of and had made similar misrepresentations in contravention of s. 53B of the *Trade Practices Act*. That would involve them considering whether defamatory meanings or representations had been conveyed and whether any defences raised by the publishers had been established by applying the moral and social standards of the community. The question of damages would be left to the trial judge.

HUMAN RIGHTS – Disability discrimination – hearing disability – alleged indirect and direct discrimination of applicant contrary to ss. 5, 6 and 15 of *Disability Discrimination Act 1992* (Cth) – whether respondent imposed requirement or condition that applicant perform employment without the assistance of flashing lights or telephone typewriter – whether respondent imposed requirement or condition that applicant attend training sessions and staff meetings without qualified interpreters

Devers v Kindilan Society
(27 November 2009, Justice Marshall)

This case concerned an application pursuant to s. 460 PO (1) of the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), following the termination of the applicant's complaint to the Human Rights and Equal Opportunity Commission alleging discrimination (both directly and indirectly) by reason of her disability, contrary to ss. 5, 6, and 15 of the *Disability Discrimination Act 1992* (Cth).

The applicant (Ms Devers) was employed on a casual basis by Focus, a not-for-profit organisation that provided services to people with disabilities. Ms Devers is profoundly deaf and is unable to communicate except by way of Australian Sign Language (Auslan). When Ms Devers commenced employment at Focus, she did not request qualified interpreters or special equipment in order to perform her duties.

During the course of her employment, Ms Devers made a number of requests asking for a telephone typewriter (TTY) and for flashing lights to be installed above her door so she would be alerted when someone entered the room. These requests were generally complied with by Focus. Ms Devers also required that interpreters be made available for staff meetings and training sessions. This request was occasionally complied with.

Focus imposed certain requirements or conditions on Ms Devers in the course of her employment. In his judgment Justice Marshall held that, the phrase 'requirement or condition' in s. 6 of the *Disability Discrimination Act* is to be construed broadly, to indicate any form of qualification or prerequisite. A requirement or condition may be imposed either explicitly or implicitly in the conduct said to constitute the indirect discrimination.

Prior to the flashing lights being installed, it was not established by Ms Devers that she suffered any serious disadvantage from her inability to answer the door. It is also uncertain whether Focus imposed a requirement or condition that Ms Devers access her employment without a TTY, as it was unclear to Focus that Ms Devers required the provision of a TTY. Nevertheless, Ms Devers did not establish that the imposition of such a requirement or condition was unreasonable. Ms Devers also failed to establish the unreasonableness of the requirement or condition that she attend training sessions and staff meetings without the use of an interpreter. The cost of providing interpreters would have been significant. In any event, Ms Devers received the information by other means and it was not established that she suffered adverse consequences as a result.

There was also no evidence to suggest any direct discrimination, by way of less favourable treatment, to Ms Devers due to her disability in the forms alleged.

APPEAL – TRADE PRACTICES – markets – alleged existence of a wholesale sports channel market – characteristics of ‘competition’ and ‘markets’ – relevant anti-competitive inquiry – application of the SSNIP test – alleged market not established – s. 45 – effect or likely effect – whether agreements entered into by various respondents had the effect, or likely effect, of substantially lessening competition in the retail pay television market

Seven Network Limited v News Limited

(2 December 2009, Justices Mansfield, Dowsett and Lander)

This appeal concerned events which occurred in the pay television industry in the late 1990s and early 2000s. It focused on the conduct of Foxtel, a supplier of pay television services, Fox Sports, a supplier of pay television sports channels to pay television services, News Ltd, Consolidated Media Holdings Ltd (PBL), Telstra Corporation Ltd and others (the Foxtel/Fox Sports parties). It also concerned the effects of such conduct upon Seven Network Ltd and C7 Pty Ltd, its subsidiary. C7 also supplied pay television sports channels to pay television services.

The conduct of the Foxtel/Fox Sports parties occurred primarily in connection with their acquisition of the pay television rights for coverage of the Australian Football League (AFL) Competition in 2002 to 2006 and for coverage of the National Rugby League (NRL) Competition in 2001 to 2006. In effect Seven claimed that the Foxtel/Fox Sports parties had acquired both the AFL and NRL rights in order to put C7 out of business so that Fox Sports could dominate the market for supplying sports channels to pay television suppliers Foxtel, Optus and Austar, and so that Foxtel could dominate the market for the supply of pay television services to subscribers. Seven and C7 claimed that the respondents’ conduct contravened s. 45, s. 45D and s. 46 of the *Trade Practices Act 1974* (Cth) (Trade Practices Act).

Justice Sackville dismissed Seven’s claim. The Court upheld that decision, although its reasons for doing so differed to some extent from his Honour’s.

Seven also claimed that Foxtel had contravened the anti-siphoning regime contained in the *Broadcasting Services Act 1992* (Cth). Other claims were made against other parties, but they were not pursued on appeal. The appellants contended at the trial that the respondents had engaged in conduct that had the purpose, effect or likely effect of substantially lessening competition in the retail pay television market. Justice Sackville dismissed the appellants’ claims in that regard. The Court agreed with the trial Judge’s conclusions that the appellants did not establish that the respondents’ conduct was likely to have the effect, or had the effect, of substantially lessening competition in the retail pay television market. The Court also agreed that the appellants failed to establish an anti-competitive purpose.

The majority (Justices Dowsett and Lander) also disagreed with Justice Sackville in two aspects of his construction of s. 45 of the Trade Practices Act. However that difference of opinion did not lead to a different result on the appeal. Justice Sackville construed ss. 45(2)(a)(ii) and (2)(b)(ii) as requiring that all parties responsible for inserting an anti-competitive purpose in a contract, arrangement or understanding have that subjective purpose in order that there be a contravention of the section. The majority considered that ss. 45(2)(a)(ii) and (2)(b)(ii) should be construed as meaning that s. 45 will be contravened if any party to the contract, arrangement or understanding, who was responsible for the inclusion of the impugned provision, had the subjective purpose of substantially lessening competition in the relevant market, provided that such purpose was, itself, a substantial purpose. The majority construed s.45 as not requiring a shared purpose. Justice Mansfield construed ss. 45(2)(a)(ii) and (2)(b)(ii) in the same manner as Justice Sackville.

Justice Sackville held that an anti-competitive purpose could only contravene s. 45(2)(b)(ii) if it related to competition in an existing market. The Court agreed with that conclusion. The trial Judge, however, concluded that if an apparently anti-competitive purpose could not, in fact, be achieved so as substantially to lessen competition in a relevant market, there could be no contravention. The

majority did not agree with that conclusion, concluding that such a construction would require the Court to inquire into whether the relevant provision had the likely effect of substantially lessening competition in the market in question, thus failing to recognise that s. 45 distinguishes between purpose and effect or likely effect.

Justice Mansfield did not disagree with his Honour's reasons.

Although the majority differed in those two respects from the views of the trial Judge, all members of the Court were of the opinion that the trial Judge was right to conclude as a matter of fact that none of the parties to the Master Agreement had an anti-competitive purpose in the retail pay television market.

Seven conceded on appeal that the decision of the High Court in *Devenish v Jewel Food Stores Pty Ltd* (1991) 172 CLR 32 meant that the case based on s. 45D of the Trade Practices Act must fail.

All members of the Court agreed with his Honour's conclusion that the respondents did not contravene s. 46. Section 46 prohibits the use of market power for an anti-competitive purpose.

The anti-siphoning regime ensures that important public events, including sporting events, are available to viewers of free-to-air television and not only to pay television subscribers. Seven claimed that the Foxtel/Fox Sports parties had tried to undermine the regime in order to benefit Foxtel.

All members of the Court agreed with his Honour's reasons for dismissing the appellants' anti-siphoning case.

CORPORATIONS - continuous disclosure - obligation to disclose information to ASX under Chapter 6CA Corporations Act 2001 (Cth) - relationship between continuous disclosure provisions of ASX Listing Rules and Corporations Act - agreements contemplating execution of fuller and more detailed agreements - mining project contingent upon completion of definitive feasibility study - notification to ASX in purported compliance with continuous disclosure provisions under s. 674

ASIC v Fortescue Metals Groups Ltd (No 5)
(23 December 2009, Justice Gilmour)

Fortescue Metals Group (FMG) is a publicly listed mining company on the Australian Securities Exchange (ASX) and Mr Andrew Forrest was FMG's chairman and CEO.

In 2004 FMG executed three framework agreements, substantially in similar terms, with three Chinese contractors to build, transfer and finance the construction of a railway, port and mine in the Pilbara. In August and November 2004 FMG made notifications concerning the framework agreements to the ASX in purported compliance with continuous disclosure provisions under s. 674 and ASX Listing Rule 3.1. Section 674(2) required a listed disclosing entity to notify ASX as a market operator of information that is not generally available and is information that a reasonable person would expect, if it were generally available, to have a material effect on price or value of the entities' securities. The notifications reported that FMG had executed 'binding agreements' with the Chinese contractors. FMG made further public statements to the same effect.

The Australian Securities and Investments Commission (ASIC) alleged that FMG did not have a genuine or reasonable basis for making the disclosure concerning the framework agreements. ASIC's primary claim was that FMG and Mr Forrest deliberately misled the market by overstating the legal effect of the framework agreements with Chinese contractors as 'binding contracts', when they were merely at most agreements to further negotiate. ASIC alleged that the notifications had a positive material effect on the price of FMG's shares. ASIC alleged that (1) FMG and Mr Forrest contravened its continuous disclosure obligations under s. 674 and that Mr Forrest was knowingly concerned in those contraventions under s. 674(2A); and (2) the disclosures were misleading and deceptive under s. 1041H; and (3) Mr Forrest breached his duty as a director to exercise care and diligence under s. 180 by failing to ensure that FMG complied with its disclosure obligations and as a result exposed FMG to a risk of harm including these penalty proceedings. ASIC sought declarations of contravention and civil penalty orders against FMG and Mr Forrest, and additionally an order disqualifying Mr Forrest from being a director.

Justice Gilmour dismissed ASIC's application. Justice Gilmour held that the information which ASIC contends ought to have been disclosed principally comprised a judgment or opinion as to what was the meaning and legal effect of these agreements, which neither FMG nor Mr Forrest ever held. Justice Gilmour found that there was a reasonable basis for FMG and Mr Forrest to conclude as a matter of opinion that the framework agreements were binding. In support of that conclusion Justice Gilmour pointed to legal advice received by FMG, FMG's internal records and external communications, the public positions adopted in respect to the framework agreements by FMG and the Chinese companies as well as the construction of the terms of the framework agreements. Similarly, Justice Gilmour found there was no evidence that Mr Forrest was dishonest or deliberately misled the market. The allegations for breach of director's duties under s. 180 were also dismissed.

A more fulsome summary is contained in the head-note of the report of the decision in the Australian Law Report of *ASIC v Fortescue Metals Group* (2009) 264 ALR 201.

COPYRIGHT – whether recordings of a musical work infringed copyright in an earlier musical work by reproducing a substantial part of the earlier work – causal connection between works not denied – objective similarity determined by aural and visual comparison of musical elements of the works – emphasis is on quality rather than quantity of what is taken – copied features must be a substantial part of the copyright work, not of the infringing work – overall appearance of infringing work may differ from copyright work

TRADE PRACTICES – whether respondents misrepresented to collecting societies that there was no infringement in the copyright work and that they were entitled to 100% of royalties from infringing work – continuing representations made by respondents to collecting societies.

RESTITUTION – whether respondents were unjustly enriched at the expense of the applicant – whether mistake of fact or law was made by collecting societies – claim did not fall within recognised categories of restitution

Larrikin Music Publishing Pty Ltd v EMI Songs Australia Pty Ltd
(4 February 2010, Justice Jacobson)

The Applicant ‘Larrikin’, owned the copyright in a short musical work of four bars ‘Kookaburra sits in the old gum tree’ (‘Kookaburra’) an iconic Australian round, written and composed in 1934 by Miss Marion Sinclair.

The pop song ‘Down Under’ was written and composed in 1978 by Mr Colin Hay and Mr Ron Strykert who were members of the group ‘Men at Work’. The flute riff of Down Under, which reproduces two of the bars of Kookaburra, was later added to Down Under by another band member, Mr Greg Ham, and formed part of the 1981 recording of Down Under which appeared on Men at Work’s best selling album ‘Business As Usual’.

