



FEDERAL COURT OF AUSTRALIA ANNUAL REPORT 2010-2011



ON COUNTRY



...ns) Yalan, Yorta Yorta, ... People St Vidgeon's ... People Mipa, Tariilag, ... Aboriginal Land Council ... (2002), Tjurabalan ... Local Aboriginal ... (Hawth), Darkinjung ... **Singleton, NT** ... Murchison, ... Native Title ... atjarra Lands ... Yarnar & Utlu, Blue ... Land Council

TITLE LAW

...les, Dindjindji People, Metropolitan ... Alice Springs, Dayan People, ... Wik and Wik-Way People ... (Ngurupai), ... **#2** ... **Torres Strait Islanders** ... Council (2002), Castle Hills, Ilfracombe, ... **NT Portion 2406**, ... Native Title Determinatio ... **#1, Kulkalgal** ... (Western ... Native Title Determinati

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14 September 2011

The Hon Robert McClelland MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General,

I have 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 2010–2011 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-second annual report.

Yours sincerely,

A handwritten signature in black ink, appearing to read "P. A. Keane".

P A Keane
Chief Justice

PART 1

OVERVIEW OF THE FEDERAL COURT OF AUSTRALIA

Establishment

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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.

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Functions and powers

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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 79.

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 Part 3.

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Objectives

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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.
-

The Court's outcome and program structure

The Court's outcome and program structure appears in Part 4 on page 57.

This report uses the outcome and program structure to outline the Court's work and performance during 2010–2011. Part 3 reports on these issues in detail.

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 2011 there were forty-six 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-six 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 2011)

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
Chief Justice The Hon Patrick Anthony KEANE	Brisbane	
The Hon Peter Ross Awdry GRAY	Melbourne	Industrial Relations Court of Australia – Judge Administrative Appeals Tribunal – Presidential Member
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
The Hon Paul Desmond FINN	Adelaide	
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

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
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 Administrative Appeals Tribunal – Presidential Member
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 Administrative Appeals Tribunal – Presidential Member
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
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

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
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 Joan 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
The Hon John Eric MIDDLETON	Melbourne	Australian Competition Tribunal – Part-time Deputy President Administrative Appeals Tribunal – Presidential Member
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	

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Neil Walter McKERRACHER	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 Administrative Appeals Tribunal – Presidential Member Copyright Tribunal – Deputy President
The Hon Lindsay Graeme FOSTER	Sydney	Supreme Court of the ACT – Additional Judge Part-time Deputy President – Australian Competition Tribunal
The Hon Michael Laurence BARKER	Perth	Administrative Appeals Tribunal – Presidential Member
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	Supreme Court of the ACT – Additional Judge
The Hon Alan ROBERTSON	Sydney	
The Hon Bernard Michael MURPHY	Melbourne	

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

5–11 July 2010	The Hon Justice Spender
15–17 July 2010	The Hon Justice Gray
25–31 October 2010	The Hon Justice Gray
28 December 2010–30 January 2011	The Hon Justice Gray
18–30 June 2011	The Hon Justice Marshall

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 Part 3 and Appendix 9.

Appointments and retirements during 2010–11

During the year two judges were appointed to the Court:

- **The Honourable Justice Alan Robertson** (resident in Sydney) was appointed on 18 April 2011.
- **The Honourable Justice Bernard Michael Murphy** (resident in Melbourne) was appointed on 13 June 2011.

During the year five judges retired from the Court:

- **The Honourable Justice Alan Henry Goldberg** resigned his commission as a judge of the Court on 4 July 2010.
- **The Honourable Justice Jeffrey Ernest John Spender** resigned his commission as a judge of the Court on 18 July 2010.
- **The Honourable Justice Ross Alan Sundberg** resigned his commission as a judge of the Court on 8 August 2010.
- **The Honourable Justice Peter Ross Graham** retired upon reaching the compulsory retirement age for federal judges on 5 September 2010.
- **The Honourable Justice Donnell Michael Ryan** retired upon reaching the compulsory retirement age for federal judges on 2 June 2011.

Other appointments during the year included:

- **The Honourable Justice Katzmann** was appointed an additional judge of the Supreme Court of the ACT with effect from 17 September 2010.
- **The Honourable Justice Perram** was appointed Acting President of the Copyright Tribunal during any period that the office of President is vacant, or the person holding the office of President is absent from duty or from Australia or is, for any other reason, unable to perform the functions of that office with effect from 14 October 2010.
- **The Honourable Justices Emmett and Lander** were appointed part-time members of the Australian Law Reform Commission for the period 27 October 2011 to 30 April 2011.
- **The Honourable Justice Collier** was re-appointed a part-time Commissioner of the Australian Law Reform Commission, for a period of three years, with effect from 27 October 2010.
- **The Honourable Justices Mansfield, Kenny, Middleton, Logan, Jagot and Barker** were appointed Presidential Members of the Administrative Appeals Tribunal, for a period of five years, with effect from 24 November 2010.

- **The Honourable Justices Bennett, Lander, Siopis, Edmonds and Greenwood** were re-appointed Presidential Members of the Administrative Appeals Tribunal, for a period of five years, with effect from 24 November 2010.
- **The Honourable Justice Emmett** was re-appointed President of the Copyright Tribunal of Australia, for a period of three years, with effect from 8 December 2010.
- **The Honourable Justice Jagot** was appointed as a Deputy President of the Copyright Tribunal of Australia for a period of three years with effect from 8 December 2010.
- **The Honourable Justice Foster** was appointed as a Part-time Deputy President of the Australian Competition Tribunal for a period of six months with effect from 7 April 2011.

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

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 Part 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 1988*.

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 76 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 2011 there were 358 staff employed under the Public Service Act. Generally, judges have two personal staff members. More details on Court staff are set out in Part 4 and Appendix 10.

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CASE SPECIFIC RESPONSIVE

PRIORITY LIST

COURT MEDIATION



CASE MANAGEMENT

ACCELERATION



THE YEAR IN REVIEW

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 2010–11 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.

SIGNIFICANT ISSUES AND DEVELOPMENTS

Native Title Review of Caseload and Priority Setting

Comment was made in the 2009–2010 Annual Report about the *Native Title Amendment Act 2009* (the Act) and the significance of this legislation to the work of the Court. The amendments empowered the Court to:

- Refer a matter to a mediator, other than the National Native Title Tribunal (NNTT) 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, the Hon Robert McClelland MP, in the Second Reading Speech for the Act, 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'.

During the reporting period the Court's Native Title Practice Committee met on many occasions to focus on the practice initiatives that had been put in place to ensure, where possible, that resolution of native title cases be achieved more easily and delivered in a more timely, effective and efficient fashion.

It is timely now to report on the effectiveness of these practice initiatives, the detail of which is to be found in Part 3 of this Report. What follows below is a summary of the Court's response to the opportunities presented by the amendments.

Priority Cases

In considering how to improve the time in which it takes to resolve a native title case, the Court has recognised that it is not possible for all pending cases to be intensively managed at the same time by the Court and the parties. It decided that there was a need to prioritise cases across Australia, on a regional basis and within the area covered by each native title representative body.

The process of making decisions about the order in which the Court will deal with pending cases involved numerous factors. The judges 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 users' forums and associated committees provided an opportunity for more focussed consideration of this and related challenges.

When determining priorities the criteria applied included:

- whether the case involved a matter of the 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 number of notifications issued by governments about proposed land use activity
- the views of the parties
- the level of preparedness of the Applicant (that is, the extent of evidence gathered and issues identified)
- the age of the case.

Importantly, in deciding to publish a priority list of cases, the Court acknowledged that the list will evolve and change for a variety of reasons. The list was first published on the Court’s website on 1 July 2010 and includes links to the case status. It is regularly updated to reflect changing priorities and the finalisation of cases.

The Court acknowledges the substantial contribution made by the parties to these cases in the settling of the priority list and maintaining the momentum required to finalise the cases. The outcomes clearly demonstrate the substantial effort made by all parties. Forty-four cases on the list have been finalised since its publication on 1 July 2010. Of these, twenty-four have been determined and twenty have been finalised through discontinuance, dismissal or combination with other cases. It is anticipated that up to eighty matters will be dealt with by the end of 2012.

Table 1.1 – Priority cases 1 July 2010 to 30 June 2011

JURISDICTION	PRIORITY CASES CURRENT AS AT 1 JULY 2010	REMOVED FROM LIST AS NO LONGER CONSIDERED A PRIORITY CASE	ADDED TO LIST AS DETERMINED A PRIORITY	FINALISED	CASES CURRENT AS AT 30 JUNE 2011
NSW	7	0	1	2	6
QLD	26	4	6	7	21
NT	30	1	25	27	27
SA	7	0	0	1	6
VIC	9	1	1	2	7
WA	38	5	0	6	27
Total	117	11	33	45	94

List of Mediators

The 2009 amendments to the Act gave clear responsibility to the Court for managing all aspects of native title proceedings from beginning to finalisation, including the opportunity to refer a matter to mediation before a person or body other than the NNTT or a registrar of the Court.

Expressions of interest were sought from suitably qualified mediators for inclusion on a list of names for 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 NNTT or a registrar).

Compilation of the list was finalised within the reporting period. The mediators on the list are aware that it is to be used by the Court and parties as a resource and appointments will be made on a case by case basis. The list, along with some introductory information, is available to all involved in native title cases via the Court's website at: http://www.fedcourt.gov.au/litigants/native/litigants_nt_mediator.html

To date the Court and the parties have identified three matters suitable for referral to private mediators. The case note about the Kalkadoon matter at page 14 in Part 3 of this Report covers one of these referrals.

Revision of the Federal Court Rules

As noted in previous Annual Reports, the Court has been undertaking a substantial project to revise its Rules. This is the first major revision of the Court's Rules since they were promulgated on 1 August 1979. The goals of the project are for the Court's Rules to:

- facilitate access to justice
- promote efficiency in the administration of the law
- complement and reflect the Court's case management philosophy and systems
- take into account current and future advances in information technology
- be easily capable of being updated
- be simple and clear.

In November 2010 the Court's judges approved the draft revised Rules and they were circulated to the legal profession for comments in late 2010. Substantial consultation about the new Rules was undertaken in early 2011. The Judges approved the Rules at a Judges' Meeting on 15 April 2011.

Justice Lander, convenor of the Court's Rules Revision Committee, continued to consult with the profession on the content of the Rules up until 15 July 2011 when the final version of the Rules and Forms was placed on the Court's website. During June and July, Justice Lander conducted information sessions for lawyers in each Registry with multiple sessions in Sydney (three), Melbourne (three) and Brisbane (two). A podcast of Justice Lander's presentation was placed on the Court's website along with answers to questions that arose during the information sessions and other frequently asked questions. Justice Lander conducted separate seminars with the Court's Registrars in each of the States.

As part of the project the Court developed new forms. The forms are user friendly but retain proper functionality as court documents. They have adopted the plain language style of the Rules and are clear and easy to understand. Each form has a logical structure and layout with helpful instructions about how to complete it. A new Practice Note has been developed to assist parties and lawyers to use the forms.

A working party of staff from across the Court chaired by Patricia Christie, District Registrar (South Australia and the Northern Territory), has been assisting Justice Lander and the Rules Revision Committee in preparing for the implementation of the revised Rules. The Court's Practice Notes and Administrative Notices have been reviewed; training sessions have been developed and run for Court staff; and relevant information on the Court's website has been reviewed. It is expected that this work will continue following the introduction of the revised Rules.

The revised Rules will commence on 1 August 2011. It should be noted that not all of the rules of the Court have been revised. The project did not include the Federal Court (Bankruptcy) Rules 2005 or the Federal Court (Corporations) Rules 2000, other than for minor consequential changes. Nor were the Admiralty Rules affected.

Freedom of information

During the reporting year substantial changes were made to the Freedom of Information (FOI) content on the Court's website following amendments to the *Freedom of Information Act 1982*.

Part 2 of the FOI Act establishes an Information Publication Scheme (IPS) for Australian Government agencies. The IPS, which commenced on 1 May 2011, requires agencies to publish a broad range of information on their websites as well as prepare an Information Publication Plan (IPP) explaining how they will implement and administer the IPS.

In early 2011 the Court developed an IPP which has been publicly available since 1 May 2011. In addition to the IPP, the FOI section of the website includes information about the Court's:

- organisation and structure
- functions and powers
- reports to Parliament
- process for making a formal FOI request.

A disclosure log is also available on the website that will list information which has been released in response to an FOI access request. The disclosure log has been in place since 1 May 2011 and as at 30 June 2011 there were no releases by the Court that met the criteria for disclosure.

Further information can be found at <http://www.fedcourt.gov.au/courtdocuments/foi.html>.

THE COURT'S PERFORMANCE

Workload

In 2010–11 the total number of filings (including appeals) in the Federal Court increased by thirty-six per cent to 4941. Filings in the Court's original jurisdiction (excluding appeals) increased by forty-six per cent. The majority of the increase was in the Court's corporations workload which increased by seventy per cent.

While the Court's appellate workload decreased slightly over the twelve months, the decrease was in migration appeals, the majority of which are heard by single judges. In contrast, the Court's more complex and lengthier non-migration appellate workload increased by twenty-one per cent. Significant resource implications arise from an increase in the full court workload with three judicial resources being required to hear and determine what are often very complex matters. This is in addition to each judge's docket of first instance cases.

Further information about the Court's workload, including the management of appeals, can be found in Part 3 on page 26.

The Federal Court's registries also provide registry services for the Federal Magistrates Court (FMC). The overall 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 5885, compared with 10 923 this year.

During the reporting year there were 4941 actions (including appeals) commenced in the Court and 6620 in the general federal law jurisdiction of the FMC, a total of 11 561. This represents a ten per cent increase on the combined workload in 2009–10.

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, 4635 FMC bankruptcy matters which equates to ninety-three per cent of the FMC's bankruptcy caseload, or almost seventy-one per cent of the FMC's general federal law 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 eighteen months of commencement

During the reporting year, the Court completed ninety per cent of cases in less than eighteen months, compared with eighty-eight per cent in the previous year. As shown in Figure 6.5 and Table 6.5 in Appendix 6 on page 91, 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 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 2010–11 the Court handed down 1740 judgments for 1061 court files (some files involve more than one judgment being delivered e.g. interlocutory decisions, and sometimes, one judgment will cover multiple files). The data indicates that eighty-one per cent of appeals (both full court and single judge) were delivered within three months and eighty 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.

The Court carefully monitors 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.

The Court continues to achieve 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, 279 migration appeals and related applications from the FMC or the Court 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-one days. The time taken to dispose of some matters was longer where hearings were adjourned pending the outcome of other decisions in the Court or the High Court.

Financial management and organisational performance

The Court's budget position continues to be impacted by the government's tight fiscal position. Permission for an operating loss of \$1.7 million was sought for 2010–11 as costs continued to rise well in excess of increases to the Court's budget appropriation. During the financial year all expenditure was closely monitored on an ongoing basis to ensure that savings were achieved wherever possible. Two major issues, unrelated to the Court's normal operations, had a significant impact on the Court's end of year result. Firstly, as part of a three year cyclic review, the Court's assets were revalued by an independent assessor with significant write-downs eventuating particularly in relation to the Court's library materials. Secondly, as part of the major building refurbishment in Sydney, an asset write-down was required in relation to vacated temporary accommodation previously occupied by the Principal Registry. The Court's operating loss of \$8.367 million is principally as a result of these technical accounting issues. Leaving these aside, the Court's loss would have been limited to approximately \$250 000, a significantly better result than the original budget estimate.

In looking forward to the next three year budget cycle, the Court will continue to face limited funding increases and escalating costs. The efficiency dividend has also been increased. Due to the 'fixed' nature of forty-five per cent of the Court's costs (such as judges and their direct staff and the requirement for purpose built court accommodation) the Court's ability to reduce these costs is extremely limited. This means the impact of the efficiency dividend on the Court's remaining cost is almost doubled.

The Court is forecasting ongoing operating losses over the next three financial years. Whilst the Court is actively examining measures to bridge the forecast funding shortfall, the extent of savings previously realised in past years is now limiting further options. An independent consultant has been commissioned to conduct an organisational health check to ensure that all available strategies and savings measures are being considered.

PART 3

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THE WORK OF THE COURT IN 2010-11

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 Part 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 Part 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.

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 Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010* (formerly 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 94 for comparative statistics regarding consumer law matters. Since late 2009 the Court has also had jurisdiction in relation to indictable offences for serious cartel conduct.

From 1 January 2011 significant changes were made to trade practices law in Australia including renaming the Trade Practices Act as the Competition and Consumer Act and the introduction of the Australian Consumer Law (ACL) to replace Part V of the former Trade Practices Act as well as State and Territory consumer laws. The ACL is now located in Schedule 2 of the Competition and Consumer Act.

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* (*ADJR Act*), 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 99 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, designs and circuit layouts). All appeals in these cases, including appeals from the Supreme Courts, are to a full Federal Court. Figure 6.14 on page 100 shows the intellectual property matters filed over the last five years.

Another 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 ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 31. Figure 6.11 on page 97 shows native title matters filed over the last five years.

A further important area of jurisdiction for the Court 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 nineteen arrests. See Figure 6.10 on page 96 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 93 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 92 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 98.

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 Part 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 28. Figure 6.15 on page 101 shows the appeals filed in the Court since 2006–07.

THE WORK OF THE COURT IN 2010–11

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 123.

Changes to the Court's jurisdiction in 2010–11

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

- *National Broadband Network Companies Act 2011*
- *National Vocational Education and Training Regulator Act 2011*
- *Paid Parental Leave Act 2010*

Amendments to the Federal Court of Australia Act

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

The *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011* made a minor amendment to subsection 32P (2) of the Federal Court of Australia Act (inserting the word 'federal' before 'judicial proceeding'). This was required as a result of amendments made to the *Crimes Act 1914* and to ensure that the section refers to the new definition of 'federal judicial proceeding' in that Act.

The *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* made amendments consequential upon the changes to the trade practices regime which took effect from 1 January 2011. These amendments replace the references to the Trade Practices Act with the appropriate references to the Competition and Consumer Act.

As mentioned in the 2009–10 Annual Report, 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. The Transitional Act will amend the Federal Court of Australia Act by omitting Part IIIA (which deals with the conduct of Trans-Tasman proceedings brought under the Competition and Consumer Act) once the substantive provisions of the Trans-Tasman Proceedings Act take effect. The Trans-Tasman Proceedings Act and the Transitional Act have, however, not yet commenced.

Amendments to the Federal Court of Australia Regulations

During the reporting year the Federal Court of Australia Regulations 2004 were amended on two occasions.

The amendments to the Regulations mentioned in the 2009–10 Annual Report, increasing the quantum of the filing and other fees set out in Schedule 1 of the Regulations, inserting a new fee for commencing a proceeding under the *Bankruptcy Act 1966* and introducing a system of tiered hearing fees whereby the daily fee increases depending on the length of the trial, took effect from 1 July 2010.

On 15 October 2010 the Regulations were amended to replace some fee exemptions and waivers with a minimum \$100 fee. These changes took effect from 1 November 2010. People in certain specified categories (for example those who are receiving legal aid) became eligible to pay the minimum fee to initiate an action and then did not need to pay any further fees in that proceeding (except for photocopying). Previously people in these categories were exempt from payment of fees. In addition, where a Registrar or authorised officer is satisfied that payment of a full fee for the filing

of a document or for any service by a person or corporation would cause financial hardship, a minimum fee for that filing or service became payable. Eligibility to pay the minimum fee on such grounds must be considered afresh each time payment of a full fee in the proceeding is required. Previously people or corporations who could demonstrate financial hardship were entitled to a waiver of all fees in the proceeding.

On 25 March 2011 the Regulations were amended to put beyond doubt that a person eligible to pay a minimum fee may be allowed to seek deferral of the payment of that fee. Deferral is available in a range of circumstances such as urgency, where the person liable to pay is represented by a lawyer who is acting pro bono, or if it would be oppressive or unreasonable for payment to be required within the usual timeframes. There has been a substantial increase in administrative work associated with the new fee arrangements, particularly work related to following up deferred fees.

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. Proposed amendments are discussed with the Law Council of Australia and other relevant organisations as considered appropriate.

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

- Order 78 consequential upon amendments to the *Native Title Act 1993* relating to mediation.
- Orders 62 and 80 and Form 15B to replace the term 'legal practitioner' with the term 'lawyer'. This was overlooked in earlier amendments made to the Rules consequential upon amendments to s 4 of the Federal Court of Australia Act in 2009 substituting the term 'lawyer' for 'legal practitioner'.
- Schedule 2 to adjust the quantum of prescribed costs in line with recommendations made by the Joint Costs Advisory Committee in its Third Report on Legal Practitioners' Costs.

Throughout the year work continued on the Court's Rules Revision project under the direction of the Rules Revision Committee. The project is developing a modern set of court rules written in plain English and gender neutral language. Further information about this project can be found in Part 2 on page 14.

The Court's Rules Committee agreed that there should be no further amendments to the current Rules other than those that may be necessary due to legislative changes or that are otherwise of an urgent nature. Any other issues with the current Rules will be addressed in the revised Rules expected to be promulgated on 1 August 2011.

THE WORK OF THE COURT IN 2010–11

Changes consequential upon the introduction of the following legislation that arose during this period were referred to the Rules Revision Project:

- *Freedom of Information Amendment (Reform) Act 2010* which commenced on 1 November 2010.
- *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* which received Royal Assent on 13 July 2010 with most provisions commencing on 1 January 2011.
- *Civil Dispute Resolution Act 2011* which received Royal Assent on 12 April 2011.

In 2009 and 2010 the Court carried out a review of the process used for determining costs incurred by parties to legal proceedings, as well as the structure of the scale of costs used in that process. Following the review the judges decided that changes to the Rules arising from the costs review should be introduced from 1 August 2011 with the revised Rules.

The changes require that the costs incurred by a party in a proceeding, which have been ordered to be paid by another party, are to be assessed on a 'fair and reasonable' basis. The revised Rules will also introduce a new scale of costs allowable for work done and services performed structured to reflect modern-day methods of delivering legal services.

There were no amendments to either the Federal Court (Corporations) Rules 2000 or the Federal Court (Bankruptcy) Rules 2005.

Practice Notes supplement the procedures set out in the Rules of Court. During the reporting year the Chief Justice issued the following new or revised practice notes:

- A revised Practice Note APP 1 – List of Appeals to the Court.
- A revised Practice Note CM 1 – List of authorities, citations of cases and legislation for proceedings generally.
- A new Practice Note APP 2 – Content of appeal books and preparation for hearing.
- A new Practice Note CORP 3 – Scheme of Arrangements.

The NSW District Registrar issued Administrative Notice NSW 4 – Related Proceedings.

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.

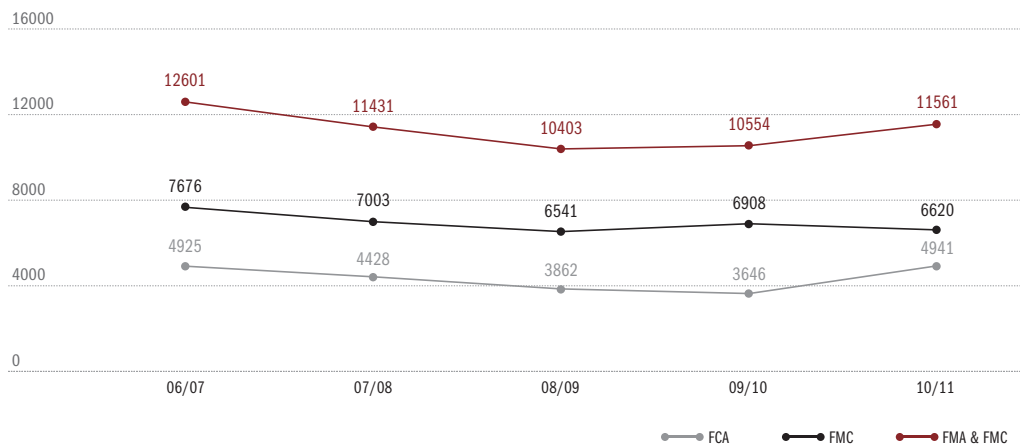
Workload of the Federal Court and Federal Magistrates Court

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 continued increase in the combined filings of the two courts since 2009–10. As noted in Part 2 and evident from figure 3.1, the combined workload increased substantially in the last financial year.

In 2010–11, a total of 11 561 matters were filed in the two courts. In 1999–2000 there were 6276 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 2011
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 2006 to 30 June 2011, ninety 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 90). Figure 6.5 on page 91 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2010–11, ninety per cent of cases were completed within eighteen months.

THE WORK OF THE COURT IN 2010–11

Delivery of judgments

In the reporting period, 1740 judgments were delivered. Of these, 531 judgments were delivered in appeals (both single judge and full court) and 1209 in 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 103 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, 4303 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 6.2 on page 89.

Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

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

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

- *eight from the High Court*
- *thirteen from the Federal Magistrates Court*
- *four from the Supreme Courts*
- *thirty-four 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*
- *Corporations Act 2001*
- *Administrative Appeals Tribunal Act 1975*

During 2010–11, twenty-two matters were transferred from the Court:

- *sixteen to the Federal Magistrates Court*
- *three to the Supreme Courts*
- *three to other Courts*

Matters completed

Table 6.2 on page 89 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 4036 against 2782 in the previous reporting year. The significant increase in the number of matters completed during the year correlates to the increase in filings.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2732 (see Table 6.2), compared with 2465 in 2009–10.

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 2011 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.

Table 3.1 – Age of current matters (excluding appeals and related actions and native title matters)

	UNDER 6 MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Cause of Action						
Administrative Law	58	44	18	6	7	133
Admiralty	10	12	7	4	10	43
Bankruptcy	45	13	4	7	3	72
Competition Law	1	7	7	8	9	32
Consumer Law	82	108	32	26	47	295
Corporations	782	112	40	31	46	1011
Human Rights	26	13	9	6	5	59
Workplace Relations	3	5	3	2	13	26
Intellectual Property	66	52	19	14	39	190
Migration	12	2	1	0	0	15
Miscellaneous	23	25	4	7	8	67
Taxation	94	78	21	39	6	238
Fair Work	64	18	13	5	0	100
Total	1266	489	178	155	193	2281
% of Total	55.5%	21.4%	7.8%	6.8%	8.5%	100.0%
Running Total	1266	1755	1933	2088	2281	
Running %	55.5%	76.9%	84.7%	91.5%	100.0%	

THE WORK OF THE COURT IN 2010-11

The Court experienced a twenty-eight per cent reduction in the number of matters over eighteen months old in 2010-11. Table 3.1 shows that at 30 June 2011 there were 348 first instance matters over 18 months old compared with 483 in 2010 (not including native title matters). Corporations, Consumer Law (misleading and deceptive conduct) and Intellectual Property make up a high proportion of the matters over twenty-four months old. The length of time it takes to finalise these matters is indicative of their complexity both for the parties in preparing the matters for hearing and the judge in hearing and deciding the case.

Table 3.2 - Age of current native title matters (excluding appeals)

	UNDER 6 MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Native Title matters	22	33	12	7	377	451
% of Total	4.9%	7.3%	2.7%	1.6%	83.6%	100.0%
Running Total	22	55	67	74	451	
Running %	4.9%	12.2%	14.9%	16.4%	100.0%	

There were 384 native title matters over eighteen months old at 30 June 2011 compared with 422 in 2010.

The Court will continue to focus on reducing its pending caseload and the number of matters over eighteen months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 6 commencing on page 83.

The Court's appellate jurisdiction

The appellate workload of the Court constitutes a significant part of its 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 ss 25(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.

The Court publishes details of the four scheduled Full Court and appellate sitting periods to be held in February, May, August and November of each year. Each sitting period is up to four weeks in duration. In the 2011 calendar year, Full Court and appellate 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 and appellate 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 a Full Court was specially convened to enable the early hearing and disposition of urgent appeals on fifteen occasions. Hearing these appeals involved a total of twenty-one days with three judges sitting on each day.

The appellate workload

During the reporting year 837 appellate proceedings were filed in the Court. They include appeals and related actions (638), cross-appeals (38) 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 (161).

The Federal Magistrates Court is a significant source of appellate work accounting for forty-nine per cent (408) of the total number of appeals and related actions, cross-appeals and other appellate motions filed in 2010–11. 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 102.

The above figures indicate that the Court's appellate workload in 2010–11 (837) has remained relatively constant when compared with 2009–10 (860).

During the reporting year the number of migration appeals and applications filed decreased by thirty-one per cent from 392 matters filed in 2009–10 to 269 in 2010–11. Notwithstanding the decline in the number of migration cases filed, this workload is subject to fluctuation due to changes that may occur in Government policy or the impact of decisions of the High Court.

By contrast, the Court's more complex and generally lengthier non-migration appellate workload has increased significantly by twenty-one per cent in 2010–11 (568) compared with 2009–10 (468). These cases often involve more active case management by judges and registrars to ensure the timely and efficient preparation and conduct of these proceedings. Non-migration matters currently account for sixty-eight per cent of the Court's overall appellate workload.

In the reporting year 831 appeals, cross-appeals and related actions were finalised, including 192 interlocutory applications made by notice of motion.

At 30 June 2011, 402 appeals, cross-appeals and related actions were current including forty-eight 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 2011 is set out in Table 3.3 below.

At 30 June 2011 there were six appeals, cross-appeals, related actions or applications that are eighteen months or older. Five of these were cases awaiting the outcome of decisions in the High Court or the Federal Court. A negotiated native title outcome is being pursued in the other case.

THE WORK OF THE COURT IN 2010-11

Table 3.3 – 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	311	67	18	1	5	402
% of Total	77.4	16.7%	4.5%	0.2%	1.2%	100.0%

Managing migration appeals

In 2010–11 five 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 264 migration cases related to judgments of the Federal Magistrates Court.