The connection between Kookaburra and Down Under was exposed in the Australian Broadcasting Corporation’s television program ‘Spicks and Specks’ in 2007.

Larrikin brought claims under the *Trade Practices Act 1974* (Cth) and the *Copyright Act 1968* (Cth) for copyright infringement against Mr Hay and Mr Strykert, and the owner and licensee of the copyright in the work, EMI Songs Australia Pty Ltd and EMI Music Publishing Australia Pty Ltd.

In considering the question of copyright infringement, his Honour applied *S.W. Hart & Co Proprietary Limited v Edwards Hot Water Systems* (1985) 159 CLR 466 in which it was held that for there to be a reproduction, there must be an objective similarity between the two works and a causal connection between the plaintiff’s work and that of the defendant. His Honour also applied the principle stated in authorities such as *Ladbroke (Football) Ltd v William Hill (Football) Ltd* [1964] 1 WLR 273, namely that if these two elements are satisfied, the question then arises as to whether the infringer has copied a substantial part of the copyright work.

In finding that there was a sufficient degree of objective similarity between the bars of Kookaburra which are seen and heard in Down Under to amount to reproduction of a part, his Honour undertook an aural comparison of the musical elements of the two works, including the melody, key, tempo, harmony and structure, as well as a visual comparison of the notated songs, with particular assistance from the evidence of the musicologist experts. The failure to call Mr Ham reinforced the finding of objective similarity.

His Honour considered Mr Hay’s evidence that, during some performances of Down Under he sang the words of Kookaburra to the tune of the flute riff in Down Under, was sufficient to show that the qualitative test for substantial part was met.

Larrikin succeeded on its claim under s. 52 of the *Trade Practices Act 1974* that the respondents had misrepresented their entitlement to 100% of the income from Down Under to the Australasian Performing Right Association ('APRA') and the Australasian Mechanical Copyright Owners Society ('AMCOS'). However Larrikin's claim of authorisation of copyright infringement under the *Copyright Act 1968* was not successful because the necessary degree of knowledge was not established.

Larrikin's additional claim that the respondents had been unjustly enriched at its expense in relation to the income collected by APRA and AMCOS was rejected.

CONSTITUTIONAL LAW – act of state doctrine – non-justiciability – scope of act of state doctrine – where Australian citizen has brought proceedings against the Commonwealth – where a determination of the proceedings would depend on findings of the legality of the acts of foreign agents outside Australia – whether act of state doctrine applicable where allegations of grave breaches of international law – whether manageable judicial standards

HIGH COURT AND FEDERAL COURT – original jurisdiction of the High Court and Federal Court – judicial scrutiny of actions of the Executive by Ch III Courts – whether Constitutional framework and legislation in question enables such scrutiny

Habib v Commonwealth of Australia

(25 February 2010, Chief Justice Black and Justices Perram and Jagot)

The Full Court considered the scope and operation of ‘the act of state doctrine’. Mr Habib, an Australian citizen, was arrested in the aftermath of terrorist attacks in the USA on 11 September 2001 and alleged that whilst incarcerated he was tortured by foreign agents in Pakistan, Egypt, Afghanistan and Guantánamo Bay, Cuba. These acts, Mr Habib claimed, involved breaches of Australian law. Proceedings against the Commonwealth arose from allegations that Australian officials aided, abetted and counselled these acts of torture and thereby had acted in excess of their authority.

The Commonwealth sought summary dismissal on the basis that the allegations were not justiciable by an Australian court because of the act of state doctrine [*Underhill v Hernandez* 168 US 250 (1897)] which prevents a domestic court from rendering judgment on the actions of a sovereign state committed inside that state’s own territory. This gave rise to two issues for determination: firstly, whether the doctrine was applicable when the alleged actions involved gross breaches of international human rights and secondly, whether the doctrine was applicable when the putative actions were alleged to be in excess of Commonwealth power.

Justice Jagot, with whom Chief Justice Black agreed, decided that the doctrine had no operation in circumstances involving grave breaches of international human rights: *Oppenheimer v Cattermole (Inspector of Taxes)* [1976] AC 249. Justice Perram did not decide that issue but rather attempted to characterise properly the doctrine. Ultimately, Justice Perram preferred a construction of the doctrine as a super choice of law rule which required domestic courts to treat foreign state action as valid, superseding a nation’s private international law rules: *WS Kirkpatrick & Company v Environmental Tectonics Corporation International* 493 US 400 (1990). Since Mr Habib’s claims did not concern the validity of actions by foreign agents, but rather whether they occurred, the act of state doctrine had no application. This conclusion was shared by Justice Jagot as another reason why the act of state doctrine was insufficient to ground a motion for dismissal.

With respect to the second issue, all members of the Court concluded that to permit the act of state doctrine to curtail judicial scrutiny of executive power would be incompatible with Chapter III of the *Constitution*, which firmly establishes that the judicial branch is to be the sole arbitrator and delineator of the scope of both legislative and executive power. Indeed, the Court observed that to hold contrary would be illogical as it would permit a common law notion, which is entirely subject to parliamentary modification, to impose a fetter upon judicial review in circumstances where Parliament could not.

INDUSTRIAL LAW – whether the Industrial Court of New South Wales had jurisdiction to hear and determine the application – whether the substantial activities of the Association should be characterised as ‘trading’ and whether it is therefore a ‘trading corporation’ to which the *Workplace Relations Act 1996* (Cth) applies so as to exclude the application of the *Industrial Relations Act 1996* (NSW) – the application of paragraph 51(xx) of the Constitution – the time at which the activities of the Association are to be assessed

Bankstown Handicapped Children’s Centre Association Inc v Hillman
(25 February 2010, Justices Moore, Mansfield and Perram)

The Association was a corporation which provided welfare and support services for people with disabilities, children and young people and provided support for their families and carers. Mr Hillman was formerly employed by the Association. He brought proceedings in the Industrial Court of NSW against the Association and its CEO, seeking a declaration that his contract of employment was unfair, an order declaring the contract void or an order varying the contract, and the payment of money and interest. The Association and its CEO challenged the jurisdiction of the Industrial Court, on the basis that the Association was a trading corporation within the meaning of s. 51(xx) of the Constitution, and therefore the Industrial Court’s jurisdiction was excluded by the operation of the *Workplace Relations Act 1996* (Cth). A Full Bench of the Industrial Court held that it had jurisdiction to hear the matter. The Association and its CEO appealed against that decision to the Full Court of the Federal Court.

The Full Court allowed the appeal. The Full Court held that the appeal was competent in that there was a right to appeal to the Court, finding that the initial proceedings in the Industrial Court gave rise to a judgment in a matter arising under the *Workplace Relations Act*. The Full Court held that the Association was a corporation to which the *Workplace Relations Act* applied, and that as a result the *Industrial Relations Act 1996* (NSW) was excluded. In so holding, the Full Court found that the commercial nature of the Association’s activities were indicative of trading, even though it may well be correct to have characterised the activities as the provision of public welfare services. In particular, the Association’s relationship with the state, whereby it provided services and was remunerated for doing so, was of an essentially commercial nature.

TORTS – Negligence – Product Liability – Prescription medicine for relief of inflammation – Side-effects – Whether medicine caused or contributed to cardiovascular disease – Whether manufacturers knew or ought to have known of that tendency – Whether they owed duty of care to consumers – Content of duty of care – Whether affected by status of product as prescription medicine – State of scientific uncertainty as to side-effects of medicine – Whether manufacturers undertook sufficient research into side effects – Whether medicine should have been withdrawn from market pending resolution of scientific issues – Whether manufacturers breached duty of care by not doing so

Peterson v Merck Sharpe and Dohme (Aust) Pty Ltd
(10 October 2008, Justice Edmonds)

This judgment was given in an ongoing representative proceeding under Pt IVA of the *Federal Court of Australia Act 1976* (Cth) in which the applicant, Graeme Robert Peterson, alleged that the consumption, by him and the other group members, of a medication for the relief of arthritic pain called Vioxx contributed to the onset of various kinds of cardiovascular disease. Vioxx was the commercial embodiment of the rofecoxib molecule, which was developed in the USA by Merck & Co, Inc. in the 1990s. Rofecoxib was a member of a new class of drugs for the relief of arthritic pain, the advantage of which was supposed to be the absence of gastrointestinal side-effects. Vioxx was marketed and sold in Australia by Merck Sharpe & Dohme (Australia) Pty Ltd, between late 2000 and September 2004, when it was withdrawn from the market internationally by Merck & Co, Inc.

In the proceeding, Mr Peterson, who had a heart attack in December 2003 after taking Vioxx for about 2½ years, alleged that Vioxx contributed to that event, that the Merck companies were negligent in not having withdrawn Vioxx from the market earlier than they did, in not having warned him of the risk of taking Vioxx and in the making of certain promotional representations to doctors and others, that the companies' failure to warn, and those representations, amounted to misleading and deceptive conduct under s. 52 of the *Trade Practices Act 1974* (Cth), that Vioxx had a defect within the meaning of s. 75AD of that Act, and that Vioxx was not reasonably fit for this purpose within the meaning of s. 74B, and was not of merchantable quality within the meaning of s. 74D, of that Act.

The judgment involved the determination of Mr Peterson's own case and of a number of questions common to group members. Justice Jessup upheld the allegations that Vioxx about doubled the risk of heart attack generally, and that it did contribute to Mr Peterson's heart attack. On Mr Peterson's case in negligence, his Honour rejected the allegation that the Merck companies had been negligent in not having withdrawn Vioxx from the market earlier than they did, but held that the failure by Merck Sharpe & Dohme (Australia) Pty Ltd to warn, and one of its promotional representations made to Mr Peterson's doctor, were less than what was required for a discharge of that company's duty of care. However, his Honour held that, had a sufficient warning been given, or had that representation not been made, Mr Peterson would still have taken Vioxx. In the result, Mr Peterson's negligence case as against both companies was dismissed.

Justice Jessup held that Vioxx did have a defect within the meaning of s. 75AD of the *Trade Practices Act*, but upheld the defence of Merck Sharpe & Dohme (Australia) Pty Ltd that the state of scientific or technical knowledge at the time when Vioxx was supplied to Mr Peterson was not such as would have enabled the defect to be discovered. His Honour upheld the allegation that, by reason of its effect on the risk of heart attack, Vioxx was not reasonably fit for Mr Peterson's purpose within the meaning of s. 74B, and was not of merchantable quality within the meaning of s. 74D, of that Act.

In this representative proceeding, Mr Peterson alleged also that Vioxx contributed to the risk of suffering certain named cardiovascular conditions in addition to heart attack. Justice Jessup rejected these allegations.

In the result, Mr Peterson's application against Merck & Co, Inc., and his application with respect to conditions other than heart attack, were dismissed. In his own case, he was awarded damages for the contribution made by Vioxx to his heart attack. In relation to other group members who suffered heart attacks, the case is continuing.

ADMIRALTY – LIMITATION OF LIABILITY – application under s.25 of the *Admiralty Act 1988* (Cth) by shipowner to limit liability under *Limitation of Liability for Maritime Claims Act 1989* (Cth) and the *Convention on Limitation of Liability for Maritime Claims 1976 as affected by the 1996 Protocol to amend that Convention* – meaning of ‘claims arising on any distinct occasion’ in Arts 2(1)(a) and 6(1) of the Convention – Arts 6(1)(b) and 11 of the Convention permitting shipowner to apply to limit liability for all claims arising on a distinct occasion – maritime liens – multiple claims alleged to arise from ship’s anchor fouling submarine gas pipeline, ship then going astern, ship later moving ahead, pipeline then fractured, later ship moving astern and further bending pipeline – claims by pipeline’s owners for repairs, loss of gas and economic loss – consumers of gas claiming economic losses – longer repair period because of further bending – whether the different events causing damage to the pipeline on one or more distinct occasions

Strong Wise Limited v Esso Australia Resources Pty Ltd
(18 March 2010, Justice Rares)

During a gale on Saturday afternoon, 13 December 2008, *APL Sydney* anchored at about 14:30 in the outer anchorage of Port Phillip Bay, Melbourne. *APL Sydney* was a two year old, 231 metre length overall, fully cellular container ship. The outer and inner anchorages of the Bay were separated by an area through which a submarine pipeline ran. It carried ethane gas at high pressure from Mordialloc on the east to Altona on the west. The pipeline was buried about three metres below the seabed.