Table 3.4 below shows the number of appeals involving the Migration Act as a proportion of the Court’s overall appellate workload since 2006–07. 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 and appellate sitting period. Fixing migration related appellate proceedings for hearing in the four scheduled 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 3.4 – Appellate proceedings concerning decisions under the Migration Act as a proportion of all appellate proceedings (including notices of motion and cross appeals)

APPELLATE PROCEEDINGS	2006-07	2007-08	2008-09	2009-10	2010-11
Migration Jurisdiction	1092	1020	530	392	269
Per cent	72%	67%	50%	46%	32%
Total Appellate Proceedings	1520	1526	1067	860	837

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

The Court's native title jurisdiction

Current and Future Workload

As at 30 June 2011 the Court had 451 current native title matters including 420 claimant applications and eight compensation applications.

During the reporting year, the Court made twenty-four determinations in respect of the existence of native title. One of these was a litigated hearing and twenty-three were achieved through mediation and negotiation. In addition there were four unopposed non-claimant determinations.

Previous Annual Reports have recognised the Court's and parties' achievements in the native title jurisdiction. In this reporting period it remains important to recognise the parties' commitment to achieving results in this jurisdiction. The outcomes achieved and those still to come are not possible without the focussed efforts of the parties over many years. The Court values its users and continues to meet with those involved in the jurisdiction so as to be informed and assisted by their feedback.

As with other litigation in the Court, native title cases continue to be subject to intensive case management with 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. The management of the evidence of expert anthropologists continues to assist in the timely resolution of many matters. In addition the Court's innovative approach to the management of connection in a number of claims in the Northern Territory and South Australia is now translating into outcomes.

The key elements to the effectiveness of the Court's approach are:

- Active judicial management of the caseload in a manner designed to achieve the desired outcomes.
- A realistic targeting of resources.
- Highly effective Assisted Dispute Resolution (ADR) practitioners to implement the proposed case management strategies and ADR initiatives.

The choice of an appropriate ADR practitioner is most often dependent upon the individual requirements of a case. This is a truism in native title as much as it is in other jurisdictions, as experience shows that parties will generally seek out appropriate expertise and a proven record of results. Currently parties in native title matters have three mediation options, the National Native Title Tribunal (NNTT), a Court registrar or an external mediator. As at 30 June 2011 fourteen matters were in court annexed mediation and all were being undertaken by registrars of the Court, in accordance with parties' preferences.

In some instances the particular characteristics of a case have necessitated that the Court look beyond its employees to find the skills needed. In these cases the Court has appointed an individual from the mediator list whose skills and experience match the issues in dispute. To date this has yielded timely and very positive results.

It is well accepted that native title cases are fact intensive and complex matters that require sophisticated case management to bring about their just resolution quickly, inexpensively and as efficiently as possible. The Court's experience to date suggests that a strong culture of active case management will deliver these outcomes and do so with due regard to the preamble and purpose of the *Native Title Act 1993* (the Act). Within the resources available and with the cooperation and engagement of the parties the Court has delivered a coordinated, consistent and refined focus on case management and ADR with a view to arriving at determinations that encompass broad outcomes, as soon as possible.

The following case notes highlight the Court's case management approach to native title cases which were resolved during the reporting year.

The Montejinni and Auvergne matters

Northern Territory

On 31 May and 2 June 2011 Justice Mansfield determined that native title exists in respect of twelve matters in the Northern Territory, referred to as the Montejinni and Auvergne matters. The Montejinni and Auvergne matters represented two clusters of claims covering land in the extensive pastoral estate of the Northern Territory. The determinations herald a new refined case management approach supported by the Court and taken by the parties which will see cases such as these being resolved much more quickly than they have in the past.

In the northern part of the Northern Territory (the area of these determinations) many matters were filed in response to notices issued under the Act of the proposed grant of a mining interest on pastoral leases. The claims, made to cover the particular proposed mining interest, were generally small in area and irregular in shape. As the claims did not correspond to the whole of the particular claim group's asserted country they presented the Court with some case management challenges.

In response to these challenges the Court employed an approach that grouped claims together in a manner designed to accommodate a commonality of particular Indigenous claim groups, their geographical proximity and the issues likely to arise in the cases by virtue of the underlying pastoral tenure. Lead cases were identified for each cluster and, with the agreement of the Northern Land Council and the Northern Territory, groups of claims were dealt with together in a way convenient to all parties. The lead case in respect of the Montejinni and Auvergne matters was the Newcastle Waters Station case. This case was also the vehicle agreed by the parties and the Court to test some outstanding legal issues arising from the recognition of native title where there is a coexistent pastoral lease. It was determined after a short hearing: *King v Northern Territory* (2007) 162 FCR 89.

With the claims clustered and many of the legal principles settled, the parties actively engaged in reaching agreement about the recognition of native title on the related cluster of cases. After exploring with the Court a number of ways in which that recognition could be achieved in a more timely manner, the Northern Territory Government, the Northern Land Council and the Northern Territory Cattleman's Association came to an agreement about what evidence is required to establish that the native title claim group named in an application are the persons who hold the claimed native title rights and interests in the determination area.

The agreed approach balances targeted anthropological evidence as well as the evidence of the indigenous people, and having regard to the interests of all parties, has delivered a just resolution of these claims as quickly, inexpensively and efficiently as possible. The new approach moves away from earlier requirements for extensive anthropological and other evidence, allowing for the Applicant's anthropologist to provide a report certified by the Land Council dealing with key evidentiary requirements sufficient to satisfy the parties and the Court that the requirements of s 87 of the Act have been met.

Gunaikurnai #1 & #2 – VID6007/1998 & VID482/2009**Victoria**

In 1997 the Gunaikurnai claimed a large area of land in Gippsland, Victoria. Following notification in 2002, approximately 480 respondents were joined as parties to the claim. As is the practice of the Court, parties with similar interest types were grouped into twenty-eight interest groups. Legal representatives were nominated for most groups, with responsibility for providing legal advice to and obtaining instructions from group members.

On 17 December 2004 the Court made orders referring the matter to mediation by the NNTT. The primary focus of that mediation, over a number of years, was the resolution of a dispute among the claimant group. In June 2007 the Court made orders for an early/preservation of evidence hearing. Orders requiring respondents to confirm their intention to remain as a party in writing to the Court registry within a set timeframe were made to refresh the party list in preparation for that hearing. As a result of those orders the 186 respondent parties who did not confirm their intention to remain as parties were removed.

On 29 June 2009 the Gunaikurnai filed a second claim to include parcels of crown land within the boundary of the original claim that were omitted. The matter was notified in June 2010, and seventeen parties were joined as a result, many of which were respondents to the first claim. These parties were grouped into interest types reflecting those in Gunaikurnai #1. The matters were run concurrently.

Following the early/preservation of evidence hearing in 2007, the State of Victoria indicated a willingness to enter into consent determination negotiations with the Gunaikurnai. Those negotiations were initially supervised by a registrar of the Court and in December 2009 were referred to the registrar for mediation.

On 6 May 2010 the applicant and State indicated to the Court that they had reached agreement in principle on the terms of a consent determination and that they wished to engage with non-State respondents on the terms of that agreement. In response to this information, and at the request of the applicant and State, the Court made orders requiring the applicant and State to jointly write to each respondent informing them of the area of the proposed determination, the general nature of the native title rights and interests proposed to be recognised and their relationship to other rights and interests. The Court made further orders requiring each respondent, having considered the terms of the proposed consent determination, to again confirm to the registry their intention to remain a party and to identify to the Applicant their parcel specific interest. As a result of those orders a further 145 parties were removed.

Mediation with non-state respondents (around 140 parties) commenced in June 2010. Respondent party groups were combined into five groups by common interest type, including mining, land, water and recreational users, fishing interests and those with public access requirements. Separate initial mediation sessions were conducted with each of the five groups over a period of three days. Further mediation sessions were convened with individual respondents to address discrete issues, concluding on 11 October 2010. Consent orders were filed on 19 October, and the matters were determined by consent on 22 October 2010.

Kalkadoon #5 & #6, QUD579/2005 & QUD15/2006

Queensland

The Kalkadoon #5 and #6 claims were filed in 2005 and 2006 respectively in response to an agreement arising out of mediation which saw six related applications, which had originated in 1996, being withdrawn.

Mediation by the NNTT continued in the new Kalkadoon matters and the matters were allocated in the early part of 2008 to Justice Dowsett, who regularly reviewed progress. In mid 2009 orders were made listing both matters for the hearing of whether or not the Kalkadoon Peoples had continued to observe traditional laws and customs and thus were and are a native title holding group. Justice Dowsett's orders did not extend to the nature and extent of the extinguishment as it was agreed that issue would be considered after the question of native title was resolved.

The matters were set down for a 6–8 week hearing, commencing in the last week of February 2011. In August 2010 Justice Dowsett made further orders defining the nature of the question to be heard and encouraged the parties to meet in the intervening period in order to resolve these issues by agreement. To assist in the preparation of the question the Applicant and the State were ordered to confer on what issues could be agreed and identify what remained in dispute. The matters were then referred to case management before a judge and registrar.

On 15 November 2010 orders were made providing that the matter as it related to the Applicant and the State be referred to a Court appointed mediator. On 18 November an appointment of a mediator from the Court's list was made and the matters were referred to mediation on 29 and 30 November.

In the lead-up to mediation the parties were encouraged to clarify their concerns. It became apparent there was an ongoing issue between a non-State respondent and the Applicant and that issue was also referred to the mediator.

The mediations were conducted in late November and the matters re-listed for a directions hearing in the first week of December where the Court was informed that, aside from the nature and extent of extinguishment, the question of native title was resolved as between the Applicant and all but one respondent.

This outstanding issue was listed for argument with a hearing date for February 2011, however the issue was also referred to the Court appointed mediator in the intervening period. Mediation was successful and terms of settlement were signed.

The Court was then informed that the question as to connection was resolved as between the parties and the tenure and extinguishment analysis remained to be negotiated as between the Applicant and the State. The parties' progress with this analysis is being closely monitored by a Court registrar.

Figure 6.11 on page 97 provides more information on native title act filings.

Assisted Dispute Resolution (ADR)

Referrals to ADR and Mediation

The ADR options currently available to the Court under the Federal Court 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
- Referral to a referee

Over the reporting year the increasing profile among practitioners and the public of ADR as a means of resolving disputes has seen a significant increase in the number of matters referred to mediation. It is now common practice for parties to request, or for judges to suggest, that matters be referred to mediation as part of preparing a matter for hearing.

Mediation continues to be the most frequently used ADR referral made by judges of the Court. While the numbers of mediation and other forms of ADR have increased in the reporting period, the data collected does not reflect the full extent of ADR activities carried out as part of the Court's general case management. Parties may indicate to the Court that they have made their own arrangements for a matter to be mediated by a private mediator and that orders referring the matter to mediation are not necessary. A judge may refer a matter to mediation but allow the parties the choice of mediator. Where the parties choose a private mediator the Court may not always record the 'external' referral. A judge may order that the experts proposed to be called in a matter confer to clarify areas of agreement and disagreement but may not require that process to take place under the supervision of a registrar.

Table 3.5 – ADR referrals in 2010–11 by type and Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Mediation	208	272	61	14	3	24	10	18	610
Arbitration	–	–	–	–	–	–	–	–	–
ENE	–	–	–	–	–	–	–	–	–
Conference of experts	–	3	–	1	3	–	–	–	7
Court appointed experts	–	–	–	4	–	–	–	–	4
Referee	–	–	–	–	–	–	–	–	–
Total	208	275	61	19	6	24	10	18	621

Table 3.6 shows the referrals to mediation by matter type and State. The information suggests that on a national basis consumer protection and Corporations Law matters are the most frequently referred matter types. This trend, however, is not reflected in every state/territory – see, for example, industrial matters in Victoria.

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Table 3.6 - Mediation referrals in 2010-11 by Cause of Action (CoA) and Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Administrative law	5	7	2	-	2	-	-	1	17
Admiralty	3	5	3	1	-	4	-	-	16
Appeals	1	4	4	-	-	-	-	1	10
Bankruptcy	7	2	1	-	-	-	-	-	10
Corporations	47	50	19	1	-	3	1	7	128
Costs	11	1	1	-	-	-	-	-	13
Human Rights	5	22	2	1	-	2	1	-	33
Industrial	11	73	7	-	-	2	-	3	96
Intellectual Property	24	45	8	4	-	-	-	-	81
Migration	-	1	1	-	-	-	-	-	2
Native Title	-	-	1	3	-	4	-	-	8
Tax	2	11	3	-	-	2	-	-	18
Consumer law	89	47	9	4	1	7	8	6	171
Competition law	3	4	-	-	-	-	-	-	7
Total	208	272	61	14	3	24	10	18	610

Table 3.7 shows referrals to mediation as a percentage of total filings for each of the last five reporting years. The percentage of referrals has averaged thirteen per cent for the last three reporting years. Total filings may, however, not give the clearest representation of the rate of referral to mediation. While all matters are capable under the Act and Rules of being referred to mediation, there are categories of matters whose features mean that it is generally accepted that ADR may not be appropriate. This is not to say that these matter types are never referred to mediation but rather that referral of these types of matters to mediation is very infrequent. These categories include migration appeals and company winding up applications dealt with by registrars. Consistent with previous reports, the term 'suitable filings' is used to refer to matters commonly considered for referral to mediation.

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

	2006-07	2007-08	2008-09	2009-10	2010-11
Referrals	332	379	522	476	610
Total filings	4925	4428	3862	3646	4941
Proportion (%)	7%	9%	14%	13%	12%

Table 3.8 shows the total matters filed and the number of filings once matters not commonly referred to mediation are excluded. While figures vary from registry to registry, applicable filings make up fifty-two per cent of total filings nationally.

Table 3.8 – Total filings and suitable filings (excluding non-mediation CoAs, e.g. migration appeals) by Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total filings	2109	1383	498	497	51	288	62	53	4941
Suitable filings	1073	791	225	223	44	150	18	47	2571
Proportion (%)	51%	57%	45%	45%	86%	52%	29%	89%	52%

When the suitable filings figures 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). This figure is the same as for the last reporting period. The real figure is likely to be higher as some registries only record referrals to mediation when the parties request that the mediation be conducted by a registrar. As not all parties seek a referral to mediation where they intend to use a private mediator, the percentage of applicable matters that have some form of ADR process applied is likely to be considerably higher than twenty-four per cent.

Table 3.9 – Mediation referrals as a proportion of applicable filings, by Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total referrals	208	272	61	14	3	24	10	18	610
Applicable filings	1073	791	225	223	44	150	18	47	2571
Proportion (%)	19%	34%	27%	6%	7%	16%	56%	38%	24%

Table 3.10 shows a breakdown of internal and external referrals to mediation by matter type. Internal and external referrals to mediation are presented as percentages of applicable matters in Table 1.7.