The ship began dragging her anchor to the north east from her original position. Between 15:44 and 15:45 the vessel’s starboard anchor fouled the pipeline. Immediately after, the master put the engine astern for ninety seconds, stopping when he realised that the anchor may have fouled the pipeline. The ship then yawed until about 16:20 when the pilot advised the master to put the engine ahead. Soon after this, the pipeline ruptured and the engine was stopped. A large amount of gas bubbled to the surface. About six minutes later, the engine was put astern, and the anchor pulled one end of the ruptured pipeline back towards Mordialloc, dragging it further out of its trench and bending it almost to a right angle.

In a number of separate proceedings, BHP and Esso sued the shipowner for damages estimated to exceed the cost of repair of \$27 million, while two large consumers of gas supplied from the pipeline also brought two separate proceedings claiming damages for pure economic loss estimated at \$12 million and \$27 million.

The shipowner began proceedings under s. 25 of the *Admiralty Act 1988* (Cth). It claimed that it was entitled to limit its liability pursuant to the *Convention on Limitation of Liability for Maritime Claims 1976 as affected by the 1996 Protocol to amend that Convention* (the Convention) which is given force of law in Australia by the *Limitation of Liability for Maritime Claims Act 1989* (Cth). The value of the ship calculated under the Convention was about \$21.5 million. Article 6(1)(b) of the Convention entitles the shipowner to limit its liability for claims ‘arising on any distinct occasion’.

The case centred on the meaning of the expression ‘arising on any distinct occasion’ in the Convention. The shipowner argued that the whole episode beginning with the initial fouling and ending on the final separation of the anchor from the pipeline was a single ‘distinct occasion’. Thus, it sought to limit all its liability by establishing a single limitation fund. Esso and BHP asserted there were four distinct occasions being the initial fouling and each engine movement beginning at 15:46, 16:20 and 16:27.

The question of what was a ‘distinct occasion’ under the Convention had not been decided previously by any court, anywhere in the world, so far as the researches of the parties or the Court had revealed. The Court reviewed the scheme of the Convention and the history of shipowners’ rights to limitation of their liability. The Court concluded that a claim arises on a distinct occasion under the Convention where a single act, neglect or default of a shipowner places him in such a

relationship that, as a matter of commonsense, it is a cause of the loss or damage suffered by a third party who has a claim under Article 2 of the Convention. It held that the occurrence that causes such a claim to arise amounts to a distinct occasion for the purposes of Articles 6, 7, 9 and 11.

However, the Court also held that if a subsequent act, neglect or default of the same shipowner separately operates to cause different or separately identifiable loss or damage to the same third party, or to others, then a new claim or claims will arise on that later distinct occasion. The latter occasion is distinct because first, there is a new event, secondly, there is a new loss or damage and thirdly, the new cause is, as a matter of commonsense, not a necessary or inseparable consequence of the earlier act, neglect or default.

The Court found that there were two distinct occasions, the initial fouling, and the subsequent astern movement which ruptured the pipeline. It held that the engine movements at 15:46 and 16:27 were inseparably connected to the events that immediately preceded them. The Court allowed the shipowner to limit its liability for each of those two occasions.

An appeal to the Full Court has been discontinued.

CORPORATIONS LAW – application pursuant to s. 411 *Corporations Act 2001* (Cth) for orders convening meeting of shareholders to approve scheme of arrangement and approving explanatory statement – proposed capital reduction condition precedent to scheme – risk that capital reduction will prejudice ability of CSR to meet asbestos liabilities – whether primary judge erred in dismissing application

CSR Ltd, in the matter of CSR Ltd

(23 April 2010, Chief Justice Keane and Justices Finkelstein and Jacobson)

CSR applied to the Court, pursuant to s. 411 of the *Corporations Act 2001* (Cth), for orders convening a meeting of shareholders to approve a scheme of arrangement. The scheme involved the demerger of CSR's sugar and renewable energy business from its building products and aluminium business. A capital reduction was a condition precedent to the scheme.

The Court at first instance had refused to make the order. The Australian Securities Investments Commission, the Attorney-General for the State of New South Wales, the Asbestos Injuries Compensation Fund Ltd and other entities were granted leave to intervene in the proceeding. They argued that the proposed demerger should not proceed because it could prejudice the prospects of recovery of damages by asbestos claimants.

The Full Court held that the discretion to refuse to make an order under s. 411(1) of the *Corporations Act* may properly be exercised where the making of the order would be futile because there is a clear indication that the scheme as proposed will not be finally approved. However, the inquiry under s. 411(1) is not intended to resolve difficult questions on which reasonable minds may differ. In circumstances where the judge at first instance did not conclude that the proposed scheme would increase the risk of non-payment to creditors in a material rather than abstract way, it was not open to the judge at first instance to refuse an order under s. 411(1). Discretion under s. 411(1) should have been exercised to allow the shareholders to vote on the proposal and the objectors to mount, if they chose to do so, a better informed and more focused challenge to the reduction of capital by the other means open to them under the *Corporations Act*.

Held by Chief Justice Keane and Justices Jacobson and Finkelstein agreeing: a 'material prejudice' to a company's ability to pay its creditors relates to a material, as opposed to theoretical, increase in the likelihood that the reduction in capital will result in a reduced ability to pay creditors.

By Justice Finkelstein: considerations of 'public policy' add nothing to existing principles, which adequately protect the interests of members, creditors and persons who might deal with the company by an inquiry whether the scheme is fair or reasonable. Notions of 'commercial morality' involve an 'ill-defined and largely subjective set of criteria' and should be jettisoned from the matters to be considered in approving a scheme under s. 411.

TAXATION – determination of preliminary questions arising in the context of appeals against objection decisions of the respondent – whether applicant entitled to claim deductions in relation to copyright – whether copyright subsists in patient medical records – whether interests in copyright were transferred to the applicant – whether the applicant used copyright interests for the purpose of producing assessable income – whether monetary consideration was paid for copyright interests

Primary Health Care v Commissioner of Taxation
(4 May 2010, Justice Stone)

Primary Health Care Limited v Commissioner of Taxation [2010] FCA 419 raised a number of preliminary issues concerning whether the applicant was entitled to claim deductions for the depreciation of intellectual property rights, being copyright in the patient records, it claimed to have acquired under individual contracts for the sale of approximately 300 medical and dental practices. In objection decisions relating to several years of income, the Commissioner had rejected the claimed deductions. By agreement the parties selected 12 of approximately 300 practices as sample practices with reference to which the trial judge was to answer the preliminary questions.

Justice Stone accepted that under the contracts for sale of the sample practices, ownership of the patient records of those practices passed to the applicant. Her Honour held, however, that except in relation to referral letters written by the sample doctors and the records relating to one patient of one of the sample practices, copyright did not subsist in the patient records.

It was a feature of the patient records that they comprised short entries, often of only a few words and, in most cases written by a number of different doctors. Copyright could not be established because either the authors of the patient records had not been sufficiently identified and shown to be qualified persons within the meaning of s. 32(1) of the *Copyright Act 1968* (Cth) or the applicant had failed to establish that the individual entries constituted original literary works. The entries did not display the independent intellectual effort directed towards expression that is necessary for an individual literary work.

On the question whether ownership of any copyright passed to the applicant under the contracts for sale, her Honour held that only in one instance, (in the only case in which copyright was expressly assigned) did any copyright owned by the sample doctors pass to the applicant. In this case, however, no consideration was paid in respect of this copyright and therefore, under the relevant provisions of the *Income Tax Assessment Act 1997* (Cth), the applicant was not entitled to claim a deduction with respect to the copyright that had passed.

NATIVE TITLE – common law extinguishment – particular non-exclusive native title rights agreed to exist subject to extinguishment – mineral leases granted pursuant to an agreement between the State and leaseholders ratified by specific legislation – purposes of agreement extended beyond mining – leaseholders conducted open cut mining, built a township and other infrastructure on one third of the leased area – the mine and town now closed and area rehabilitated – whether mineral leases conferred right of exclusive possession – whether rights granted by the mineral leases are inconsistent with the native title rights – whether grant of mineral leases extinguished the native title rights over the entire leased area or only the developed leased areas – relevance of actual exercise of rights by the leaseholders or by the native title holders - relevance of rehabilitation

Brown (on behalf of the Ngarla People) v State of Western Australia (No 2)
(21 May 2010, Justice Bennett)

The applicants claimed native title over certain land in Western Australia. Under present consideration were parts of the claimed area which are subject to two mineral leases (the mineral leases), granted pursuant to an agreement between joint venturers and the State of Western Australia (the agreement), which was ratified by specific state legislation. Pursuant to rights granted under the mineral leases and the agreement, the leaseholders constructed and utilised an open-cut mine, a town and other infrastructure over approximately one third of the leased area. The mine and town were subsequently closed and rehabilitation was carried out.

The parties agreed that, unless extinguished by the grant of the mineral leases, particular non-exclusive native title rights exist over the leased area (agreed native title rights). The issue of extinguishment was addressed in the form of preliminary questions. It was agreed that the extinguishing effect of the mineral leases was to be determined under common law principles and that the applicable test was whether the rights granted to the leaseholders under the mineral leases were inconsistent with the agreed native title rights.

The Court found that the mineral leases did not confer on the leaseholders a right of exclusive possession over the whole of the leased area such as to extinguish all native title rights in that area. The Court considered that the leaseholders did not have the right to exclude access by native title holders seeking to exercise rights over parts of the leased area that were not developed by the leaseholders.

The Court found that the rights granted to the leaseholders to construct and utilise the mine, the town site and associated infrastructure were inconsistent with the continued existence of any of the agreed native title rights within the areas on which the mines, town site and associated infrastructure have been constructed (the developed areas). The Court did not consider, however, that the rights granted by the mineral leases were inconsistent with the continued existence of the agreed native title rights in those parts of the leased area which were not affected by developments carried out pursuant to the mineral leases and the agreement. This was so even though the leaseholders could choose where on the leased area to exercise their rights. The Court found the reasoning of the Full Court in *De Rose v South Australia* (No 2) (2005) 145 FCR 290 to be applicable in that the grant of the mineral leases became operative to extinguish native title rights on particular parts of the leased area when the granted rights were exercised, because it was only then that the precise areas of land affected by the right could be identified.

The Court concluded that the agreed native title rights had only been extinguished over the developed areas and could not be 'revived' even though the mine and the town site are no longer used by the leaseholders.

SUPERANNUATION – superannuation guarantee scheme – liability for superannuation guarantee charge – s. 12(1) and s. 12(3) *Superannuation Guarantee (Administration) Act 1992* (Cth) definition of employee – whether interviewers employees or independent contractors

CONSTITUTIONAL LAW – powers of Commonwealth Parliament – s. 51(ii) taxation power – whether *Superannuation Guarantee Charge Act 1992* (Cth) a law with respect to taxation – severability of *Superannuation Guarantee Charge Act* and Part 8 *Superannuation Guarantee (Administration) Act 1992* (Cth) – s. 51(xxiii) invalid and old-age pensions power – whether Part 8 *Superannuation Guarantee (Administration) Act* a law with respect to invalid and old age pensions

Roy Morgan Research Pty Ltd v Commissioner of Taxation
(26 May 2010, Chief Justice Keane and Justices Sundberg and Kenny)

Roy Morgan appealed from a decision of the Administrative Appeals Tribunal affirming a decision of the Commissioner of Taxation in respect of assessments of superannuation guarantee charge. Roy Morgan paid interviewers to conduct market research. It did not treat the interviewers as employees and did not lodge superannuation guarantee statements in relation to them under the *Superannuation Guarantee (Administration) Act 1992* (Cth).

The issue before the Tribunal was whether Roy Morgan's interviewers were 'employees' either within the ordinary meaning of the word in s. 12(1) *Superannuation Guarantee (Administration) Act* or because they worked under a contract that was wholly or principally for their labour as specified in s. 12(3). The Tribunal decided the interviewers were employees within the meaning of both subsections.

Roy Morgan also argued the *Superannuation Guarantee (Administration) Act* and the *Superannuation Guarantee Charge Act 1992* (Cth) were constitutionally invalid. Specifically, it was said that the charge was not imposed for public purposes, and was not supported by any head of Commonwealth power.