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Table 3.10 – Internal and external mediation referrals by CoA

	INTERNAL	EXTERNAL
Administrative law	15	2
Admiralty	11	5
Appeals	10	–
Bankruptcy	10	–
Corporations	93	35
Costs	13	–
Human rights	33	–
Industrial	96	–
Intellectual property	77	4
Migration	2	–
Native Title	3	5
Tax	16	2
Consumer law	164	7
Competition law	4	3
Total	547	63

Table 3.11 – Internal and external mediation referrals as a proportion of applicable filings

	INTERNAL	EXTERNAL
Total referrals	547	63
Applicable filings	2571	2571
Percentage	21%	2.5%

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-nine per cent.

It should be noted that the number of matters referred by judges to registrars for mediation in the reporting year (547) is more than 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.

Table 3.12 – Mediation outcomes by CoA in 2010–11

OUTCOMES BY COA	RESOLVED	RESOLVED IN PART	NOT RESOLVED	TOTAL	PROPORTION RESOLVED/IN PART (%)
Administrative law	6	1	2	9	78%
Admiralty	6	–	2	8	75%
Appeals	1	1	3	5	40%
Bankruptcy	3	2	–	5	100%
Corporations	32	5	20	57	65%
Costs	7	–	4	11	64%
Human rights	12	–	14	26	46%
Industrial	47	3	26	76	66%
Intellectual property	53	2	18	73	75%
Migration	–	–	–	–	–%
Native Title	2	2	5	9	44%
Tax	4	–	1	5	80%
Consumer law	63	9	86	158	46%
Competition law	1	–	2	3	33%
Total	237	25	183	445	59%

Table 3.13 shows the outcome of mediated matters by registry including the percentage of mediated matters resolved either in full or part.

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Table 3.13 – Mediation outcomes by State

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Resolved	69	131	20	6	–	6	2	3	237
Resolved in part	7	11	–	2	1	1	–	3	25
Not resolved	72	78	15	4	1	1	6	6	183
TOTAL	148	220	35	12	2	8	8	12	445
Proportion resolved/ in part (%)	51%	65%	57%	67%	50%	88%	25%	50%	59%

For the purposes of reporting, the Court records only the number of mediations regardless of whether a matter is mediated over one or more days. If mediation in a matter occurs over a number of days, each day will be recorded in the Court's case management database, Casetrack. Table 3.14 compares the Casetrack statistic of 1007 mediation events compared with the 445 mediations recorded by registries. The large difference suggests that in many instances mediations occurred over more than one day.

Table 3.14 – Mediations held in comparison with Casetrack mediation events, by matter type

	REGISTRY	CASETRACK
Administrative law	9	11
Admiralty	8	17
Appeals	5	26
Bankruptcy	5	13
Corporations	57	150
Costs	11	–
Human rights	26	53
Industrial	76	168
Intellectual property	73	174
Migration	–	3
Native Title	9	105
Tax	5	26
Consumer law	158	255
Competition law	3	6
Total	445	1007

Table 3.15 shows the number of mediations held during the reporting year as a percentage of the suitable filings. Again, the proportion of suitable filings mediated is less than the proportion of suitable filings referred to mediation. This may be because of the time between referral and the mediation or because of the use by the parties of private mediators in respect of some referrals.

Table 3.15 – Mediations held as a proportion of applicable filings, by Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total held	148	220	35	12	2	8	8	12	374
Applicable filings	1073	791	225	223	44	150	18	47	2571
Proportion (%)	14%	28%	16%	5%	5%	5%	44%	26%	15%

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 103.

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 Australian Institute of Judicial Administration and in other law reform and educational activities.

eServices strategy

The Court's eServices strategy aims to implement a series of integrated electronic services to support the efficient management of cases from the time of filing through to disposition and archiving. The eServices strategy is central to increasing the Court's accessibility and assisting judges in their task of deciding cases according to law quickly, inexpensively and as efficiently as possible.

During the reporting period the Court continued to promote and use contemporary technology to improve efficiency and increase accessibility to the Court. Through the launch of its electronic filing application, eLodgment, the Court delivered on its commitment to create an environment where actions which are commenced electronically, are managed electronically. It also embarked on the

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implementation of enhancements to on-line applications such as eCourtroom. Much has been accomplished as a result of the implementation of these key components of the strategy including:

- improved access to court services through on-line delivery
- reduced need to be present in court or visit a Court registry
- increased service availability
- reduced reliance on the printing and photocopying of documents
- the potential to reduce the costs of litigation

eLodgment has proven to be a successful on-line application with over 2000 registered users electronically lodging over 28 000 documents in both the Federal Court and the Federal Magistrates Court. It is anticipated that with the integration of other online services, such as eCourtroom and the Commonwealth Courts Portal, this usage will increase during 2011–12.

In line with the uptake of eLodgment, the year also saw increased activity on eCourtroom, resulting in 600 matters being commenced in eCourtroom during 2010–11.

During the next reporting year the Court will deliver an integrated solution, providing on-line users with a suite of applications accessed through a user ID and password.

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 adoption of revised costs rules and a new scale of costs that will allow the amount of party and party costs to be determined on the basis of what is fair and reasonable.
- Monitoring the impact of increased filing, setting down and hearing fees introduced on 1 July 2010 and the consequences of changes to the fee waivers and exemptions and deferral of fees as well as the introduction of reduced fees which took effect from 1 November 2010.
- Consideration of the Australian Law Reform Commission (ALRC) reference on discovery in the federal courts, the Administrative Review Council inquiry into federal judicial review and the review of the refugee determination process.
- Consideration of the jurisdiction to grant compulsory licences to generic pharmaceuticals manufacturers to produce patented medicines to export to least-developed and developing countries with health crises.
- Requesting an amendment to existing federal legislation governing representative proceedings to permit these proceedings being taken against several defendants when not all group members have a claim against all defendants and bringing 'closed class' actions.
- Development of procedures in the area of taking evidence overseas by way of an examination and ex parte substituted service applications in Bankruptcy matters.

The Committee also considered proposed legislative changes in the areas of: the national legal profession reform; implementation in the federal courts of the Standing Committee of Attorneys-General model law for suppression and non-publication orders; public interest disclosure and whistleblower protection; updating of the Acts Interpretation Act; and in implementation of recommendations of the National Alternative Dispute Resolution Advisory Council in its 2009 Report *The Resolve to Resolve – Embracing ADR to Improve Access to Justice in the Federal Jurisdiction*, providing encouragement to parties to take 'genuine steps' to resolve their disputes before commencing certain 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:

- interaction of the Civil Dispute Resolution Act 2011 and Part VB of the Federal Court of Australia Act
- ALRC Report 115 *Managing Discovery of Documents in Federal Courts*
- the impact of fee changes
- class actions
- case management reforms – including the development and implementation of the legislative reforms to support active case management
- the Rules revision project
- the review of the basis for determination of costs and scales of costs
- the impact of possible changes to the structure of the federal courts and the creation of a new Military Court
- implementation of modifications to eLodgment and eCourt applications
- developments with arrangements for providing assistance to self represented litigants in the Court
- improving communications and co-ordination between the Court and the Law Council.

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.

In early 2011 the Court developed a proposal, in consultation with the Queensland Public Interest Law Clearing House (QPILCH), to pilot a program for self represented litigants in the Queensland District Registry. The program, which will be run by QPILCH, consists of two elements:

1. The provision of legal advice and procedural assistance to self represented litigants in a range of matters in the Federal Court and bankruptcy proceedings in the Federal Magistrates Court. The advice will be provided by experienced volunteer lawyers.
2. Court Network volunteers – to provide emotional support for people attending court.

The pilot will commence in July 2011 and will run for an initial six month period.

The Court is 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, 336 people who commenced proceedings in the Federal Court were identified as self represented. The majority were appellants in migration appeals.

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The following tables provide some further information.

Table 3.16 – Actions commenced by Self Represented Litigants (SRLs) during 2010-11 by Registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	–	172	–	35	18	–	59	52	336
%Total	–	51%	–	10%	5%	–	18%	15%	100%

The 336 SRLs were applicants in 275 proceedings, as a proceeding can have more than one applicant. The following table breaks down these proceedings by major CoA.

Table 3.17 – Proceedings commenced by SRLs in 2010-11 by CoA

COA	TOTAL ACTIONS	% OF TOTAL
Administrative Law	42	15%
Appeals and related actions	169	61%
Bankruptcy	13	5%
Consumer protection	8	3%
Corporations	11	4%
Fair work	4	1%
Human rights	7	3%
Intellectual property	1	–
Migration	7	3%
Miscellaneous	8	3%
Native title	1	–
Taxation	4	1%
Total	275	100%

Table 3.18 – Appeals commenced by SRLs in 2010–11 by type of appeal

COA	TOTAL ACTIONS	% OF TOTAL
Migration	115	68%
Bankruptcy	29	17%
Administrative Law	6	4%
Miscellaneous	5	3%
Consumer Protection	2	1%
Corporations	2	1%
Human Rights	2	1%
Industrial	2	1%
Taxation	2	1%
Admiralty	1	1%
Competition Law	1	1%
Fair Work	1	1%
Intellectual Property	1	1%
Total	169	100%

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 are entitled to a reduction of payment of court fees, under the Federal Court of Australia Regulations (see below).

Remission or waiver of court and registry fees

As noted on page 22, on 1 November 2010 changes took effect which removed some fee exemptions and waivers and introduced instead minimum fees. For most proceedings commenced since then 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 also payable on some matters and the amount of the daily hearing fee will vary depending on the length of the hearing.

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Some specific proceedings are exempt from all or some fees. These include:

- Human Rights applications (other than the initial filing fee of \$54).
- Some Fair Work applications (other than the initial filing fee of \$60.60 [with effect from 1 July 2011]).
- Appeals from a single judge to a Full Court in Human Rights and some Fair Work applications.
- Setting-down and hearing fees in proceedings under the *Bankruptcy Act 1966*.

A person is entitled to apply for a 'reduction of payment of court fees – general' and pay only a 'one off' flat fee of \$100 (or the full fee if it is less than \$100) on the first occasion a full fee would otherwise be payable in a proceeding if that person:

- Has been granted Legal Aid.
- Has been granted assistance by a registered body to bring proceedings in the Federal Court under Part 11 of the *Native Title Act 1993* or have been granted funding to perform some functions of a representative body under section 203FE of that Act.
- Is the holder of a health care card, a pensioner concession card or a Commonwealth seniors health card.
- Is the holder of another card issued by the Department of Families, Housing, Community Services and Indigenous Affairs or the Department of Veterans' Affairs entitling them to Commonwealth health concessions.
- is an inmate of a prison or are otherwise lawfully detained.
- is under the age of 18 years.
- is in receipt of youth allowance or Austudy or is receiving a benefit under ABSTUDY.

Such a person, however, must pay fees for copying any court document other than for a first copy of the document or for a copy required for the preparation of appeal papers.

For proceedings commenced on or before 31 October 2010, if a person had been granted an exemption from payment of fees because that person fitted one of the categories mentioned above then that exemption continues and no further filing, setting-down or hearing fees in those proceedings have to be paid unless that person's circumstances change, although fees for copying as above are payable.

A corporation which has been granted Legal Aid or similar assistance or funding under the *Native Title Act 1993* has the same entitlements.

In addition, a Registrar or an authorised officer may approve payment of a minimum fee of \$100 instead of the full fee which would otherwise be payable if, having regard to the income, day-to-day living expenses, liabilities and assets of the person or corporation, the Registrar or authorised person is satisfied that payment of the fee would cause financial hardship to the person or corporation liable for the fee.

More detailed information about the operation of the fee waivers and reductions is available on the Court's website www.fedcourt.gov.au. Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 72.

Website

The website is integral to the Court's business and contains useful information about the Court and its work including practice and procedure guides, daily court lists, forms and fees and information for litigants and legal practitioners. The website is also a gateway to the Court's eServices.

In 2010, the website's content management system and search engine were upgraded resulting in improved performance and streamlined work practices. This platform enables the sharing of content between the Court's intranet and website supporting, for example, the replication of the Court's archive of judgments.

During the reporting period a project to redesign the website commenced with the intention to deliver a new look website during the next reporting period inclusive of further improved functionality and content.

Requests for information

Every year approximately 500 emails are received by the Court through the website's email account 'query@fedcourt.gov.au'. Frequent questions are received from students, researchers and members of the public who are interested in the role of the Court, its jurisdiction, practice and procedure and at times particular cases of interest. Staff ensure they respond to the queries in a comprehensive and timely fashion.

Some enquiries concern legal advice. Whilst court staff cannot provide legal advice, they endeavour to assist all enquirers by referring them to reliable sources of information on the internet or to community organisations such as legal aid agencies and libraries.

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 is made available to the parties as well as being published on the Internet at the AustLII website and therefore available to the media and the public. A link to this site is provided on the Court's website. Judgments of public interest are usually made available at the AustLII site within a few hours of publication and other judgments within a few days. The Court also provides electronic copies of judgments to legal publishers and other subscribers.

Information for the media and televised judgments

During the reporting year a range of assistance was provided to journalists covering cases before the Court and issues related to the Court's work. The Chief Justice, judges and senior staff were interviewed about major areas of the court's work and television access was facilitated in matters including:

- *Akiba on behalf of the Torres Strait islanders of the Regional Seas Claim Group v State of Queensland* (No 2) [2010] FCA 643 at Cairns, Justice Finn granted camera access to mainstream media for the determination. The claim related to most of the waters in the Torres Strait.

THE WORK OF THE COURT IN 2010–11

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- *Mullett on behalf of the Gunai/Kurnai People v State of Victoria (No 2)* [2010] FCA 1144. Justice North permitted extensive media access to coverage of the determination at Stratford, Victoria. The determination recognised traditional ownership across a large part of eastern Victoria as well as rights to some 22,000 square kilometers of Crown and other land.
 - The Montejinni Applications at Pigeon Hole, Northern Territory. Justice Mansfield allowed electronic media access at Pigeon Hole on Victoria River Downs, Northern Territory when delivering six determinations that covered just under 16,000 square kilometres. The determinations were: Camfield Pastoral Lease [2011] FCA 580; Dungowan Pastoral Lease [2011] FCA 581; Montejinni East Pastoral Lease [2011] FCA 582; Montejinni West Pastoral Lease [2011] FCA 583; Birrimba Pastoral Lease [2011] FCA 584; Killarney Pastoral Lease [2011] FCA 585.

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 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 2010–11 judges and registrars in the NSW Registry hosted six user group meetings or seminars with practitioners in areas such as corporations law, admiralty, native title, patents and copyright.

The District Registrar and Deputy District Registrars hosted an information session for lawyers new to practice in the Federal Court; gave a presentation to the NSW Bar Association on appearing before registrars in the Federal Court; and presentations to various organisations about Assisted Dispute Resolution.

The Court's facilities in Sydney were made available for a number of events during the reporting year including: the Australian Maritime and Transport Arbitration Commission annual address delivered by the Hon Robert McClelland MP; the Tristan Jepson Memorial Lecture delivered by Professor Patrick McGorry; a Macquarie University seminar Super Sovereign presented by Professor Lea Brilmayer; and the 2010 Sydney University Ross Parsons Corporate Law Address: *Fraud on the Market in the US – Can it be Fixed?*

Judges and registrars in the Victoria Registry hosted quarterly Federal Court Users Committee meetings and quarterly class action and insolvency user group meetings. These meetings 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.

On Thursday, 5 August 2010, a Deputy District Registrar and senior registry staff from the Victoria Registry conducted an information session for recently admitted solicitors who practice in the Federal Court and the Federal Magistrates Court.

On 14 February 2011 the Victoria Registry held a function to thank barristers and solicitors who had volunteered their time and expertise to support the Court's pro bono scheme. The Court instituted its pro bono scheme in 1998 to assist unrepresented individuals with the challenges associated with court litigation. The Court's pro bono scheme was the first of its kind in Australia. Since its inception judges in the Victoria District Registry have made approximately 390 pro bono referrals.

The Chief Justice hosted the function and over forty Victorian barristers and solicitors who have accepted pro bono referrals from the Court, members of the Victorian Bar Pro Bono Committee and representatives of the Public Interest Law Clearing House attended the function.

On 29 March 2011 Justices Gray and Bromberg hosted a meeting of lawyers who practise in disability discrimination cases. The purpose of the meeting was to consider case management strategies in disability discrimination cases concerning children with disabilities and the education sector.

The Victoria Registry hosted a number of Moot Courts in 2010–11 for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities and Moot Court Competitions for the Victorian Bar Readers. On two occasions Justice Gray and a Deputy District Registrar addressed the Victorian Bar Readers Welcome. The address provided an overview of the Court, the Victoria Registry and federal jurisdiction.

During the reporting year the Victoria 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 the Court. Two library students undertook industrial placements at the Victoria Registry library and the Registry hosted several work experience students.

Queensland judges and registrars hosted moot courts for the Queensland University of Technology, University of Queensland and the Red Cross International Humanitarian Law School Mooting Competition.

On 11 November 2010 Professor Bradford Morse delivered the Richard Cooper Memorial Lecture at the Court in Queensland.

Judges and registrars in Queensland hosted an insolvency user group meeting and two presentations for legal practitioners about the Federal Court's revised Rules. Four groups of high school students visited the Queensland Registry during the reporting year.

Judges and registrars from the West Australia Registry hosted two native title forums and three intellectual property seminars during the reporting year. 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 Siopis.

Registry staff spoke about the Court's eServices to members of the local legal profession. The registry library hosted a technology showcase for the Australian Law Librarians' Association Western Australia Division.

Judges and staff in South Australia hosted seminars for new legal practitioners, participated in the Flinders University New-In-Law program, conducted information sessions on the revised Federal Court Rules and ADR, participated in the South Australia Bar Readers course, undertook presentations during Law Week and hosted school visits.

Staff in the Australian Capital Territory, Northern Territory and Tasmania registries participated in information sessions on the revised Federal Court Rules hosted by Justice Lander. In December 2010 Justice Marshall hosted a user group meeting with Tasmanian legal practitioners.

THE WORK OF THE COURT IN 2010–11

Pegasus Scholar

The Pegasus Scholarship Trust was established in England to make it possible for gifted young lawyers to learn about the practical working of the common law system in countries other than their own, and to form enduring links with lawyers in those countries. Since 1987 the Trust has been sponsoring Pegasus Scholars from overseas to study and work in England, and Pegasus Scholars from England to live and work abroad.

The Victoria registry has been involved in the Pegasus Scholarship Trust for many years. In 2010, the registry hosted Ms Niamh O'Reilly who was named the 2010 Pegasus Scholar. Ms O'Reilly commenced with the Court on 11 October 2010 for a period of nearly two months. On 1 December 2010, Ms O'Reilly gave a presentation to Judges and staff entitled *Life at the English Bar, and a brief comparative look at the Irish Bar*.

Complaints about the Court's processes

During the reporting year, twelve 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. On 9 November 2010, the Court's Admiralty Committee hosted an Admiralty and Maritime Law Seminar titled *Current Issues in Admiralty*. This public seminar was held simultaneously in all registries of the Court, via video conference.

The Court and the Law Council of Australia jointly organised and convened the second International Commercial Law Conference from 5 to 7 May 2011. This followed the success of the first conference in November 2009. Over 140 delegates attended from many countries including Canada, New Zealand, China, Hong Kong, Singapore, Vietnam, the Philippines and Papua New Guinea. The Conference was opened by the Attorney General, the Hon Robert McClelland MP, with a keynote address by Chief Justice Keane. The Conference papers have been compiled into a book which will be launched later in 2011.

During the reporting year 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 128.

WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programmes Office, the Court collaborates with many neighbouring judiciaries across the Asia-Pacific region. In 2010–11, the Court coordinated a number of programs and hosted official visits from judicial and senior administrative staff from other countries.

Pacific Judicial Development Programme

Since July 2010 the Court has managed the Pacific Judicial Development Programme (PJDP) on behalf of the New Zealand Ministry of Foreign Affairs and Trade. PJDP is designed to strengthen governance and the rule of law across the Pacific region by enhancing the professional competence of judicial and court officers along with the processes and systems they use. The Federal Court is consolidating and extending the delivery of high quality and practical judicial training and court development services, while enhancing the establishment, localisation and sustainability of those services across the region.

In the first six months of 2010–11 an assessment was conducted to identify and prioritise the region's development needs. Consequently, a number of projects were developed which focus on building both institutional and individual capacity. These projects will:

- Research and develop a customary dispute resolution strategy as a mechanism for promoting an holistic approach to alternative dispute resolution in the region.
- Introduce codes of judicial conduct to strengthen governance mechanisms in selected courts.
- Research and develop a medium to long-term plan for the sustainability of ongoing judicial development across the region.
- Strengthen judicial leadership by providing opportunities for intra-regional interaction and actively involving leaders in the ongoing development and implementation of PJDP.
- Diagnose the needs for judicial administration and support pilot activities to guide the formulation of a regional support strategy for registry systems and processes.
- Design a judicial monitoring and evaluation framework to provide the basis for future performance monitoring and assessment of the impact of development assistance.
- Mobilise the Regional Training Team, a group of certified trainers from member countries, and actively support this team to develop sustainable training capacity regarding four core modules.
- Develop core orientation and decision making training modules for judges, court officers and lay magistrates to provide the basis for ongoing and locally driven training in the region.
- Publish and revise benchbooks to develop selected resources with medium to longer-term value to counterpart courts.
- Manage a Responsive Fund for locally based, incentive driven, development applications.

In addition to these projects, the Court hopes to secure further funding to enable it to deliver several complementary activities designed to promote the benefits of the PJDP, particularly in terms of judicial capacity building.

Supreme People's Court, People's Republic of China

The Court completed its second substantive project with the Supreme People's Court during the reporting year. The project focused on supporting the development of a judicial interpretation of international law to protect the nation's waterways. Both Courts wish to continue the mutually beneficial exchange. Future collaborations will likely focus on developing judicial interpretations of competition law along with the litigation and arbitration of cargo claims and damages and progress towards a regional exchange on maritime law and the interpretation of associated international conventions.

Supreme Court of Indonesia

As part of the ongoing relationship with the Supreme Court of Indonesia under the Memorandum of Understanding (MOU) between the Courts, significant planning and other activities took place this year. In September 2010 a new Annex to the MOU was signed in Melbourne, the first to be signed by Chief Justice Keane on behalf of the Court. The Annex sets out the priority areas for collaboration over the next two years which are: judicial transparency; case management; leadership and change management; and maintaining the court-to-court relationship.

To develop the Annex according to the priorities contained in the Supreme Court's new Blueprint for Reform, and to participate in the ongoing leadership and change management programme between the Courts, the District Registrar for Victoria, Ms Sia Lagos, visited Jakarta in August 2010. Ms Lagos participated in delivering the Women's Leadership and Change Management Programme for female Chief Justices from around Indonesia. Ms Lagos opened the workshop and led a number of discussions throughout the four day programme sharing case studies and successful changes implemented by the Federal Court.

In March 2011 Justice Moore, Registrar Warwick Soden and Ms Lagos visited Jakarta to engage in detailed planning meetings with the Supreme Court and its Judicial Reform Team. The purpose of the meetings was to discuss how the priority areas articulated in the Annex can be programmed into a suite of activities the Courts can work together on.

Supreme People's Court of Vietnam

Following the successful completion of the judicial benchbook revision project in 2009–10 and the signing of a Memorandum of Understanding between the Courts, Justices Moore and Marshall travelled to Hanoi, Da Nang and Ho Chi Minh City in September 2010 to deliver a series of workshops about Intellectual Property and Admiralty Law. Each workshop included presentations by members of the Vietnam Supreme People's Court along with local subject matter experts.

In October 2010 six delegates from the Supreme People's Court travelled to Sydney to participate in an information technology programme at the Court. The aim of this visit was to assist the Supreme People's Court to consider how it might utilise information technology to efficiently and effectively manage cases from both judicial and administrative perspectives. The programme involved a number of demonstrations and discussions and was well received by the delegates.

Supreme and National Court of Justice, Papua New Guinea

Pursuant to the Memorandum of Understanding signed with the Supreme and National Courts of Justice in November 2009, the Courts continued to work together during the reporting year. In August 2010, Deputy District Registrar Ian Irving visited Port Moresby to assist the Supreme and National Courts to review its progress made in relation to ADR and to make recommendations about what would be required in order to establish a fully functioning system for the courts.

Also in August, Deputy Registrar John Mathieson visited Port Moresby to assist the Supreme and National Courts to review its progress with respect to case management and the use of information technology. The review incorporated current court administration systems, policies, rules and procedures and produced a series of recommendations designed to increase the number of cases heard and the speed of processing them as well as refining file management, administration and security procedures.

Library Services to the South Pacific

The Federal Court continues to provide assistance to law libraries in the South Pacific with library staff coordinating shipments of books and law reports. The libraries assisted by the Court are the Supreme Court of Tonga including the Vava'u Court House, the Supreme Court of Vanuatu and the High Court of Kiribati.

Visitors to the Court

During the reporting year the Court facilitated a number of visits from international delegations or individuals interested in learning about the role of the Court and its systems and processes. Visitors were welcomed from:

- Hong Kong: 17 delegates from the Chinese University of Hong Kong visited the New South Wales Registry as part of an International Law Study Abroad Programme.
- Korea: A delegation from the Gwangju and Daejeon High Courts, Patent Court, and Daejeon, Gwangju and Cheongju District Courts of the Republic of Korea visited the registries in New South Wales and Victoria in July 2010 to discuss case management and civil procedure.
- Bangladesh: Three delegates from the Supreme and High Courts of Bangladesh visited Registries in Queensland, New South Wales and Victoria in September 2010 to discuss case management processes.
- South Africa: Justice Albie Sachs, a retired judge from the Constitutional Court of South Africa, met with judges and associates in the Victoria registry on 21 September 2010.
- China: A legal aid lawyer and Deputy Director of the Beijing Zhicheng Migrant Workers Legal Aid and Research Centre visited the Court's Victorian registry in October 2010 as part of the China–Australia Human Rights Technical Cooperation Programme. In addition, a delegation from the Migrant Legal Aid Lawyers from China visited the Victoria registry in November 2010.
- Japan: A delegation from the District and Family Courts in Nagasaki, Omuru Summary Court, Kagoshima District Court, and the Sendai District Court, visited the New South Wales Registry in November 2010 to attend a directions hearing and discuss the use of court room technology. In addition, three delegates from the Supreme Court visited the New South Wales Registry in December 2010 to discuss issues of court security and protection. Students from the Chuo Law School visited the Victoria Registry in February 2011 for a presentation by Justice Gordon which focused on the role and jurisdiction of the Federal Court. In March 2011 two judges from the Japanese District Court visited the New South Wales Registry as part of a study tour of Australian legal systems.
- Russia: A delegation of eight officials from the Constitutional Court of the Russian Federation visited the registry in Victoria in February 2011 to discuss the application of new information technologies in order to facilitate judicial proceedings.
- Sri Lanka: The Secretary and Assistant Secretary of the Ministry of Justice visited the Australian Capital Territory Registry in March 2011 to discuss case management.

PART 4 MANAGEMENT OF THE COURT

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Corporate functions 56



OVERARCHING PURPOSE
FOCUS

PROPORTIONATE

CULTURE



RIGHTS AND INTERESTS

ACCOUNTABLE



MANAGEMENT OF THE COURT

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 Part 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 75.

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 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.

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.

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.

CORPORATE FUNCTIONS

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 2010–11 the Committee met on three occasions.

Financial accounts

The net operating result from ordinary activities for 2010–11 was an operating deficit of \$8.367 million. The operating deficit is primarily a result of the revaluation and write off of non-current assets. Equity decreased from \$35.011 million in 2009–10 to \$33.545 million in 2010–11.

During 2010–11 revenues from ordinary activities totalled \$106.660 million. Total revenue, in the main, comprised:

- An appropriation from Government of \$88.374 million
- \$5.999 million of resources received free of charge, including for accommodation occupied by the Court in Sydney
- \$9.755 million of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court’s judges
- \$2.532 million from the sale of goods and services.

Total expenses of \$115.027 million in 2010–11 comprised: \$58.877 million in judges’ and employees’ salaries and related expenses; \$31.696 million in property related expenses; \$13.545 million in other administrative expenses; \$2.845 million in depreciation expenses; \$5.116 million write-down of non-current assets; and \$2.948 million paid to the Federal Magistrates Court.

Table 4.1 – Outcome and Program Statement

		BUDGET EXPENSES 10-11 (\$'000)	ACTUAL EXPENSES 10-11 (\$'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	89.959	88.374	1.585
	Revenues from other sources (s. 31) for Federal Court	1.562	2.532	-0.970
	Subtotal for Program 1.1	91.521	90.906	0.615
	Total for Outcome 1	91.521	90.906	0.615
	Average staffing level (number)		309	

The Court’s agency resource statement can be found at Appendix 2 on page 74.

MANAGEMENT OF THE COURT

Audit and risk management

The Audit Committee met four times during 2009–10. The Committee comprises an independent chairperson, three judges, the Registrar, and the NSW District Registrar. 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.

The Court appointed new internal Auditors, O'Connor Marsden and Associates, in May 2011. The new internal auditors commenced an 'organisational and financial health check' during 2010–11. The Court's previous internal auditors, Deloitte, conducted a payroll and travel services audit; completed a risk assessment and physical security review; and prepared the Court's 2011–13 Fraud Control Plan during 2010–11.

In June 2011 the Registrar informed all court staff about the Fraud Control Plan. An information sheet was prepared and distributed to all registries with a request that it be displayed in staff common areas. All registries provided staff with short information sessions in June and July 2011 about fraud prevention and control with a focus on the Court's Fraud Control Plan. A short eLearning module on 'Fraud Prevention and Control' was developed and placed on the Court's intranet to be used as part of the induction process for new Court staff.

Staff of the ANAO inspected the Court's 2010–11 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 2010–11 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 2010–11, twelve new consultancy contracts were entered into involving total actual expenditure of \$297 278. In addition, five ongoing consultancy contracts were active during the 2010–11 year, involving total actual expenditure of \$193 359. 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 \$
2010–11	297 278	193 359
2009–10	231 659	95 656
2008–09	232 253	129 328

Table 11.1 at Appendix 11 provides more detailed information on consultancy contracts entered into during 2010–11.