The Court, consisting of Chief Justice Keane, Justices Sundberg and Kenny, held that the interviewers were employees within the meaning of s. 12(1). In relation to the constitutional matters, the Court held that the fact that the exacted moneys were paid into the Consolidated Revenue Fund established, in the absence of countervailing considerations, that the exaction was for public purposes. The Acts did not substitute a pre-existing private obligation with a statutory one, and the benefits received by employees would only eventuate upon their infirmity or retirement. As to the appropriate head of Commonwealth power, the Court found that Acts were within the scope of s. 51(xxiii) of the Constitution, and that it was contrary to the general approach to Constitutional interpretation to find that this section should be limited to old-age pensions provided by the Commonwealth.

INDUSTRIAL LAW – Workplace Agreements – Obligation to ‘consult’ with employees in respect of proposals to be implemented that will impact on ‘terms and conditions of employment’ – Contravention of that obligation in relation to proposal for partial privatisation of State railway - Penalties

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Ltd
(11 and 22 June 2010, Justice Logan)

This was an application under the *Fair Work Act 2010* (the Act) by railway industry unions for the imposition of pecuniary penalties on QR Limited and two of its subsidiaries (‘the QR Group’) for twenty two alleged contraventions of a civil remedy provision of that Act. That provision was a like term in each of twenty two governing industrial agreements that imposed an obligation on a particular employer within the QR Group to ‘consult’ with employees in respect of a proposal for change will impact upon the terms and conditions of their employment. The QR Group was owned by the Queensland Government and used the trading name, Queensland Rail.

On 8 December 2009 the Queensland Government announced a decision partially to privatise the QR Group via the sale to the public of shares in a new company, QR National, which was to become the operator of what had hitherto been the QR Group’s coal and freight businesses. A government owned corporation, to be called ‘Queensland Rail’, was to operate the QR Passenger business, retain ownership of the existing publicly owned track network and maintain it. The date proposed for the break up of the QR Group was 1 July 2010.

Decisions were made in January 2010 by the QR Group, upon the recommendation of its ‘People Resourcing Team’ (PRT), as to which employees would be offered positions in QR National and who would remain in the new Queensland Rail. Letters advising this decision were sent to its workforce by the QR Group on 22 January 2010. The decision to constitute the PRT was made by the QR Group’s senior managers alone and, in determining what allocation recommendation to make, the PRT dealt with senior managers only. Although, before 22 January 2010, the QR Group had extensively and intensively provided information to its workforce and made provision for feedback it had not put proposed individual allocations to employees for comment.

In the Termination Change and Redundancy Case (TCR Case) in 1984 the Australian Industrial Relations Commission for the first time made general provision for the insertion into Federal awards of clauses providing for consultation by employers with employees in relation to change in the workplace. This was the first case since the TCR Case when the Court had been required to consider in depth what constituted ‘consultation’ for the purpose of a consultation clause in an industrial instrument.

Justice Logan analysed the meaning given by courts to ‘consult’ in other contexts, the heritage of consultation clauses, International Labour Organisation commentary on provision for consultation in ILO Conventions and the wording of the particular term in the agreements. His Honour held that key elements of consultation were that the party to be consulted be given notice of the subject upon which that party’s views are being sought before any final decision is made or course of action embarked upon, that while the word always carried with it a consequential requirement for the affording of a meaningful opportunity to that party to present those views, what will constitute such an opportunity will vary according to the nature and circumstances of the case and that a right to be consulted, though a valuable right, is not a right of veto. Justice Logan concluded that, in the circumstances, the QR Group had been obliged to consult with its workforce before 22 January 2010 and had not complied with the obligation in the industrial agreements.

In a later judgment with respect to penalty Justice Logan held that the change proposed was radical, affected the whole of the QR Group’s workforce of some 15,000 persons and that the senior management of the Group had closed its eyes to the obvious in relation to the need to consult. His Honour held that these were serious contraventions of an important, modern workplace right and that in the public interest Parliament had made provision for adherence to industrial bargains. Penalties totalling \$660,000, the maximum available under the Act, were imposed on the QR Group.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2009–10

On 28 July 2009 Chief Justice BLACK hosted a round-table luncheon for judges and academic visitors to meet with The Hon Yvonne Mokgoro, a justice of the Constitutional Court of South Africa.

Chief Justice Black travelled to Jakarta from 29 to 31 July 2009 for an official visit to the Supreme Court of Indonesia for the signing by the Federal Court and the Family Court of Australia of a further Annex to the Memorandum of Understanding between the Courts.

On 12 August 2009 Chief Justice Black hosted a luncheon for the Hon Arthur Chaskalson, former President of the Constitutional Court of South Africa and former Chief Justice of South Africa.

On 24 August 2009 Chief Justice Black hosted a round table luncheon in Melbourne for the Hon Lord Neuberger of Abbotsbury, Master of the Rolls. He later attended a lecture delivered by Lord Neuberger on *The New United Kingdom Supreme Court and Developments in Equitable Estoppel*.

Chief Justice Black and Justice Moore travelled to Hanoi from 7 to 9 September 2009 for an official visit to the Supreme People’s Court of the Socialist Republic of Vietnam for the signing of a Memorandum of Understanding on Judicial Cooperation with the Federal Court and the launch of a revised Judicial Benchbook for the courts of Vietnam. Chief Justice Black and Justice Moore were received by Madam Nguyen Thi Doan the Vice President of the Socialist Republic of Vietnam at the Presidential Palace, Hanoi.

On 23 September 2009 in Sydney Chief Justice Black met with the Hon Mr Justice K. G. Balakrishnan, the Chief Justice of India, to discuss judicial collaboration.

Chief Justice Black attended a reception in London on 1 October 2009 to mark the opening of the Supreme Court of the United Kingdom and the following day attended the service for the Opening of the Legal Year at Westminster Abbey and the Lord Chancellor’s Breakfast in Westminster Hall. Whilst in London he met with members of the senior judiciary and conferred with officers of the Office for Judicial Complaints. Chief Justice Black then travelled to Paris and met with the Secretariat of the International Association of Supreme Administrative Jurisdictions (IASAJ) in his capacity as Co-President of the Association.

In October 2009 Chief Justice Black attended the International Organisation for Judicial Training (IOJT) Conference, organised by the National Judicial Training Council and held in Sydney. The Conference was opened by the Commonwealth Attorney-General and Chief Justice Black gave a speech entitled: *Judicial Training as a Means to Enhance Judicial Independence?*

On 4 November in Sydney, Chief Justice Black attended and spoke at the launch by the Commonwealth Attorney-General of the Report *Solid work you mob are doing, Case Studies in Indigenous Dispute Resolution and Conflict Management in Australia*. The Report, which has its origins in the work of the National Alternative Dispute Resolution Advisory Council (NADRAC) and used a case study approach, makes recommendations aimed at improving dispute resolution practice in many indigenous contexts.

On 9 November 2009 Chief Justice Black gave his annual Address to the Victorian Bar Readers.

On 12 November 2009 Chief Justice Black was the guest speaker at the Annual Dinner of the Constitutional Bar Association in Sydney at which he gave a speech about the role of the Attorney-General.

On 13 November 2009 Chief Justice Black gave a speech at the ANU Public Law Weekend on the topic *Reflections on changes in the Federal Court of Australia*.

On 19 November 2009 at Monash University in Melbourne, Chief Justice Black attended the 17th Lucinda Lecture delivered by The Hon Susan Kiefel, of the High Court of Australia entitled: *Section 92: markets, protectionism and proportionality –Australian and European perspectives*.

In Sydney on 26 November 2009 Chief Justice Black and the Chief Justice of the Supreme Court and National Court in Papua New Guinea, Sir Salamo Injia, Kt. signed a Memorandum of Understanding and Annex on Judicial Cooperation between the Federal Court and the Supreme and National Courts of Justice of Papua New Guinea. Each Chief Justice delivered a short address.

On 27 November 2009 Chief Justice Black welcomed guests at an 'International Commercial Dispute Resolution Conference', hosted by the Federal Court in Sydney. The Commonwealth Attorney-General officially opened proceedings.

In Melbourne on 7 December 2009 Chief Justice Black and the Chief Justice of the Supreme People's Court of the Socialist Republic of Vietnam, the Hon Truong Hoa Binh, signed an Annex to the Memorandum of Understanding on Judicial Cooperation between the Federal Court and the Supreme People's Court. Chief Justice Black travelled to Sydney on 10 December to continue discussions with Chief Justice Binh and the Sydney judges of the Federal Court.

In Sydney on 20 January 2010 Chief Justice Black hosted a dinner for a delegation of judges from the Supreme People's Court of the People's Republic of China. The focus of the evening was on maritime environmental issues and was part of an ongoing program between the Courts, funded by AusAID.

Also in January 2010, Chief Justice Black attended the Annual Supreme and Federal Court Judges' Conference in Canberra where he gave a speech entitled: *Securing the Future*.

On 9 February 2010 Chief Justice Black and the NSW Bar Association co-hosted a reception at the Federal Court in Sydney to promote the Model Equal Opportunity Briefing Policy for Female Barristers and Advocates. Speakers included the Commonwealth Attorney-General, the Honourable Robert McClelland MP, and the Hon Catherine Branson QC, President of the Australian Human Rights Commission.

Also on 9 February, Chief Justice Black gave an address by video-link from the Federal Court in Sydney to the Court in Melbourne to a delegation of judges and senior staff members of the Constitutional Court of the Russian Federation. The delegation was sponsored by the World Bank to exchange information about the use of technology in courts.

On the evening of 9 February 2010, in Sydney, Chief Justice Black attended a private dinner hosted by Allens Arthur Robinson, in connection with the American Bar Association's (ABA) International Legal Exchange Conference (ILEX) at which the Honorable Antonin G Scalia, Associate Justice of the U.S. Supreme Court was special guest.

On 10 February 2010, Chief Justice Black attended the ILEX Conference session entitled: 'Internationalisation of Law (Presentation on the Australian judicial system)'. Following the Conference, the Supreme Court and Federal Court hosted a luncheon for American lawyers at the Federal Court in Sydney.

On 23 February 2010 Chief Justice Black and the Sydney judges hosted a reception for women members of the New South Wales Bar. The function, which was organised by the Women Barristers Forum, acted as an occasion for women at the Bar to meet the present judges and senior staff of the Federal Court.

Chief Justice Black and the President of the Administrative Appeals Tribunal, the Hon Garry Downes AM (as joint-presidents of the International Association of Administrative Jurisdictions (IASAJ)) co-hosted the 10th Congress of the IASAJ which was held in Sydney and Canberra from 7 – 11 March 2010. The Congress examined aspects of administrative law in civil and common law systems. Chief Justice Black spoke at the opening of the Congress in Sydney and at subsequent sessions of the Congress in Sydney and Canberra.

On 12 March 2010 Chief Justice Black presided and spoke at a ceremonial sitting on the occasion of the opening of the newly refurbished Court One in Sydney. The occasion also marked Chief Justice Black's farewell sitting in Sydney.

On 17 March 2010 Chief Justice Black gave his annual Address to the Victorian Bar.

On 19 March 2010 following his farewell sitting in Melbourne, Chief Justice Black attended a meeting of the Council of Chief Justices of Australia and New Zealand and, that evening, hosted a dinner for the members of the Council.

On 20 March 2010 Chief Justice Black was conferred with the degree of Doctor of Laws, *honoris causa*, by the University of Melbourne and delivered an occasional address to graduates on the topic of creativity in the practice of the law.

On 23 March 2010, at the Federal Court in Brisbane, Chief Justice KEANE met with the Hon Chief Justice Sir Salamo Injia Kt, Chief Justice of the Supreme and National Court of Papua New Guinea, and Justice Ambeng Kandakasi of the Supreme and National Court of Papua New Guinea.

On 13 May 2010, Chief Justice Keane addressed readers at the NSW Bar Association Bar Practice Course in Sydney.

On 14 May 2010, Chief Justice Keane gave the Keynote Address at the Queensland Law Society's 2010 Government Lawyers Conference in Brisbane.

On 27 May 2010, Chief Justice Keane and Dr Keane attended a dinner at Government House in Darwin at the invitation of His Honour Mr Tom Pauling AO QC, Administrator of the Northern Territory, and Mrs Tessa Pauling.