This report contains 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.

Competitive tendering and contracting

During 2010–11, 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 2010–11, 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 \$33 704 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 2010–11.

Human resources

During the reporting year, the Court’s Human Resources Section continued to provide strategic, policy and operational support to the Federal Court’s registries.

Human Resources staff supported the Court by providing advice on the full range of human resource activities including: managing organisational changes and the implementation of organisational reviews; recruitment and selection activities; workforce planning and organisation development; learning and development; workplace diversity; workplace relations; policy development; remuneration policy; payroll services; and occupational health and safety.

The Court’s approach to human resources issues is characterised by transparency and consultation and, to this end, the National Consultative Committee (NCC) continued to operate effectively through the year. The Court’s other consultative forums such as Regional Consultative Committees and the Occupational Health and Safety Committee also 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.

Significant developments during the reporting period included the successful negotiation of a new Enterprise Agreement 2010–2014 (to commence 6 July 2011), replacing the 2010–2011 Enterprise Agreement.

MANAGEMENT OF THE COURT

Staffing Profile

At 30 June 2011, the Court employed 358 employees under the *Public Service Act 1999*, comprising 208 ongoing full time employees, twenty ongoing part time employees and 130 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 twelve months, as well as casual court officers. The Court had an average staffing level of 309 during the reporting period.

The following table provides an overview of the Court's staffing by location at 30 June 2011. More detailed staffing statistics can be found in Appendix 10 on page 141.

Table 4.3 – Staffing overview by location (actual occupancy at 30 June 2011 – 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	1	1	1					7
FCL2	3	7	5	3	1	4				3	26
FCL1							1				1
FCM2	6	1	2	1	1	1				1	13
FCM1	14		3	1	1	1				3	23
FCS6	13	22	16	6	5	8		1	1	3	75
FCS5	9	31	20	7	5	8	1			3	84
FCS4	2	7	8	9	6	3	1	1	4		41
FCS3	2	15	3	4	1	2	1		1		29
FCS2			1		1						2
FCS2		24	11	5	4	7		2			53
CCO											
FCS1			1								1
Total	52	109	72	37	26	35	4	4	6	13	358

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
 CCO Casual Court Officer
 CM Federal Court Manager
 FCL Federal Court Legal
 NAT National
 Includes the following staff:
 – National Native Title
 – Chambers of Chief Justice
 – Appeals

Table 4.4 – Salary ranges by classification level under Certified Agreement, AWA or Determination (as at 30 June 2011)

COURT DESIGNATION	AUSTRALIAN PUBLIC SERVICE (APS) CLASSIFICATION	SALARY
Clerical Administrative Positions		
Federal Court Staff Level 1	APS Level 1	\$39 450
		\$43 598
Federal Court Staff Level 2	APS Level 2	\$44 646
		\$49 509
Federal Court Staff Level 3	APS Level 3	\$50 853
		\$54 885
Federal Court Staff Level 4	APS Level 4	\$56 681
		\$61 540
Federal Court Staff Level 5	APS Level 5	\$63 218
		\$67 033
Federal Court Staff Level 6	APS Level 6	\$68 279
		\$78 432
Federal Court Manager Level 1	Executive Level 1	\$87 390
		\$94 380
Federal Court Manager Level 2	Executive Level 2	\$100 746
		\$114 245
		\$118 070
Legal Positions		
Federal Court Legal 1	From APS Level 3	\$57 095
	To Executive Level 1	\$110 992
Federal Court Legal 2	Executive Level 2	\$128 581
		\$133 620
Senior Executive Positions		
Senior Executive Service Band 1	SES Band 1	\$166 957
Senior Executive Service Band 2	SES Band 2	\$237 770

Note: The above salary rates will increase by three per cent from 6 July 2011.

MANAGEMENT OF THE COURT

Table 4.5 Senior Executive Service (SES) as at 30 June 2011

		SES LEVEL
Principal Registry		
Executive Director, Corporate Services Branch	Gordon Foster	Senior Executive Band 2
Deputy Registrar	John Mathieson	Senior Executive Band 1
Deputy Registrar, eServices/Native Title	Louise Anderson	Senior Executive Band 1
New South Wales District Registry		
District Registrar	Michael Wall	Senior Executive Band 2
Deputy District Registrar	Jennifer Hedge	Senior Executive Band 1
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	Heather Baldwin	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

Workplace bargaining

Negotiations for the Court's 2011–14 Enterprise Agreement commenced and were completed during the reporting period. The new Agreement is for three years as provided under the APS Bargaining Framework.

During the reporting period, the Court has relied on determinations under s 24 of the Public Service Act 1999 for new SES staff and other employment arrangements not covered by the Court's Enterprise Agreement.

The Court has fifteen employees who remain on AWA's (nine SES and six non-SES) and four employees on individual s 24 determinations (one SES and three non-SES).

The Court is aiming to move non-SES staff to flexibility agreements under the Enterprise Agreement in 2011–12. Similarly, the Court will be looking to move existing SES staff on AWA's to common law contracts and s 24 determinations in the coming year.

Performance Pay

There were no performance pay arrangements in 2010–11.

Occupational Health and Safety

The Court's health and safety practices continued to ensure that its ability to meet business objectives was not compromised by workplace health issues. In addition, the Court continued to pursue a range of proactive workplace health measures as detailed below. Average days of unplanned leave per staff member for 2010–11 was 7.41, compared with 7.80 in 2009–10. There were four claims for workers compensation in 2010–11 compared with five in 2009–10. More generally, Court management actively worked with the Court's Occupational Health and Safety (OHS) Committee to maintain and where possible improve health and safety in the workplace. Specific measures included:

- Arranging regular meetings of the National OHS Committee and other consultative forums such as the National Consultative Committee and Regional Consultative Committees, all of which have a significant OHS focus.
- Continuing to conduct regular workplace inspections during 2010–11 in accordance with a check-list developed in consultation with the OHS Committee.
- Making available annual health checks and flu shots for all staff, provided for in the Enterprise Agreement (currently used by thirty-five per cent of staff).
- Providing OHS representative training (for four staff).
- Providing access to eyesight testing and reimbursement for spectacles where needed for screen-based work.
- Continuing to provide access to the Court's Employee Assistance Program.
- Encouraging health and fitness-related activities by providing funding via the Court's Health and Fitness policy.

During the reporting year, no provisional improvement notices were issued under s 29 of the OHS Act. No directions or notices under s 46 and s 47 of the OHS Act were served on the Court prohibiting the use of any workplace, plant or substance. There were no accidents or dangerous occurrences that required the giving of notice under s 68 of the OHS Act.

The Court continued to manage its workers compensation cases proactively throughout the reporting period.

Workplace Diversity

The Court remains strongly committed to diversity in the workplace and has developed a wide range of flexible employment conditions with the aim of accommodating the needs of a diverse range of staff. These conditions have assisted the Court in competing with private sector, and other public sector, employers in attracting and retaining employees in key areas, for example legal staff.

The Court's human resource policies actively foster a workplace that is free from discrimination and harassment and is characterised by high levels of employee engagement and consultation. Further training sessions on workplace harassment and bullying are currently being developed for presentation through 2011–12.

The Court also continued to build upon strategies in its Workplace Diversity plan. This included developing a draft Indigenous Employment Strategy, with the aim of increasing the number of indigenous employees in the Court.

MANAGEMENT OF THE COURT

The Court also continued to actively participate in the Employers Disability Network's 'Stepping Into Law' program via the engagement of disabled legal interns. Feedback from interns has been very positive with most reporting they believe the placement will improve their prospects of pursuing a career in the law. The Court will continue the program with funding for up to three interns in 2011–12.

Workforce planning

During 2010–11, Human Resources staff continued to work actively on workforce planning and organisation development projects. Specific workforce planning issues include ensuring that Court employees, such as casual court officers, have the technological skills needed to work in an eCourt environment. Another challenge is to ensure that the Court's organisational structures and work practices are developed in a way that complements its eServices initiatives.

To this end Human Resources staff worked closely with the Court's eServices team to assist with the identification of future workforce requirements, and organisational structures, to support proposed changes to work practices.

As outlined in more detail under 'Training and Development', Human Resources staff also worked with registries to develop three capability streams: excellence in customer service; legislation and practice; and technical skills and innovation. These capability streams now underpin the Court's learning and development activities and will also be the focus of new performance management and recruitment and selection policies to be developed in 2011–12.

Retention Strategies

The Court has a range of strategies in place to attract and retain staff including flexible employment conditions and flexibility agreements under the Enterprise Agreement. The Court continued to refine these through 2010–11 and modify them as required to meet specific issues and cases. Some issues that were addressed included the attraction and retention of legal staff and measures to address the needs of skilled staff approaching retirement.

Work life balance

As noted already, the Court's Enterprise Agreement 2010–11 and a range of other human resources policies provide flexible working arrangements to help employees balance their work and other responsibilities, including young families and ageing parents. The conditions available include access to part-time work, job sharing, flexible leave arrangements and purchased leave.

The Court also provides a wide range of other family-friendly initiatives including improved parental and adoption leave arrangements and 'homework' rooms or similar appropriate facilities for staff with school aged children.

Reward and recognition

The Court encourages and recognises exceptional performance through its annual National Excellence Service Award. This was redesigned in 2010–11 to better reflect the Court's capability streams and will be further refined in the coming year to that end. The Award is used to recognise the work of both individual staff and teams. The Chief Justice presented the National Excellence Service Award at a ceremony held at the Queensland Registry on 7 February 2011. The award ceremony coincided with the 34th anniversary of the Court's Foundation Day, 7 February 1977.

The Court also introduced a program for recognising staff as they reach ten, fifteen, twenty and more years of employment in the Court.

Training and development undertaken and its impact

During 2010–11 the Court offered a range of options to assist employees develop and improve their knowledge and skills, ensuring they have the capabilities needed now and for the future.

The Organisational Development team continued to work closely with the eServices section to support staff with the roll-out of the eLodgment platform across the Court's registries. This work will continue in 2011–12 with the development of a capability framework to reflect the skills required by staff as eServices initiatives are implemented.

Registry managers were surveyed during the reporting year to determine the Court's national training priorities. These priorities then became projects within the three capability streams that form the Court's National Training Initiative. A training program focusing on the priorities identified in each of these three streams is being developed.

In 2010–11 the Organisational Development team developed and conducted a national workshop for Executive Assistants and coordinated a rollout of MS Windows Outlook training for all staff. Other in-house training developed and delivered by Court staff included: comprehensive training to support the implementation of the revised Court Rules; refresher training on the use of the Court's case management, eLodgment and videoconferencing systems; and training for the Court's Assisted Dispute Resolution practitioners.

More generally, training was carefully targeted towards the development of essential core skills and the Court spent \$35 641 on external training during the reporting period.

The Court's Study Assistance policy continued to operate and provided staff with leave and financial assistance to pursue approved tertiary studies. During the reporting period \$48 070 was reimbursed to staff undertaking studies under the policy.

Property management

The Court occupies law court buildings in every Australian capital city. The buildings are all shared with other jurisdictions and are all owned by governments.

- Court buildings in Brisbane, Canberra, Melbourne, Hobart, Adelaide and Perth are leased from the Commonwealth through the Department of Finance and Deregulation. The Court, along with other occupying jurisdictions, contributes funding to cover rent, maintenance, operation and utility costs. These arrangements are currently under review by the Department of Finance and Deregulation.
- In Sydney, the Law Courts Building at Queens Square is owned by a private company – Law Courts Limited. In turn, that company is jointly owned by the Commonwealth and NSW State governments. In contrast to the Commonwealth owned buildings, the Court does not pay rent, outgoings or utility costs.
- The Court also leases a small area in the Northern Territory Supreme Court Building in Darwin.

MANAGEMENT OF THE COURT

The Court's Property Section contributes to the management of the buildings and also manages construction projects with the Court's tenancies. Achievements during the year include:

- Queens Square – completion of levels 16, 19 and 20. These complete the refurbishment of the Court's space in the building and provide an additional five courts, new judicial facilities and office space. The floors were occupied in December 2010 and January 2011. Temporary court and office facilities in nearby buildings, leased to facilitate the construction program, were vacated at the same time. For the first time in many years all New South Wales judges and staff are located in the same building. Works will continue for some years on floors occupied by other jurisdictions.
- Melbourne – Completion of a new jury courtroom and jury deliberation room. A new large courtroom has been provided by combining two smaller courts. Both the new court and jury room are designed to be 'multi purpose' facilities to maximise return on investment.
- Melbourne – Mediation Facility, Stage 2. These works, on level 6, complete a two stage project that has provided new specially designed facilities to support Assisted Dispute Resolution – an important and very busy aspect of the Court's operations in Victoria.
- Brisbane – Registry Counter. The new facility replaces a stand up 'post office counter' and provides a new lower counter where both members of the public and staff are seated and conduct their business in a comfortable and professional environment. Other Registry counters will be similarly upgraded as funds permit.

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.

In other developments, a Property Management Plan was prepared which examines the Court's current and future property needs. The plan was prepared in accordance with the *Commonwealth Property Management Guidelines* and was approved in December 2010.

Security

During the year work continued to complete and fully commission a new national access control system that is linked to all Commonwealth-owned law court buildings. The new system is part of an ongoing national program to progressively upgrade security infrastructure. The program will proceed as funds permit.

The Court continues to develop security policies and other documents in accordance with its obligations under the Government's *Protective Security Policy Framework*. In addition a National Risk Review was completed and physical security was reviewed as part of the Court's internal audit program. The recommendations of both reviews are currently under consideration.

Environmental management

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

The Court, together with other jurisdictions in shared premises, seeks to reduce the impact of its operations on the environment through the following measures:

- Environmental Management Systems are in place in all buildings to minimise the consumption of energy, water and waste.
- The Court has established a National Environment Committee with sub-committees in most registries. The committee seeks to raise staff awareness of workplace environment issues.
- The Court has developed a National Environmental Initiatives Policy which encourages staff to adopt water and energy savings practices.

All Court property upgrade projects comply with the Building Code of Australia, which includes energy efficient light fittings, programmable lighting (which turns off automatically when not required) and efficient air conditioning and power supply systems. The completion of the Court's floors in the Queens Square refurbishment project means that a significant proportion of the Court's accommodation has been upgraded with the latest and most efficient fittings and building services.

Technology services

The judges' Information Technology (IT) Committee oversees the Court's technology services. During 2010–11 the key projects in this area included the following.

Deployment of new personal computers

During the reporting period the Court rolled out new laptop and desktop computers running the Windows 7 platform. Through this project the overall number of computers was reduced by twenty-five per cent.

Deployment of new multi functional devices and printers

In 2010–11, under the Attorney-General's Department's contract with Lexmark, the Court replaced its photocopiers and printers. The deployment of new multi-function devices resulted in the overall number of printers and copiers falling by approximately thirty per cent.

Revised IT security policy

The IT Committee approved a revised IT Security Policy during the reporting year. Rollout of the new policy has commenced with the implementation of more robust passwords.

Replacement of Private Automatic Branch Exchanges (PABX's)

During the course of the reporting year the Court commenced the replacement of ageing PABX's in all registries under a joint contract with the Family Court of Australia and VOIP Pty Ltd. When completed, the Court will implement a national voice network enabling substantially reduced call costs.

eServices strategy

In addition to the information provided in Part 3, the following outlines the progress during the year on the various components of the Court's eServices Strategy.

eCourtroom

The primary focus of the eService Strategy during 2010-11 has been the launch of eLodgment and the integration of the existing eCourtroom application with eLodgment and the Court's case management application, Casetrack.

This integration work involved reviewing the effectiveness of the different applications in managing on-line hearings and meeting the requirements of the judges, the legal community and the general public.

Using funds received under the Commonwealth Government's Information and Communications Technology Business as Usual (ICT BAU) Reinvestment Fund, the Court worked with the developers of the original eCourtroom and the developers of eLodgment to integrate the two applications providing both a single sign-on facility for the external user so they can navigate seamlessly between the different applications as required, and through integration with Casetrack reducing the need for Court staff to enter data in multiple applications.

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 is welcomed and will continue to escalate into the future. Without the right document management policies, practices and tools, it is acknowledged that the Court will be challenged to manage both electronic and paper based documents and information.

In 2010-11 a report was received from specialist consultants which has assisted the Court to identify its document management requirements and an implementation strategy. The report identified a number of key drivers for the Court to implement a document management system:

- The need to effectively and consistently manage the increasing volume of email correspondence that relates to cases before the Court.
- The pressing need to improve the management of network traffic generated by ad-hoc distribution of documents via email and other mechanisms.
- The impact of eLodgment, since it is anticipated that the bulk of court file documents will be lodged electronically in the near future.

The first phase of implementation will focus on the Court's highest current priority – that is, a system for the management of electronically filed material.

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.

Library Review

A series of three separate but related reviews that focused directly or indirectly on the Court's library services were completed in August 2010. As a result the following recommendations were implemented:

- The integration of Principal Registry library and information staff undertaking work that has an 'electronic information services' focus into the eServices Business Unit.
- The incorporation of the management and oversight of national library services from the Corporate Services Branch of Principal Registry into the role of the Manager, Library and Information Services in the Victorian Registry.
- A reduction of full-time equivalent library staff in the Court's Principal, South Australia, Victoria and Western Australia registries.

Library Databases

A contract was signed to upgrade the current library databases and move to external hosting and maintenance of the library management system.

PART 5

APPENDICES

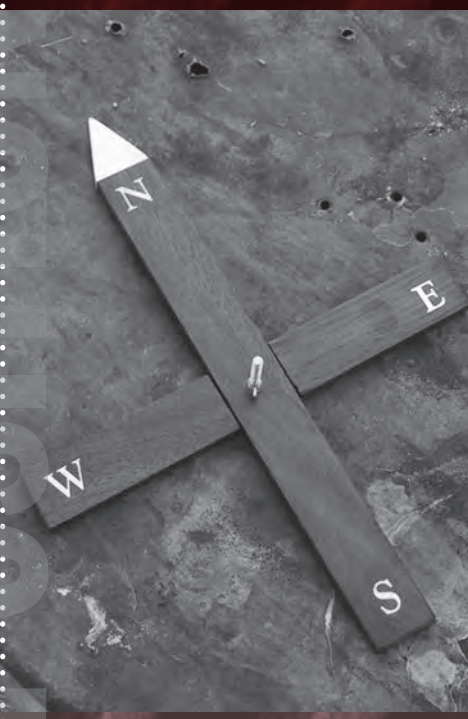
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ANTHROPOLOGIST CONFERRING CUSTOM

RECOGNITION

DISPOSITION

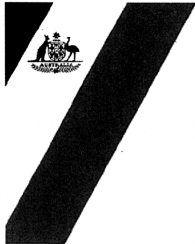


ACCOUNTABILITY

OUTCOMES



FEDERAL COURT OF AUSTRALIA INDEPENDENT AUDITOR'S REPORT



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

Report on the Financial Statements

I have audited the accompanying financial statements of Federal Court of Australia for the year ended 30 June 2011, which comprise: a Statement by the Registrar and Chief Finance Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Asset Additions; Schedule of Contingencies; Schedule of Administered Items and Notes to and forming part of the Financial Statements including a Summary of Significant Accounting Policies.

Registrar's Responsibility for the Financial Statements

The Federal Court of Australia's Registrar is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as the Registrar determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I 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 about whether the financial statements are free from material misstatement.

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 of the financial statements that give a true and fair view 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 the accounting policies used and the reasonableness of accounting estimates made by the 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 my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Opinion

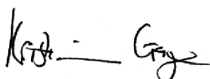
In my opinion, the financial statements of the Federal Court of Australia:

- (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 2011 and of its financial performance and cash flows for the year then ended.

Report on Other Legal and Regulatory Requirements

As described in note 20 to the financial statements, the Federal Court of Australia has recently become aware there is an increased risk of a breach of section 83 of the Constitution where payments are made from special accounts in circumstances where the payments do not accord with conditions included in the relevant legislation, and has advised that these circumstances will be investigated.

Australian National Audit Office



Kristian Gage
Engagement Executive

Delegate of the Auditor-General
Canberra

31 August 2011

FEDERAL COURT OF AUSTRALIA
STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

FEDERAL COURT OF AUSTRALIA

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STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2011 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

31 August 2011

Signed 

Peter Bowen
Chief Finance Officer

31 August 2011

FEDERAL COURT OF AUSTRALIA

STATEMENT OF COMPREHENSIVE INCOME

FOR THE PERIOD ENDED 30 JUNE 2011

	NOTES	2011 \$'000	2010 \$'000
EXPENSES			
Judge benefits	2A	27,420	26,791
Employee benefits	2A	31,410	32,015
Suppliers	2B	45,221	45,464
Depreciation and amortisation	2C	2,845	2,345
Finance costs	2D	18	13
Write-down and impairment of assets	2E	5,113	13
Loss on sale of assets	2F	3	–
Other payments to FMC	2G	387	735
Contribution to FMC	2H	2,561	6,869
Total Expenses		114,978	114,245
LESS			
OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	3A	2,532	2,659
Other revenue – FMC	3B	–	8,721
Total own-source revenue		2,532	11,380
Gains			
Sale of assets	2F	–	3
Other gains	3C	15,754	15,694
Total gains		15,754	15,697
Total own-source Income		18,286	27,077
Net cost of services		96,692	87,168
Revenue from Government	3D	88,325	88,410
Surplus (Deficit) attributable to the Australian Government		(8,367)	1,242
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves		295	–
Total Comprehensive Income		295	–
Total Comprehensive Income (Loss) attributable to the Australian Government		(8,072)	1,242

The above statement should be read in conjunction with the accompanying notes.

FEDERAL COURT OF AUSTRALIA

BALANCE SHEET

AS AT 30 JUNE 2011

	NOTES	2011 \$'000	2010 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	4A	810	587
Trade and other receivables	4B	29,591	33,691
Total financial assets		30,401	34,278
NON-FINANCIAL ASSETS			
Land and buildings	5A	12,273	11,510
Infrastructure, plant and equipment	5B	5,845	9,326
Intangibles	5C	1,596	1,621
Other non-financial assets	5E	1,825	1,679
Total non-financial assets		21,539	24,136
Total Assets		51,940	58,414
LIABILITIES			
Payables			
Suppliers	6A	(940)	(5,994)
Other Payables	6B	(915)	(1,030)
Total payables		(1,855)	(7,024)
INTEREST BEARING LIABILITIES			
Leases	7	(735)	(83)
Total interest bearing liabilities		(735)	(83)
Provisions			
Judge and employee provisions	8	(15,805)	(16,296)
Total provisions		(15,805)	(16,296)
Total Liabilities		(18,395)	(23,403)
Net Assets		33,545	35,011
EQUITY			
Contributed equity		16,325	9,719
Reserves		1,584	1,289
Retained surplus		15,636	24,003
Total Equity		33,545	35,011

The above statement should be read in conjunction with the accompanying notes.

FEDERAL COURT OF AUSTRALIA

STATEMENT OF CHANGES IN EQUITY

FOR THE PERIOD ENDED 30 JUNE 2011

	RETAINED EARNINGS		ASSET REVALUATION RESERVES		CONTRIBUTED EQUITY/CAPITAL		TOTAL EQUITY	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
Opening balance	24,003	23,808	1,289	1,289	9,719	9,719	35,011	34,816
Comprehensive Income								
Other Comprehensive Income	-	-	295	-	-	-	295	-
Surplus (Deficit) for period	(8,367)	1,242	-	-	-	-	(8,367)	1,242
Total comprehensive income	(8,367)	1,242	295	-	-	-	(8,072)	1,242
Transactions with owners								
Distribution to owners								
Return of prior years' unspent appropriation	-	(1,047)	-	-	-	-	-	(1,047)
Contributions by owners								
Equity Injection – Appropriations	-	-	-	-	360	-	360	-
Departmental Capital Budget	-	-	-	-	6,246	-	6,246	-
Sub-total transactions with owners	-	(1,047)	-	-	6,606	-	6,606	(1,047)
Closing balance as at 30 June	15,636	24,003	1,584	1,289	16,325	9,719	33,545	35,011
Closing balance attributable to the Australian Government								
Australian Government	15,636	24,003	1,584	1,289	16,325	9,719	33,545	35,011

FEDERAL COURT OF AUSTRALIA

CASH FLOW STATEMENT

FOR THE PERIOD ENDED 30 JUNE 2011

	NOTES	2011 \$'000	2010 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		1,812	6,590
Appropriations		96,035	87,292
Refunds credited		26	44
Net GST received		190	–
Total cash received		98,063	93,926
Cash used			
Judges and employees		(49,556)	(49,108)
Suppliers		(48,190)	(38,321)
Net GST paid		–	(223)
Borrowing costs		(18)	(13)
Total cash used		(97,764)	(87,666)
Net cash from / (used by) operating activities	9	299	6,261
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		19	20
Total cash received		19	20
Cash used			
Purchase of property, plant and equipment		(3,854)	(5,819)
Purchase of intangibles		(313)	(103)
Total cash used		(4,167)	(5,922)
Net cash / (used by) investing activities		(4,148)	(5,902)
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		4,195	–
Total cash received		4,195	–
Cash used			
Other – Return of Appropriation		–	(1,047)
Payment of finance lease liabilities		(123)	(160)
Total cash used		(123)	(1,207)
Net cash / (used by) financing activities		4,072	(1,207)
Net increase (decrease) in cash held		223	(848)
Cash at the beginning of the reporting period		587	1,435
Cash at the end of the reporting period	4A	810	587

The above statement should be read in conjunction with the accompanying notes.

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2011

	2011 \$'000	2010 \$'000
BY TYPE		
Commitments receivable		
Net GST recoverable on commitments	17,116	14,214
Total commitments receivable	17,116	14,214
Commitments payable		
Capital commitments		
Infrastructure, plant and equipment ¹	(139)	(1,842)
Total capital commitments	(139)	(1,842)
Other commitments		
Operating leases ²	(187,323)	(154,474)
Other ³	(817)	(34)
Total other commitments	(188,140)	(154,508)
Net commitments by type	(171,163)	(142,136)
BY MATURITY		
Commitments receivable		
One year or less	1,686	1,487
From one to five years	6,536	5,336
Over five years	8,894	7,391
Total commitments receivable	17,116	14,214
Capital commitments		
One year or less	(139)	(1,842)
Total capital commitments	(139)	(1,842)
Operating lease commitments		
One year or less	(17,591)	(14,485)
From one to five years	(71,896)	(58,694)
Over five years	(97,836)	(81,295)
Total operating lease commitments	(187,323)	(154,474)
Other commitments		
One year or less	(817)	(34)
Total other commitments	(817)	(34)
Net Commitments by Maturity	(171,163)	(142,136)

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:

The above statement should be read in conjunction with the accompanying notes.

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2011

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. In the Northern Territory, space is leased from the Northern Territory Government.

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 2011

There were no contingent losses or gains as at 30 June 2011 (2010: nil).

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ASSET ADDITIONS

FOR THE PERIOD ENDED 30 JUNE 2011

.....

The following non-financial non-current assets were added in 2010-11:

.....

	BUILDINGS	OTHER PROPERTY, PLANT & EQUIPMENT	INTANGIBLES	TOTAL
Additions funded in the current year				
By purchase – appropriation other services				
Equity Injections	–	–	272	272
By purchase – appropriation ordinary annual services				
Departmental Capital Budget	3,135	719	41	3,895
Total additions funded in the current year	3,135	719	313	4,167

Additions recognised in 2010-11 to be funded in future years

By purchase – finance leases	–	775	–	775
Total future years / unfunded additions	–	775	–	775
Total additions	3,135	1,494	313	4,942

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

.....

	BUILDINGS	OTHER PROPERTY, PLANT & EQUIPMENT	INTANGIBLES	TOTAL
Additions funded in the current year				
By purchase – appropriation other services				
Equity Injections	2,154	–	–	2,154
By purchase – appropriation ordinary annual services				
Ordinary Operating Costs	–	–	272	272
Ordinary Operating Costs	2,465	1,221	224	3,910
Total additions funded in the current year	4,619	1,221	224	3,910
Total additions	4,619	1,221	224	6,064

The above statement should be read in conjunction with the accompanying notes.

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS

FOR THE PERIOD ENDED 30 JUNE 2011

	NOTES	2011 \$'000	2010 \$'000
Income administered on behalf of Government			
<i>for the period ended 30 June 2011</i>			
Revenue			
Non Taxation Revenue			
Fees (filing and hearing fees)	13	10,514	6,961
Fines	13	2,032	785
Other revenue	13	43	145
Total revenue administered on behalf of Government		12,589	7,891
Total income administered on behalf of Government		12,589	7,891
Expenses administered on behalf of Government			
<i>for the period ended 30 June 2011</i>			
Fees and fines – provision for doubtful debts	14	(98)	(22)
Total expenses administered on behalf of Government		(98)	(22)
Assets administered on behalf of Government			
<i>as at 30 June 2011</i>			
Financial assets			
Cash and cash equivalents	15A	23	40
Receivables	15B	803	369
Total assets administered on behalf of Government		826	409
Liabilities administered on behalf of Government			
<i>As at 30 June 2011</i>			
Payables			
Refunds of fees	16A	1	–
Total payables		1	–
Total liabilities administered on behalf of Government		1	–

The above statement should be read in conjunction with the accompanying notes.