On 15 June 2010, Chief Justice Keane attended the official launch of Australia's Framework for Law and Justice Engagement with the Pacific at Parliament House in Canberra. Following the launch, Chief Justice Keane participated in a roundtable discussion on enhanced coordination across government and non-government sectors which was hosted by the Attorney-General's Department and AusAID.

On 16 June 2010, Chief Justice Keane presented the Queensland Public Interest Law Clearing House Incorporated 2010 Public Interest Address at Customs House in Brisbane.

From 29 June to 10 July 2009 Justice MOORE sat on the Court of Appeal in Tonga.

In September 2009 his Honour attended the launch of the Benchbook for the judges of the Supreme People's Court of Vietnam and Provincial judges, and conducted training workshops for judges of the District Court in Ho Chi Minh City and Hanoi.

On 27 November 2009, Justice Moore gave a paper on the *Internationalization of Judging* to the 'International Commercial Litigation and Dispute Resolution Conference' in Sydney. In December 2009 his Honour hosted a delegation of Vietnamese Judges in Sydney and attended the signing of the MOU with the Supreme People's Court in Melbourne on 7 December 2009.

In January 2010 Justice Moore attended the Supreme and Federal Court Judges' Conference in Canberra. On 24 February his Honour gave a presentation on recent developments in Class Action litigation for the UNSW Centre for Continuing Legal Education.

Throughout the period under review, Justice LINDGREN continued to chair the various committees of the Council of Chief Justices concerned with the harmonisation of rules of court. These committees are concerned with court rules in such areas as corporations, subpoenas, freezing and search orders, and service outside the jurisdiction. The committees prepare model rules of court that are then made by the Federal Court and all State and Territory Supreme Courts.

His Honour was a member of the Council of the Australian Institute of Judicial Administration, the Law Executive Council of the Faculty of Law, University of Technology, Sydney, and the Membership Committee of the Australian Academy of Law.

Justice Lindgren's publications during the period under review were: a foreword to Professor James O'Donovan's book, *Personal Property Securities Law in Australia* (Thomson Reuters, 2009); an article, 'Harmonisation of Court Rules and Forms' (2009) 83 (6) *Australian Law Journal* 359-361; 'The relevance of overseas case law to Australia's GST' (2009) 13(1) *The Tax Specialist* 31-37 (a revised for publication version of a paper his Honour presented at the Taxation Institute of Australia's 2009 GST Intensive Conference held in Melbourne on 3 September 2009); 'Some current practical issues in class action litigation' in Forum 15(2) of the *University of New South Wales Law Journal* and 32(3) *UNSWLJ* 900; the editing of *International Commercial Litigation and Dispute Resolution* (papers and proceedings of a conference on this subject held at the Federal Court of Australia in Sydney on 27 and 28 November 2009, published by the Ross Parsons Centre for Commercial, Corporate and Taxation Law in April 2010); 'Musings on Copyright Law – Some current issues touching the basic principles' (2010) 28 *Copyright Reporter*, 10-16 (a keynote address to the 14th Biennial Copyright Law and Practice Symposium on 15 October 2009, revised for publication).

During the period under review, Justice Lindgren spoke at several conferences and seminars as follows: on 14 August 2009, chaired a session on *Constructive trusts and insolvency* in a Conference on Equity and Financial Stress organised by the *Journal of Equity* and the Commercial Law Association held at the State Library of New South Wales; on 3 September 2009 gave the keynote address on *The courts' role in statutory interpretation: the relevance of overseas case law to Australia's GST* at the Taxation Institute of Australia's National GST Intensive Conference; on 15 October 2009 gave the keynote address on *Copyright Law – some current issues touching the basic principles* at the 14th Biennial Copyright Law and Practice Symposium of the Copyright Society of Australia and the Australian Copyright Council; organised a Conference held on 27 and 28 November 2009, 'International Commercial Litigation and Dispute Resolution' at the Federal Court in Sydney; on 4 December 2009 launched *Product Liability in the Asia-Pacific* (3rd ed, The Federation Press, 2009) edited by Jocelyn Kellam, and gave a speech commemorating the contributions to consumer law, made by the late Professor David Harland and the late Judge John Goldring, at a Consumer Law Roundtable at The University of Sydney; on 11 December 2009 chaired a session at the 'Collective Redress and Litigation Funding Conference' held at the Law School, University of Sydney; on 24 February 2010 spoke on *Managing Class Action* at a Conference entitled: 'Class Actions and Litigation Funding in Corporate Securities cases' organised by the Centre for Continuing Legal Education of the University of New South Wales; and on 25 February 2010 presented a paper on *A superannuation fund trustee's right of indemnity* at a Conference entitled: '2010 a Super Odyssey' held by the Superannuation Committee of the Law Council of Australia.

In addition to the above, Justice Lindgren gave two two-hour classes in the 'Equity Financing Law' course in the LLM program of the University of Sydney, and set and marked associated assignments and examination questions. During February and March 2010, his Honour organised and presented at 'The Judges' Series' – a five week series of two-hour workshops, one per week,

held by the College of Law, at each of which one Supreme Court Judge and one Federal Court Judge were the speakers.

In September 2009 Justice FINN addressed the Australian Government Solicitor/University of Sydney Faculty of Law Course in Canberra on *Federal Administrative Law Proceedings in the Federal Court*.

In October 2009 Justice Finn was the guest speaker at UNSW Faculty of Law's Continuing Legal Education program involved with Contract Law and presented a paper on *Internationalisation or Isolation: The Australian Cul de Sac? The Case of Contract Law*.

In November 2009 Justice Finn presented a seminar on *Contract Law* for the University of Melbourne.

In November 2009 Justice Finn was a guest speaker at the Fiduciary Duty, Public Trust and the Governance of Climate Change Workshop, Monash University, Melbourne. His paper was entitled: *Public Trusts and Fiduciary Relations*.

In February 2010 Justice Finn was a guest speaker at the American Bar Association, Section of International Law, ILEX Aust and NZ, Conference in Sydney. His address was on *National Contract Law and Transnational Norms and Practices*.

Justice Finn was an Advisory Board Member of the Australian Law Reform Commission's Secrecy Inquiry. He was a member of the Third Working group of the International Institute for the Unification of Private Law (UNIDROIT's) Principles on International Commercial Contract, attending a meeting in Rome, Italy in May 2010.

In 2010 Justice Finn conducted a semester course on Commercial Equity for students at the Flinders University, South Australia.

In March 2010 Justice Finn addressed the SA Bar Association's Continuing Professional Development Program. His address was titled: *Internationalisation or Isolation: The Case of Australian Contract Law*.

In July 2009, Justice MARSHALL co-chaired the law and justice section of a development conference held in Dili East Timor co-sponsored by Victoria University and the National University of Timor Leste.

On 20 May 2010, Justice Marshall presided over the final of the Deakin University seminar moot, together with Justices Tracey and Gordon.

Justice NORTH is a member of the International Humanitarian Law Advisory Committee of the Victorian Branch of the Red Cross. He is also a member of the Monash University Workplace and Employment Law Advisory Panel.

In December 2009 Justice North was appointed Chair of the Advisory Committee of the Centre for Employment and Labour Relations Law at the University of Melbourne. Justice North is a Co-Patron of the Institute of Postcolonial Studies, University of Melbourne.

Justice North is the Immediate Past President of the International Association of Refugee Law Judges and in this capacity met Lord Justice Carnwath of the Court of Appeal and Senior President of Tribunals, and Mr Justice Blake the President of the Immigration and Asylum Chamber of the Upper Tribunal in June 2010 in London. Justice North is also the Special Advisor to the Australasian Chapter and Patron of the African Chapter of the Association. Justice North jointly convened the Regional Conference of the International Association of Refugee Law Judges held at the University of New South Wales in February 2010 on the subject of *Critical Issues in Regional Refugee Protection*.

In May 2010 Justice North presented a paper entitled: *Towards Convergence in the Interpretation of the Refugee Convention: a Proposal for the Establishment of an International Judicial Commission for Refugees* at a conference held at York University in Ontario, Canada on the subject of 'Forced Displacement, Protection Standards, and the Supervision of the 1951 Convention and 1967 Protocol and Other International Instruments'.

Justice MANSFIELD continues as Chair of the Graduate Diploma and Legal Practice Course Committee of the Law Society of South Australia as well as Chair of the SA Bar Association Continuing Professional Development (CPD) Committee. Justice Mansfield is a member of the University of South Australia Law School Advisory Board and also Chair of the Centre for Regulation and Management at the University of South Australia.

During the financial year Justice Mansfield participated in various functions for the Law Society of South Australia. In his capacity as Chair, Justice Mansfield was the formal speaker at the Graduate Diploma and Legal Practice Graduation Ceremonies held on 6 August and 8 October 2009 at the Law Society. On 8 July 2010 Justice Mansfield presented a speech to the Law Society of South Australia entitled: *Litigation in a Collapsing Economy*.

On 2 September 2009, Justice Mansfield gave a presentation on the Federal Court to the SA Bar Readers Course and also launched the Indigenous Students Mentor Program on 30 March 2010. On 10 March 2010, Justice Mansfield was the keynote speaker at the Official Launch of JusticeNet SA, an organisation established by the legal profession in South Australia on 2 July 2009 to harness the resources of a network of member lawyers to provide pro bono legal assistance to individuals and charitable not for profit organisations.

Justice Mansfield attended a Report on Government Services Meeting in Melbourne on 24 July 2009. The 36th Australian Legal Convention of the Law Council of Australia was held in Perth on 17-19 September 2009, at which Justice Mansfield presented a paper, entitled: *Life in the Fast Track*. On 24 September 2009, Justice Mansfield attended the 4th National Indigenous Legal Conference in Adelaide, presenting a session entitled: *Native Title Where are we Now?* Justice Mansfield gave the opening remarks at the 7th Annual UniSA Trade Practices Conference held in Adelaide on 16 October 2009 and on 13 November 2009 gave a commentary on a case management presentation by Justice Patricia Bergin, Chief Judge in Equity, Supreme Court of NSW, for the National Judicial Orientation Program. On 27-28 November 2009, the International Dispute Resolution Conference was held in the Sydney Federal Court and Justice Mansfield chaired the session: 'Ships, Arrests and Insolvency'. Justice Mansfield also attended the 'Criminal Cartel Proceedings' seminar conducted in the Adelaide Federal Court from 9-11 June 2010. Justice Mansfield also attended the Supreme and Federal Court Judges' Conference held in Canberra from 23-27 January 2010.

Various native title forums and meetings were held throughout the year which Justice Mansfield attended, including the Native Title Forum in Sydney on 12 August 2009, the Native Title Ministers Meeting on 28 August 2009 in Adelaide, and the SA Native Title Forum to the profession conducted on 5 November 2009. On 21 September 2009, Justice Mansfield presented a session relating to the new native title legislation to the Northern Territory Profession. During 2-3 June 2010, the Australian Institute of the Aboriginal and Torres Strait Islander Studies (AIATSIS) 'People Place Power' Native Title Conference was held at the National Convention Centre, Canberra. Justice Mansfield participated in a Panel discussion 'Resolving native title claims: Putting the 2009 Amendments to Work' and also presented a paper entitled: *The 2009 Amendments to the Native Title Act: the Extended Powers of the Federal Court*.

Justice Mansfield visited China, pursuant to Phase III of the China/Australia Judicial Program on Maritime Law and Strategic Planning. The final phase involved a seminar/workshop with maritime judges of the High People's Courts of ten provinces, and maritime courts of ten significant maritime regions in China, together with judges of the Supreme People's Court and of the Federal Court of Australia. Phase III of the China Maritime Law Project was conducted firstly with a visit to the Sydney Federal Court by a delegation from China on 18-20 January 2010. It then followed

with visits to Beijing and Guangzhou on 5–9 April and Beijing and Qingdao on 21–25 June 2010.

Justice DOWSETT continues to be a member of the Programs Advisory Committee of the National Judicial College of Australia.

On 1 July 2009 his Honour participated in the University of Queensland/Queensland University of Technology Maritime Moot held at the Federal Court. On 15 July 2009 his Honour presented a paper entitled: *Beyond Mabo: Understanding Native Title Litigation through the Decisions of the Federal Court* at the National Native Title Law Summit in Brisbane.

On 15 and 16 August 2009 his Honour attended the Trade Practices Conference conducted in the Yarra Valley, Victoria.

On 21 August 2009 Justice Dowsett chaired the inaugural Native Title Forum at the Federal Court in Brisbane.

On 7 and 8 September 2009 his Honour attended the Jury Management Programme conducted by the National Judicial College of Australia in Adelaide.

From 25 to 29 October 2009 Justice Dowsett attended the 4th International Conference on the Training of the Judiciary in Sydney.

On 11 November 2009 his Honour chaired a session on *Judgment Writing* at the National Judicial Orientation Programme held in Adelaide.

On 6 and 7 February 2010 Justice Dowsett attended the National Judicial College of Australia's Sentencing Conference held in Canberra and chaired the session *Sentencing of Corporate Offenders* and *The Relevance of 'Corporate Culture' in Sentencing for Corporate Offences*.

On 15 February 2010 his Honour opened the Pacific Regional Mediation Forum held at the Federal Court in Brisbane from 15–17 February 2010. The Forum was attended by fourteen representatives of the judiciary from seven Pacific countries.

On 8 April his Honour presented a paper on Native Title at the University of Queensland. Also on that day his Honour, together with other Brisbane Judges, met with Judge Bufford of the US Bankruptcy Court.

On 22 April 2010 Justice Dowsett chaired a session on *Litigants in Person* at the National Judicial Orientation Programme held at Broadbeach.

On 29 May 2010 Justice Dowsett attended the Competition Law Conference in Sydney and chaired the session *Current Issues on the ACCC's Radar*.

On 2 June 2010 Justice Dowsett attended the 'People Place Power Native Title Conference 2010' held by the Australian Institute of the Aboriginal and Torres Strait Islander Studies in Canberra. His Honour participated in a panel presentation *Resolving Native Title claims: Putting the 2009 amendments to work*.

On 9–11 June 2010 his Honour participated in the 'Cartel Criminal Proceedings in the Federal Court' workshop, held at the Federal Court in Adelaide.

In October 2009 and May 2010, Justice EMMETT participated in the New South Wales Bar Association readers' course.

On 18 November 2009, at Sydney Law School, Justice Emmett launched *International Courts and Environmental Protection* by Dr Tim Stephens, published by Cambridge University Press.

In November 2009 Justice Emmett chaired a session at the conference organised in Sydney by the Federal Court on 'International Commercial Litigation and Dispute Resolution'.

From 10 to 15 January 2010, Justice Emmett represented the Federal Court at the 'Second Judicial Seminar on Commercial Litigation', held in Hong Kong under the auspices of the High Court of Hong Kong.

At the Supreme and Federal Court Judges' Conference held in Canberra in January 2010, Justice Emmett chaired a session on 'The Constitution and the Management of Water in Australian Rivers'.

In February 2010, Justice Emmett participated in the sessions organised by the College of Law on *Practical Litigation in the Federal Court and in the Supreme Court of New South Wales*. Justice Emmett gave a paper on the use of affidavits in the Federal Court.

On 8, 9 and 10 February 2010, Justice Emmett jointly hosted a delegation of the American Bar Association Section of International Law, at a conference organised by the Law Council of Australia on 'Cross-Border Collaboration, Convergence and Conflict: The Internationalization of Domestic Law and its Consequences'.

Justice Emmett is the Challis Lecturer in Roman Law at the University of Sydney and in first semester of 2010 presented his usual undergraduate course on Roman private law.

In April 2010, Justice Emmett gave the keynote address at the Annual 'GST and Indirect Tax Weekend Workshop' organised by the University of New South Wales. Justice Emmett's address was entitled: *Some Musings on decision making in relation to the A New Tax System (Goods and Services) Act 1999*.

In June 2010, Justice Emmett presented a paper in the series organised by the New South Wales Bar Association on 'Law's Dependence on Social Values'. Justice Emmett's paper was entitled: *The Law and International Commerce: How we came to where we are*.

Justice KENNY is a part-time Commissioner, Australian Law Reform Commission. In this capacity she was a Member of the Division constituted under the *Australian Law Reform Commission Act 1996* (Cth) for the purposes of the references that resulted in ALRC Report 112, *Secrecy Laws and Open Government in Australia* and ALRC Report 111, *Making Inquiries: A New Statutory Framework*.

Justice Kenny is a member of the Council of the Australian Institute of Judicial Administration, Regional Deputy Governor of the International Organization for Judicial Training, member of the International Law Advisory Board, Law School, Monash University, Chair of the Advisory Board of the Institute of Legal Studies, Australian Catholic University, member of the Advisory Board of the Centre for International and Public Law, and a Foundation Fellow of the Australian Academy of Law. Justice Kenny has also been a member of the Council of the National Judicial College of Australia.

In October 2009, in Thailand, Justice Kenny (with Professor Spencer Zifcak and Alison King) taught a course on International Human Rights Law. Also in October 2009, Justice Kenny participated in the Fourth International Conference on Training of the Judiciary held in Sydney, under the auspices of the National Judicial College of Australia and the International Organization for Judicial Training.

In November 2009, Justice Kenny chaired the session 'Courts and Change' at the Fourteenth Annual Public Law Weekend presented by The Centre for International and Public Law, ANU College of Law, Canberra. In the same month, her Honour attended various conferences

(Future Leader's 'What will we leave Behind? Sustainable living now and forever', Melbourne; 'International Commercial Litigation and Dispute Resolution Conference', Sydney; and 'The Responsibility to Protect (R2P): Prevention and intervention in response to mass atrocity crimes', Melbourne.

On 26 February 2010, Justice Kenny was a panellist for the all-day 'Hearsay and Admissions Workshop' organised by the Judicial College of Victoria.

During the reporting year Justice STONE delivered the following addresses or papers:

- 1 August 2009, 'Banking and Financial Services Law Association Conference'—Indefeasibility and All Advances Mortgages – Gold Coast, Queensland
- 14 August 2009, Commercial Law Association of Australia seminar, 'Equity and Financial Stress' – chair of a session on *Fiduciary Investment and duties of care: was Lord Eldon right?* - - Dixon Room, NSW State Library, Sydney
- 15 September 2009, Seminar on 'International Commercial Dispute Resolution' – chair of a session on *Cross Border Insolvency*, Federal Court Sydney
- 26-28 October 2009, 'Sino-Australian Seminar', sponsored by the Australian Human Rights Commission and the People's Supreme Court of China - five presentations with Sackville AJ of the NSW Supreme Court: *Appeal and Retrial in Australian Courts*, *Judicial Accountability and Independence*, *Checks and Balances in Judicial Accountability*, *The Courts, the Public and the Media*, *Judicial Ethics and Judicial Misbehaviour* - Wuzhen, China
- 20 November 2009, NSW Bar Association Conference, 'Is the Rule of Law under Challenge in Australia?': *Judicial Power, Human Rights and the Rule of Law* - Sydney
- 10 February 2010, American Bar Association, Section of International Law Conference on 'The Internationalisation of Domestic Law and its Consequences' - Moot Court Demonstration – *the Art of Persuading Judges* – with Sackville AJ of the New South Wales Supreme Court, Professor Gillian Triggs, Justice Antonin Scalia, US Supreme Court – Sydney University
- 25 March 2010, Australian Government Solicitor 'Excellence Seminar': '*Statutory Interpretation*' – University of Sydney

Justice Stone also attended the Judicial Council of Australia Colloquium from 9-11 October 2009 in Melbourne and a 'Shareholder Class Action' Conference on 4 May 2010 in Sydney.

During the reporting year Justice Stone gave informal presentations about the Federal Court to visiting Judges from Thailand (28 September 2009), and women lawyers at Allens, Arthur Robinson, Melbourne (30 September 2009).

On 3 March 2010, Justice Stone judged a practice moot for law students from the University of Technology Sydney who were preparing to participate in the 'Willem C Vis International Commercial Arbitration Moot' in Vienna, Austria.

On 13 May 2010 Justice Stone presided over a mock trial application as part of the NSW Bar Association's training for new barristers.

On 25 May 2010 Justice Stone (with two solicitors from Mallesons) judged the Senior Moot Final for the Faculty of Law, University of Technology Sydney at Mallesons, Governor Phillip Tower, Sydney.

Justice Stone continues as the Federal Court's representative on the Governing Council and Executive Committee of the Judicial Conference of Australia.

Justice BENNETT was invited to speak at the 14th Asia-Pacific Economic Cooperation (APEC) Women Leaders Network (WLN) Meeting, in Singapore from 3 to 5 August 2009. Her paper was entitled: *Women and Sustainable Development: Tri-partism and Social Enterprise*.

During the week 21 to 23 September 2009 Justice Bennett was part of a delegation of Federal Court judges involved in meeting Judges visiting from India. A reciprocal visit of the Australian delegation of judges visited India in February 2010.

On 29 September 2009, Justice Bennett spoke about *Intellectual Property* at the Federal Magistrates Court 2009 Plenary Programme. In November 2009 her Honour attended the International Commercial Dispute Resolution Conference. In December 2009, her Honour was a speaker at an Adventure Antarctica seminar entitled: 'A changing law for a changing world'. Justice Bennett attended the Supreme and Federal Court Judges' conference in Canberra in January 2010.

Invited as a keynote speaker, Justice Bennett attended the 'Kick-Off Seminar towards the 2010 APEC WLN Meeting' held in Japan on 23 and 24 March 2010. She presented a paper and also participated in a panel discussion on the subject of *Expectations for WLN – its expected/practical application and effect in each APEC economy*.

On 25 March 2010, her Honour spoke at the Australian Government Solicitor (AGS) Administrative Law Symposium: Commonwealth and New South Wales on 'Excellence in Government Decision-making' on the topic *A Duty to Consider: The Decision-maker and the Unrepresented Litigant*.

In April 2010 her Honour attended the 18th Annual Conference on Intellectual Property Law and Policy, Fordham University School of Law as a speaker and panellist. Justice Bennett was an invited speaker at the Annual BIO Convention in Chicago on 4 May 2010 on *Patenting Genes: In Search of Calmer Waters*. On 29 May 2010, her Honour attended the NSW Bar Association's 'Competition Law Conference' in Sydney.

Justice Bennett continues to be involved in a number of other judicial and extra-judicial commitments including Pro-Chancellor of the Australian National University, Trustee of the Board of the Centennial Park and Moore Park Trust, Arbitrator of the Court of Arbitration for Sport, member of the Law Academic Advisory Committee for the School of Law of the Chinese University of Hong Kong and member of Chief Executive Women. Her Honour was also a member of the judging panel for the Australian Veve Clicquot Award for Business Woman of the Year.

Justice LANDER conducted a continuing legal education (CLE) session at the offices of the Director of Public Prosecutions on the topic of 'Expert Evidence' on 9 July 2009. In September 2009 Justice Lander was part of a delegation of Federal Court Judges who met with Judges visiting from India. A reciprocal visit of the Australian delegation of judges visited India in February 2010. Justice Lander continues to be the Patron of the Flinders Law Students' Association. In the week of 12 October 2009 his Honour was appointed the Visiting Judicial Fellow at the Flinders University. Justice Lander opened the Flinders Law Careers Fair and was also involved in judging various Moot Competitions and Witness Examinations for the University. From 26-28 November 2009 Justice Lander participated in the International Commercial Dispute Resolution Conference held in Sydney. Justice Lander continues as the Federal Court's representative on the Steering Committee of the Supreme Court and Federal Court of Australia Judges' Conference and attended the 2010 Conference in Canberra from 23-27 January. During the course of the year, Justice Lander also conducted, in collaboration with Registrar Christie, in-house lunch time sessions for the South Australian profession on 'Insolvency'. From 9-11 June 2010 Justice Lander, as part of the Criminal Panel of the Court, assisted in the organisation of a Criminal Jurisdiction/ Cartel Workshop held at the Adelaide Registry of the Federal Court.

During the reporting year Justice SIOPIIS undertook the following activities.

- From 10-16 July 2009 attended the Aspen Institute's: 'Justice and Society Seminar' at Aspen, Colorado, USA.
- On 29 July 2009 chaired a Law Society of Western Australia Seminar: 'Intellectual Property Update'.
- On 13 October 2009 spoke at the Western Australian Law Reform Commission Report Seminar on 'Criminal and Civil Procedural Reforms'.
- On 7 December 2009 chaired the Law Society of Western Australia Continuing Professional Development Seminar: 'Recent Case Law Developments for Commercial Litigators'.

Justice EDMONDS spoke at a Young Lawyers Seminar organised by the Law Society of New South Wales on 16 September 2009 on the subject: *Deductibility of Expenditure*.

His Honour spoke at the Australasian Tax Teachers' Association 22nd Annual Conference (University of New South Wales, Sydney, 20 – 22 January 2010) on the subject: *A finding that a taxpayer carries on a business: What is required, related issues and what are the tax consequences*. An edited version of this talk was subsequently published in the *Australian Tax Review*, Vol 39 at 71 – 81 (May 2010).

On 3 March 2010 his Honour delivered the Graham Hill Memorial Lecture at the 25th National Convention of the Taxation Institute of Australia held in Melbourne on the subject: *The Distinction Between Capital and Revenue and its Continuing Relevance to Tax Matters*.

On 24 March 2010 his Honour addressed a meeting of the Society of Trust and Estate Practitioners in the Banco Court of the Supreme Court of New South Wales on the subject: *What is 'income' for the purposes of s 97 of the Income Tax Assessment Act 1936 (Cth)? Second guessing the High Court in Bamford*.

Justice RARES was appointed a council member of the Australian Institute of Judicial Administration in March 2010. In January, April and June 2010, his Honour travelled to China as part of the Federal Court delegation of the China-Australia Judicial Exchange Program, working with the Supreme People's Court of the People's Republic of China in Beijing and the Shanghai Intermediate People's Court and Maritime Court. There, his Honour delivered a presentation on the application of the *International Convention on Civil Liability for Oil 1969 and 1992 Protocol*, and the *International Convention on Civil Liability for Bunker Oil Pollution Damage 2001*, in respect of oil pollution from ships.

On 4 September 2009, Justice Rares delivered a paper to the 36th Annual Conference of the Maritime Law Association of Australia and New Zealand at Queenstown, New Zealand on *International Arbitration of Admiralty and Maritime Disputes in Australia*. On 15 October 2009, his Honour presented a paper at the Copyright Symposium on the topic of *Expert Evidence in Copyright Cases – Concurrent Expert Evidence and the "Hot Tub"* subsequently published in the *Copyright Reporter* at (2010) 28 Copy Reprtr 36.

Justice Rares delivered a paper titled *Admiralty Law – the flying Dutchman of cross-border insolvency* at the Court's Conference on 'International Commercial Litigation and Dispute Resolution' held on 27 and 28 November 2009.

On 25 March 2010, his Honour presented a paper entitled: *The Jury in Defamation Trials* at the University of New South Wales Continuing Legal Education 'Defamation and Media Law' Conference, held at the Grace Hotel, Sydney.

On 18 June 2010, Justice Rares chaired the Commercial Law Association seminar on 'Recent developments in Parts IV and V of the *Trade Practices Act 1976* (Cth)'. In June 2010, his Honour spoke in a panel discussion on International Arbitration at the University of Technology Sydney, his Honour subsequently judged the finals of the International Maritime Law Arbitration Moot Competition 2010, organised by Murdoch University and the University of Queensland.

Justice COLLIER addressed a Cooper Grace Ward seminar and participated in the judging of the Kirby Cup Law Reform competition at the Australian Law Students' Association conference, held in Brisbane. In August 2009, her Honour participated as a judge in the Queensland University of Technology Shine Moot and attended a Native Title Forum.

Justice BESANKO has been a member of the Legal Practitioners' Education and Admissions Council of South Australia (SA) since February 2002. In August 2009, and in previous years, he gave a presentation to the SA Bar Association Bar Readers' Course and Reading Program on *Legal argument and Appellate advocacy*. He regularly participates in judging law student moot competitions.

Justice Besanko has an ongoing involvement with the Law Society of SA continuing professional development programme: in July 2009, he chaired a session on Trade Practices law – *Litigating unconscionable conduct: the TPA, unfair contracts and conduct* and, in November 2009, on *Differences between TPA damages and common law damages*. On 4 November 2009, he gave a presentation to the South Australian legal profession on the subject of *Statutory Interpretation*. On 18 May 2010, Justice Besanko presented the opening address at the Law Society's 'Personal Properties Securities Conference'.

Justice TRACEY is a member of the Advisory Board of the Centre for Comparative Constitutional Studies in the Faculty of Law in the University of Melbourne. He delivered a paper on the *Implications of the High Court's decision in Lane v Morrison for the Military Discipline System* at the triennial Defence Legal Conference in Sydney on 1 December 2009.

On 7-8 August 2009, Justice MIDDLETON attended the Twentieth Annual Workshop of the Competition Law and Policy Institute of New Zealand in Auckland, and presented the judicial keynote paper entitled: *The Trade Practices Legislation Amendment Act 2008 (Cth) and section 46 of the Trade Practices Act 1974 (Cth) – will anything really change?*

In November 2009 and April/May 2010, Justice Middleton delivered a paper in conjunction with Mr David O'Callaghan SC to the Victorian Bar Readers' Course on Written Advocacy.

On 27-28 November 2009, Justice Middleton participated in the 'International Commercial Litigation and Dispute Resolution Conference' in Sydney conducted by the Federal Court, and presented a commentary on a paper entitled: *International Commercial Arbitration - The Role of the Courts* presented by Justice Clyde Croft and Ms Bronwyn Lincoln.

On 4 December 2009, Justice Middleton participated in a hypothetical on *Effective Advocacy in International Commercial Arbitration* at the Australian Centre for International Commercial Arbitration Conference in Melbourne.

On 10-12 February 2010, Justice Middleton participated in the International Cartel Workshop in Paris, France, conducted by the American Bar Association and the International Bar Association, and participated in a Judicial Roundtable discussion with the Honourable Judge Nicholas Forwood, the General Court, Court of Justice of the European Union, Grand Duchy of Luxembourg, and the Honourable Judge Ruben Castillo, United States District Court, Northern District of Illinois, Chicago, IL.

On 23 April 2010, Justice Middleton presented a session on case management in Broadbeach, Queensland, as part of the National Judicial Orientation Programme.

On 5 May 2010, Justices Middleton and Gordon hosted at the Federal Court in Melbourne Mr Zhiyon Wang, former judge of the Supreme People's Court of China.

On 29 May 2010, Justice Middleton attended the 2010 Competition Law Conference held in Sydney and chaired the session 'The Australian Consumer Law – Is it really a new era of Consumer Protection?'.

On 9–11 June 2010, Justice Middleton participated in a Cartel Criminal Proceedings Workshop in Adelaide conducted by the Federal Court.

During the reporting year Justice GORDON delivered the following addresses or papers:

- 18 August 2009 – Women in Tax – *Avoid Error & Irrelevance – Embrace Change*.
- 8 October 2009 – keynote speaker at the Taxation Institute Victorian State Convention. *Trends in Tax Advice & Litigation – What to do when it all turns on a Word or a Few Words*.
- 21 October 2009 – International Fiscal Association – *Judging Tax Cases – Report on the IFA Tax Jurists Conference*.
- 27 – 28 November 2009 – International Commercial Litigation and Dispute Resolution Conference – *The Fast Track Experience in Victoria: Changing & Evolving the way in which we Administer Justice*.
- 4 February 2010 – Melbourne University – Welcome Oration for the Law School Juris Doctor Students Class of 2010.
- 5 May 2010 – Deakin University – Graduation Ceremony for the Faculties of Business and Law and Health, Medicine, Nursing and Behavioural Sciences. Occasional Address for the Graduating Class of 2010.
- 3 June 2010 – Tax Association of Victoria – *Drafting an Appeal Statement and Preparation for the Scheduling Conference*.

Recent publications include *Trends in tax advice and litigation – what to do when it all turns on a word or two* (2009) 38 ATR 203; *Avoid error and irrelevance – embrace change* (2009) 44 TIA 207; contributing the chapter entitled: *The Fast Track experience in Victoria: Changing and evolving the way in which we administer justice* to Lindgren K (ed) 2010, *International Commercial Litigation and Dispute Resolution*, Ross Parsons Centre, Sydney and contributing the chapter entitled: *The Same Yesterday, Today and Tomorrow?* to Dharmananda, K & Papamatheos, A (eds) 2009, *Perspectives on Declaratory Relief*, Federation Press, NSW.

Justice Gordon is the Chair of the Academic Advisory Board, Faculty of Business and Law Deakin University.

In 2010 Justice Gordon was invited to join the Elders and Respected Persons Panel of Tarwirri – The Indigenous Law Students and Lawyers Association of Victoria.

On 21 September 2009 Justice Gordon hosted a delegation from the Japan Federation Bar Association. On 10 November 2009 Justice Gordon co-hosted Judges Morishita and Abe from Japan. Her Honour presented sessions to the judges including the individual docket system and case management and a presentation on an integrated court environment (eCourt).

From 8 February to 12 March 2010 Justices Gordon and Gray participated in the Indigenous Clerkship Program in conjunction with the Supreme Court of Victoria and the Victorian Bar.

Justice LOGAN attended the Australian Bar Association Conference in Strasbourg and London which concluded on 1 July 2009. On 7 August 2009 at the Taxation Institute of Australia's (TIA) '9th Annual State Taxes Conference' in Darwin his Honour presented a paper on statutory construction entitled: *Black Letter or Purposive – A False Dichotomy?*.

On 1 October 2009 Justice Logan presented a paper at the Bar Common Room entitled: *Considerations and Implications Arising in The Event of a Chapter III Replacement* at a Queensland Bar Association Seminar on 'The Demise of the Australian Military Court – The High Court's Judgement in *Lane v Morrison* and its Ramifications'. On 20 October 2009, at the invitation of the Panel Leader of the South-East Queensland Joint Services Legal Panel, his Honour gave a more detailed presentation on that same subject at a panel training seminar at Victoria Barracks, Brisbane.

On 16 December 2009, at the invitation of the President of the Queensland Bar Association, Justice Logan delivered the speech on behalf of the Judiciary at the Association's dinner for newly appointed Senior Counsel at the Brisbane Club.

On 2 February 2010 his Honour delivered a presentation to a Queensland Bar Continuing Professional Development (CPD) Seminar in the Bar Common Room on *Recent Developments in Federal Jurisdiction with particular reference to the Access to Justice (Civil Litigation Reforms) Amendment Act 2009 and Federal Justice System Amendment (Efficiency Measures) Act (No 1)*.

On 6 May 2010 his Honour, as guest speaker, gave an address to the Taxation Institute of Australia Brisbane Chapter Breakfast Seminar on *The Importance and Place of Judicial Power in Commonwealth Taxation Law*.

Justice Logan continued to serve as a judicial member of the Queensland Bar Association's CPD Committee throughout the year and attended the Association's Annual Conference at The Marina Mirage, on the Gold Coast in March 2010, including participating at that conference as a panel member at the session in respect of 'Transition from Bar to Bench'. His Honour also continued to serve throughout the year as a member of the Board of Governors of Cromwell College within the University of Queensland.

Justice FOSTER attended the 'International Commercial Litigation and Dispute Resolution Conference' on 27 and 28 November 2009 in Sydney and chaired the session *International Commercial Arbitration* which included the role of the courts, enforcement of arbitration awards and anti-arbitration injunctions.

On 24 March 2010, Justice Foster participated in the College of Law 2010 Judges' Series—a five week series of seminars for the profession held in February/March every second year. Justice Foster, with Justice Brereton of the Supreme Court of New South Wales, presented the session *Lawyer-Client Privilege in Litigation*.

On 29 May 2010, Justice Foster attended the NSW Bar Association's 'Competition Law Conference' in Sydney.

From 9 to 11 June 2010, Justice Foster attended a judicial educational programme in Adelaide on cartel criminal proceedings in the Federal Court.

On 11 September 2009, Justice BARKER convened and participated in the Western Australian Registry Native Title Forum at the Federal Court's Registry in Perth at which options for future native title case management were discussed with a range of practitioners and party

representatives in light of forthcoming amendments to the *Native Title Act 1993* (Cth).

On 13 October 2009, Justice Barker's paper *The Duty of Parties and their Lawyers to Cooperate and Act in Good Faith in Civil Proceedings* was presented to the Murdoch Law School/Freehills Seminar in Perth to 'Celebrate and reflect upon the 10th anniversary of the Law Reform Commission's Final Report on the Review of the Criminal and Civil Justice System in Western Australia (Project 92, September 1999)'.

Between 13 – 15 October 2009, in Beijing, China, Justice Barker presented two papers, *General Overview of the Right of the Citizen to Seek Judicial Review of Government Decisions in Australia* and *Special Issues Governing Judicial Review of Government Decisions – Justiciability, Private/Public Decisions, Standing, Time Limitations and Discretion Not to Grant Remedy* to the 'Joint Seminar of Comparative Research on Protection of Litigation Rights' hosted by the National Judges College, Administrative Trial Division of the Supreme People's Court and the Australian Human Rights Commission.

On 22 October 2009, Justice Barker chaired the Law Society of Western Australia's seminar 'Property Foundations: *Native Title Act 1993* and *Aboriginal Heritage Act 1972*'.

On 13 November 2009, Justice Barker made a presentation concerning the case management of native title proceedings in the Federal Court to the Western Australian Office of Native Title '2010 Connections Workshop' in Perth, which was attended by representatives of major organisations involved in native title matters in Western Australia and other invited speakers.

On 16 November 2009, Justice Barker presented a paper, *Background to the Establishment of the State Administrative Tribunal* at the State Administrative Tribunal's conference, 'Town Planning Law – Past, Present and Future: Conference to mark 80 Years of Town Planning Law in Western Australia'.

Between 23 – 27 January 2010, Justice Barker attended the Supreme and Federal Court Judges' Conference in Canberra.

On 26 February 2010, Justice Barker presented a paper, *Techniques in Introducing Expert Evidence* to the University of Western Australia Law School/Law Society of Western Australia '2010 Law Summer School' in Perth.

On 20 May 2010, Justice Barker presented the Sir Ronald Wilson Lecture 2010 during Law Week in Western Australia on the topic, *On Being a Chapter III Judge*.

On 4 June 2010, Justice Barker made a presentation on *Recent Federal Court Developments following Amendments to the Native Title Act* to the LegalWise Seminar in Perth on 'Native Title: Rights, Obligations and Agreements' attended by legal practitioners and others concerned with native title law and practice in Western Australia.

On 19 June 2010, Justice Barker attended the Australian Association of Constitutional Law/Constitutional Centre of Western Australia/University of Western Australia Law School seminar, 'The French Court: Some Early Glimmerings' at the Constitutional Centre of Western Australia, Perth.

APPENDIX 10 – EQUAL EMPLOYMENT OPPORTUNITY STATISTICS

Representation of EEO Groups within Occupational Groups

Occupational Group	Total staff	Women	NESB1	NESB2	ATSI	PWD
SES	11	5	1	1		
FCS and related	327	212	24	31		1
Professional	25	10	3	3		
Total	363	227	28	35	0	1

Representation of EEO Groups within salary levels

Salary	Total staff	Women	NESB1	NESB2	ATSI	PWD
\$38301 – \$42328 FCS1	1					
\$43346 – \$48067 FCS2	56	30	5	9		1
\$49372– \$53286 FCS3	30	18	4	3		
\$55030 – \$59748 FCS4	35	26	2	3		
\$61377 – \$65081 FCS5	90	53	11	11		
\$66290 – \$76148 FCS6	77	67	2	5		
\$84845 – \$91631 FCM1/ FCL1	23	13	1			
\$97812 – \$124738 FCM2/FCL2	40	15	2	3		
SES	11	5	1	1		
Total	363	227	28	35		1

Note: EEO target groups are not mutually exclusive. Any individual officer may be included in more than one group. Salary groupings are based on maximum salary for a classification.

Key: NESB1 – people of non-English speaking background, first generation
 NESB2 – people of non-English speaking background, second generation
 ATSI – Aboriginals and Torres Strait Islanders
 PWD – People with disabilities
 FCS – Federal Court Staff
 FCM – Federal Court Manager
 FCL – Federal Court Legal
 SES – Senior Executive Service

APPENDIX 11 – EXPENDITURE ON CONSULTANTS

(at 30 June 2010)

The Court's policy on the selection and engagement of all contractors is based on the Australian Government's procurement policy framework as expressed in the Commonwealth Procurement Guidelines (December 2008) and associated Finance Circulars and guidance documentation published by the Department of Finance and Deregulation.

The main function for which consultants were engaged related to the delivery of specialist and expert services, primarily in connection with the Court's information technology (IT) infrastructure, finance and business elements of the Court's corporate services delivery.

Table 11.1 below lists all consultancy contracts let during 2009–10 with a value of \$10,000 or more, and provides details for each individual consultancy, including the total value over the life of the contract.

Table 11.1 – Consultancy Services Contracts let during 2009–10

Consultant Name	Description	Contract Price	Selection Process (1)	Justification (2)
Housley Consulting	To prepare a request for tender for the Court's transition of its voice carriage services (Stages 1 and 2) to a new provider	20,790	Direct Source	(B)
Deontik P/L	Provide Services to support the Court's procurement of a Document Management System	74,993	Select Tender	(C)
Azure	eServices Integrated Business Application Services Reviews	33,000	Direct	(C)
Azure	eCourtroom - Upgrading existing application code and applying enhancements	69,108	Direct	(C)
Dagmar Schmidmaier	Library and Information Services Consultancy	15,400	Direct	(C)
Loquinar Pty Ltd	Citrix XenApp Upgrade Proposal	41,250	Select Tender	(C)
Arles	Federal Court Rules Revision	15,180	Direct	(B)
National Judicial College of Australia	Strategic Planning for Judicial Education	24,921	Select Tender	(B)
Reliable Legal Precedents	Rules Revision Forms Development	24,035	Direct	(B)
Total		318,677		

- (1) Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (January 2005):

Direct Sourcing: refers to a procurement process, in which an agency may invite a potential supplier or suppliers of choice to make submissions under defined circumstances.

Select Tender: A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers

- (2) Justification for decision to use consultancy:

- (A) Skills currently unavailable within the agency.
- (B) Need for specialised or professional skills.
- (C) Need for independent research or assessment.

APPENDIX 12 - STATEMENT UNDER SECTION 8 OF THE FREEDOM OF INFORMATION ACT 1982

Information on the establishment, organisation, functions and powers of the Court is contained throughout this report. Information on the Court's arrangements for consultation with users of the Court about the Court's operations is also included in Chapter 3 of the report. The following sets out the categories of documents maintained by the Court, the Court's facilities for public access and the Court's Freedom of Information (FOI) procedures and relevant contacts for inquiries.

Categories of documents

The Federal Court Registries maintain the following categories of documents:

- documents relating to matters heard by, or applications or appeals lodged with, the Court including applications, notices of appeal, affidavits, pleadings, transcripts and copies of judgments
- registers and indexes in bound volumes of matters coming to the Court (documents dealing with matters coming to the Court are also generated by computer)
- statistical information
- documents concerning staff matters
- documents concerning the administrative and financial aspects of the Court's operations
- internal working documents and correspondence
- registry manuals.

The District Registries also maintain a computer database containing details of matters commenced in the Court since 1 January 1984.

The following categories of documents are open to public access according to an enactment (other than the *Freedom of Information Act 1982*) where the access is subject to a fee or other charge:

- documents filed in a proceeding or purported proceeding (available upon application, subject to the Rules of Court and upon payment of the fees set out in the Federal Court Regulations).

The following categories of documents are available for purchase by the public in accordance with arrangements referred to below:

- transcripts of proceedings (inquiries may be made at the relevant District Registry to ascertain the local contact details of the Transcript service provider)
- copies of documents filed in the Registry (available upon application, subject to the Rules of Court and any order made in the relevant proceedings, and upon payment of the fees set out in the Federal Court of Australia Regulations)
- reasons for judgment (available upon application subject to any order made in the relevant proceedings and payment of the fees set out in the Federal Court of Australia Regulations).

The following categories of documents are open to public access according to an enactment (other than the Freedom of Information Act) free of charge on request:

- registers of proceedings in the Court.

The following documents are available free of charge upon request:

- procedural guides to:
 - commencing an action in the Federal Court of Australia (for self represented litigants)
 - appearing in Court in relation to a creditor's petition (for unrepresented debtors)
 - completing certain forms prescribed by the Rules of Court
 - filing documents in the Court by facsimile transmission.
- a list of Full Court sittings (published yearly)
- court lists (published daily)
- various practice notes made by the Chief Justice and administrative notices made by District Registrars
- video-conferencing Protocol.

In addition, a range of information is available free of charge through the Federal Court Website (www.fedcourt.gov.au) and the Federal Law Search function on the Commonwealth Courts Portal (www.comcourts.gov.au).

Facilities for access

Facilities to examine documents and to obtain copies are available at the Court's registries as initial contact points. Registers open to public inspection are available at all initial contact points. Transcript is available from the relevant reporting service provider.

FOI procedures and initial contact points

FOI contact officers will assist applicants to identify the particular documents they seek. The only officer authorised to deny access to documents is the Registrar of the Court.

The availability of some documents under the Freedom of Information Act will be affected by section 5 of that Act, which states that the Act does not apply to any request for access to a document of the Court unless the document relates to matters of an administrative nature.

Inquiries concerning access to documents or other matters relating to freedom of information should be directed to the District Registrar of the relevant District Registry or, in the case of the Principal Registry, to the Registrar. The addresses are listed on page iv at the front of this report.

APPENDIX 13 - COMPLIANCE WITH ANNUAL REPORT REQUIREMENTS

This is a guide to the report's compliance with the requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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GLOSSARY

Appeal	An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Magistrate may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.
Appellate jurisdiction	The power given to a court to hear appeals in certain matters.
Applicant	The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as ‘plaintiff’ in admiralty and corporations matters and in some other courts.
Application	The document that starts most proceedings in the Federal Court.
Cross appeal	An application by a respondent in an appeal also seeking a review of the lower court or tribunal decision and made in response to the appeal. A cross appeal is not required if the respondent is simply seeking that the decision of the lower court or tribunal be upheld.
Cross claim	A claim made in a proceeding by one party against a co-party, such as the first respondent (or defendant) against the second respondent (or defendant). However if the claim in the proceeding is by one party against an opposing party, such as the respondent (or defendant) against the applicant (plaintiff), it is called a counter claim. A cross claim has to be closely connected to what is in dispute in the original claim or a counter claim.
Directions	Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
Discovery	A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.
Docket system	A system by which each case is allocated to a particular judge who will then see the case through to completion. In the Federal Court the system is called the Individual Docket System (IDS).
Exhibit	A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.
Filing of documents	The process of the Court accepting a document or documents lodged by a party to a proceeding.
First Instance	A proceeding heard in the Court’s original jurisdiction.
Hearing	That part of a proceeding where the parties present evidence and submissions to the Court.

Interlocutory Application	Interlocutory proceedings are for dealing with a specific issue in a matter - usually between the filing of the application and the giving of the final hearing and decision. In the Federal Court interlocutory issues are usually brought before the Court by a 'notice of motion' or an 'interlocutory process'. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).
Judgment	The final order or set of orders made by the Court after a hearing, often accompanied by reasons which set out the facts and law applied in the case. A judgment is 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.
Jurisdiction	The extent of legal authority or power of the Court to apply the law. The Federal Court has jurisdiction under more than 150 Commonwealth Acts and has original and appellate jurisdiction.
Litigants	Individuals, organisations or companies who/which are the parties to a proceeding before the Court.
Mediation or (Assisted Dispute Resolution)	A process in which an impartial third party assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.
Notice of Motion	The document filed by a party to an existing proceeding which asks the Court to make orders that were not included in the original application.
Original Jurisdiction	The authority or legal power of the Court to hear a case in the first instance.
Parties	People involved in a court case. Applicants, appellants, respondents, defendants, are generally called 'parties'.
Proceeding	The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.
Regulations	The Federal Court of Australia Regulations 2004 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.
Respondent	The individual, organisation or corporation against whom/which legal proceedings are commenced. Also known as a 'defendant' in admiralty and corporations matters and in some courts. In an appeal it is the party who/which did not commence the appeal.
Rules	Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules, Federal Court (Corporations) Rules 2000 and Federal Court (Bankruptcy) Rules 2005.
Self Represented Litigant	A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.