FEDERAL COURT OF AUSTRALIA

SCHEDULE OF ADMINISTERED ITEMS

FOR THE PERIOD ENDED 30 JUNE 2011

Administered cash flows

for the period ended 30 June 2011

	NOTES	2011 \$'000	2010 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees		10,304	7,011
Fines		2,059	857
Other		44	146
Total cash received		12,407	8,014
Cash used			
Refund of court fees and fines		(350)	(266)
Total cash used		(350)	(266)
Net cash flows from operating activities		12,057	7,748
Net Increase in cash held		12,057	7,748
Cash at the beginning of the reporting period		40	55
Cash from Official Public Account for:			
– Appropriations		350	265
		350	265
Cash to Official Public Account		(12,424)	(8,028)
		(12,424)	(8,028)
Cash at the end of the reporting period	17A	23	40

Administered commitments

as at 30 June 2011

There were no Administered commitments as at 30 June 2011. (2010: nil)

Administered contingencies

as at 30 June 2011

There were no Administered contingent losses or gains as at 30 June 2011. (2010: nil)

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

-
- Note 1: Summary of Significant Accounting Policies
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 - Note 4: Financial Assets
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 - Note 6: Payables
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 - Note 10: Executive Remuneration
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 - Note 23: Comprehensive Income (Loss) attributable to the Court

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 on behalf of the Government: The collection of fees and fines.

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 are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997*.

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 2010; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have 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 executor contracts 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 Statement of Comprehensive Income only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

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 effect 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 the sale of goods is recognised when:

- a) the risks and rewards of ownership have been transferred to the buyer;
- b) the entity retains no managerial involvement or effective control over the goods;
- c) the revenue and transaction costs incurred can be reliably measured; and
- d) it is probable that the economic benefits associated with the transaction will flow to the Court.

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:

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

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at the balance date. Allowances are made when collection of the debt is no longer probable.

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

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 which are reciprocal in nature, in which case revenue has been recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

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. As a result of the delay, part of the appropriation has been returned to the FMC with effect from 1 January 2011. Refer to note 1.17 for further details.

Funding that was transferred from the FMC to the FCA and the FCoA respectively was invoiced back by the FMC for the period 1 January 2010 to 31 December 2010. This arrangement was 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.

Revenue

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 entity 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’ (less any formal reductions) and Departmental Capital Budgets (DCBs) 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 \$9,754,417 (2009-10: \$9,394,987). 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.

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 Contingent Liabilities and Contingent Assets

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.14 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.

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

1.15 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 in the surplus / (deficit). 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.

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:

	2011	2010
Leasehold improvements	10 years or Lease term	10 years or Lease term
Plant and equipment – excluding library materials	3 to 25 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.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no future economic benefits are expected from its use or disposal.

1.16 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 (2009-10: 5 years).

All software assets were assessed for indications of impairment at 30 June 2011.

1.17 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 from the Australia Taxation Office; and
- for receivables and payables.

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

1.18 Other expenses – payments to FMC

The Court made a contribution of \$2.561m (2010: \$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 was invoiced back by the Federal Magistrates Court until 31 December 2010. From that date, the appropriation has been reallocated to the FMC. \$2.561m was transferred to the Federal Magistrates Court for the period 1 January 2011 to 30 June 2011. Refer to Note 1.5 Revenue from Government.

For the period 1 July 2010 to 30 June 2011, the Court provided \$8.760m worth of resources free of charge to the Federal Magistrates Court.

1.19 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 17: 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.

Note 2: Expenses

	2011 \$'000	2010 \$'000
NOTE 2A: JUDGE AND EMPLOYEE BENEFITS		
Judge remuneration	17,665	17,396
Judge notional superannuation	9,755	9,395
	27,420	26,791
Employee wages & salaries	27,256	26,986
Employee superannuation	3,721	3,799
Employee separation and redundancies	433	1,230
	31,410	32,015
Total judge and employee benefits	58,830	58,806
NOTE 2B: SUPPLIERS		
Goods and Services		
Property operating costs	7,050	7,351
Library purchases	2,729	2,491
Information technology expenditure	2,951	3,123
Travel expenditure	3,076	2,715
Contractors and consultants	1,554	1,635
Other goods and services	3,003	3,107
Total goods and services	20,363	20,422
Goods and services are made up of:		
Provision of goods – external parties	1,965	1,913
Rendering of services – related entities	1,374	1,459
Rendering of services – external parties	17,024	17,050
Total goods and services	20,363	20,422
Other supplier expenses		
Operating lease rentals:		
Minimum Lease Payments	24,646	24,886
Workers compensation premiums	212	156
Total other supplier expenses	24,858	25,042
Total supplier expenses	45,221	45,464

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2011 \$'000	2010 \$'000
NOTE 2C: DEPRECIATION AND AMORTISATION		
Depreciation:		
Buildings	1,497	1,057
Property, plant and equipment ¹	900	1,002
Total depreciation	2,397	2,059
Amortisation:		
Intangibles:		
Computer Software	322	137
Leased plant and equipment	126	149
Total amortisation	448	286
Total depreciation and amortisation	2,845	2,345

¹ Depreciation expenses for finance leases were included in the line 'Leased plant and equipment' above. The Court has equipment under finance lease arrangements worth \$719,835 (2010: \$71,024).

NOTE 2D: FINANCE COSTS

Finance leases	18	13
Total finance costs	18	13

NOTE 2E: WRITE-DOWN AND IMPAIRMENT OF ASSETS

Non-financial assets		
Impairment of plant & equipment	5,113	13
Total write-down and impairment of assets	5,113	13

NOTE 2F: SALE OF ASSETS

Infrastructure, plant and equipment:		
Proceeds from sale	18	3
Carrying value of assets sold	21	-
Net gain(loss) from sale of assets	(3)	3

NOTE 2G: OTHER PAYMENTS TO FMC

Other	387	735
Total other payments to FMC	387	735

NOTE 2H: CONTRIBUTION TO FMC

Contribution to FMC	2,561	6,869
Total contribution to FMC	2,561	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 until 31 December 2010. From this date, the appropriation has been returned to the Federal Magistrates Court. See Note 1.5 Revenue from Government for further information.

Note 3: Income

OWN-SOURCE REVENUE

	2011 \$'000	2010 \$'000
NOTE 3A: SALE OF GOODS AND RENDERING OF SERVICES		
Rendering of services – related entities	1,216	1,934
Rendering of services – external entities	1,316	725
Total sale of goods and rendering of services	2,532	2,659
NOTE 3B: OTHER REVENUE – FMC		
Other FMC	–	8,721
Total other revenue – FMC	–	8,721
GAINS		
NOTE 3C: OTHER GAINS		
Liabilities assumed by other agencies	9,755	9,395
Resources received free of charge	5,999	6,299
	15,754	15,694
REVENUE FROM GOVERNMENT		
NOTE 3D: REVENUE FROM GOVERNMENT		
Appropriation:		
Departmental outputs	88,325	88,410
Total revenue from Government	88,325	88,410

Resources received free of charge includes an amount of \$5,547,582 (2009-10: \$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.

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 4: Financial Assets

	2011 \$'000	2010 \$'000
NOTE 4A: CASH AND CASH EQUIVALENTS		
Cash on hand or on deposit	810	587
Total cash and cash equivalents	810	587
	2,532	2,659

NOTE 4B: TRADE AND OTHER RECEIVABLES		
Goods and services – external parties	385	186
Appropriations receivable:		
for existing outputs – operating	26,160	28,736
for existing outputs – capital	2,411	
accrued appropriations	221	3,743
GST receivable from the Australian Taxation Office	414	1,026
Total trade and other receivables (gross)	29,591	33,691
Less impairment allowance account		
Goods and Services	–	–
Total trade and other receivables (net)	29,591	33,691

Receivables are aged as follows:

Not overdue		
Overdue by:	29,463	33,657
Less than 30 days	73	4
30 to 60 days	39	3
61 to 90 days	4	–
More than 90 days	12	27
	128	34
Total receivables (gross)	29,591	33,691

All receivables are current. Credit terms are net 30 days (2010: 30 days).

Reconciliation of the impairment allowance account:

Opening balance	–	–
Amounts written off	–	–
Increase/decrease recognised in net surplus	–	–
Closing balance	–	–

Note 5: Non-Financial Assets

	2011 \$'000	2010 \$'000
NOTE 5A: LAND AND BUILDINGS		
Leasehold improvements		
Fair value	12,594	14,937
Accumulated depreciation	(321)	(3,427)
Total leasehold improvements	12,273	11,510
Total land and buildings (non-current)	12,273	11,510

No indications of impairment were found for land and buildings

NOTE 5B: INFRASTRUCTURE, PLANT AND EQUIPMENT

Infrastructure, plant and equipment		
Fair value	6,801	13,956
Accumulated depreciation	(956)	(4,630)
Total infrastructure, plant and equipment	5,845	9,326
Total infrastructure, plant and equipment (non-current)	5,845	9,326

All revaluations are conducted in accordance with the valuation policy stated in Note 1. In 2010-11, 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	442	170
Internally developed – in use	1,301	1,291
Purchased – in use	2,085	2,121
Total Computer Software	3,828	3,582
Accumulated amortisation	(2,232)	(1,961)
Total intangibles (non-current)	1,596	1,621

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 (2010-11)

ITEM	LEASEHOLD IMPROVEMENT – TOTAL LAND AND BUILDINGS \$'000	INFRASTRUCTURE, PLANT AND EQUIPMENT \$'000	COMPUTER SOFTWARE – INTANGIBLES \$'000	TOTAL \$'000
AS AT 1 JULY 2010				
Gross book value	14,937	13,956	3,582	32,475
Accumulated depreciation/amortisation	(3,427)	(4,630)	(1,961)	(10,018)
Net book value 1 July 2010	11,510	9,326	1,621	22,457
Additions*	3,135	1,494	312	4,941
Revaluations and impairment recognised in other comprehensive income.	312	(17)	–	295
Revaluation expense	–	(3,904)	–	(3,904)
Depreciation/amortisation expense	(1,497)	(1,027)	(321)	(2,845)
Disposals:				
Other disposals	(1,187)	(27)	(16)	(1,230)
Net book value 30 June 2011	12,273	5,845	1,596	19,714
Net book value as of 30 June 2011 represented by:				
Gross book value	12,594	6,801	3,828	23,223
Accumulated depreciation/amortisation	(321)	(956)	(2,232)	(3,509)
	12,273	5,845	1,596	19,714

*Disaggregated additions information is disclosed in the Schedule of Asset Additions.

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*:	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

* Disaggregated additions information is disclosed in the Schedule of Asset Additions.

	2011 \$'000	2010 \$'000
NOTE 5E: OTHER NON-FINANCIAL ASSETS		
Prepayments	1,825	1,679
Total other non-financial assets	1,825	1,679
Total other non-financial assets that are expected to be recovered in:		
No more than 12 months	1,793	1,675
Total other non-financial assets	1,793	1,675
More than 12 months	32	4
Total other non-financial assets	32	4

No indicators of impairment were found for other non-financial assets

Note 6: Payables

	2011 \$'000	2010 \$'000
NOTE 6A: SUPPLIERS		
Trade creditors and accruals	886	5,590
Deferred Revenue	54	404
Total supplier payables	940	5,994

All supplier payables are expected to be settled within 12 months

Settlement is usually made net 30 days.

NOTE 6B: OTHER PAYABLES

Salaries and wages	606	585
Superannuation	309	281
Separations and redundancies	–	164
Total other payables	915	1,030

All other payments are expected to be settled within 12 months.

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 7: Interest Bearing Liabilities

	2011 \$'000	2010 \$'000
NOTE 7: LEASES		
Finance leases	735	83
Total finance leases	735	83
Payable:		
Within one year:		
Minimum lease payments	231	78
Deduct: future finance charges	(45)	(4)
In one to five years:		
Minimum lease payments	606	9
Deduct: future finance charges	(57)	—
Finance leases recognised on the balance sheet	735	83

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 5.14% (2010: 6.40%). 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

	2011 \$'000	2010 \$'000
NOTE 8A: JUDGE & EMPLOYEE PROVISIONS		
Long Leave (Judges)	9,425	10,096
Leave	6,380	6,200
Total judge and employee provisions	15,805	16,296
Employee provisions are expected to be settled in:		
No more than 12 months	4,055	4,006
More than 12 months	11,750	12,290
Total judge and employee provisions	15,805	16,296

Note 9: Cash flow reconciliation

	2011 \$'000	2010 \$'000
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash Flow Statement	810	587
Balance Sheet	810	587
Difference	–	–
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(96,692)	(87,168)
Add revenue from Government	88,325	88,410
Adjustments for non-cash items		
Depreciation/amortisation	2,845	2,345
Net write down of non-financial assets	5,113	13
(Gain)/Loss on disposal of assets	3	(3)
Changes in assets/liabilities		
(Increase)/decrease in net operating receivables	6,511	(1,334)
(Increase)/decrease in prepayments	(146)	(273)
Increase/(decrease) in suppliers payables	(5,054)	4,009
Increase/(decrease) in judge and employee provisions	(491)	421
Increase/(decrease) in other liabilities	(115)	(159)
Net cash from/(used by) operating activities	299	6,261

Note 10: Senior Executive Remuneration

	2011 \$'000	2010 \$'000
NOTE 10A: SENIOR EXECUTIVE REMUNERATION EXPENSE FOR THE REPORTING PERIOD		
Short-term employee benefits:		
Salary (including annual leave taken)	2,408,600	2,064,557
Annual Leave accrued	174,061	154,976
Motor Vehicle and other allowances	104,702	116,818
Total Short-term employee benefits	2,687,363	2,336,351
Long Term Benefits:		
Superannuation (post-employment benefits)	318,259	257,938
Long Service leave	56,010	49,868
Termination benefits	–	126,091
Total	3,061,632	2,770,248

FEDERAL COURT OF AUSTRALIA NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 10B: AVERAGE ANNUAL REMUNERATION PACKAGES AND BONUS PAID FOR SUBSTANTIVE SENIOR EXECUTIVES AS AT THE END OF THE REPORTING PERIOD

	AS AT 30 JUNE 2011 FIXED ELEMENTS			AS AT 30 JUNE 2010 FIXED ELEMENTS				
	NO OF SENIOR EXECUTIVES	SALARY \$	ALLOWANCES \$	TOTAL \$	NO OF SENIOR EXECUTIVES	SALARY \$	ALLOWANCES \$	TOTAL \$
Total remuneration (including part-time arrangements):								
\$180,000 to \$209,999	3	\$166,957	\$22,000	\$188,957	3	\$169,213	\$22,000	\$191,213
\$210,000 to \$239,999	4	\$207,297	\$22,000	\$229,297	5	\$211,355	\$22,000	\$233,355
\$240,000 to \$269,999	3	\$228,671	\$22,000	\$250,671	1	\$230,845	\$22,000	\$252,845
\$270,000 to \$299,999	-	-	-	-	1	\$225,890	\$58,573	\$284,463
\$300,000 to \$329,999	1	\$267,910	\$57,832	\$325,742	-	-	-	-
Total	11				10			

Notes:

- 1 This table reports substantive senior executives who were employed by the Court at the end of the reporting period. Fixed elements were based on the employment agreement of each individual. Each row represents an average annualised figure (based on headcount) for the individuals in that remuneration package band (ie the "Total" column.)
- 2 No bonuses were paid to senior executives of the Court in 2010-11 or 2009-10.

Variable elements

With the exception of bonuses, variable elements were not included in the 'Fixed elements and Bonus Paid' table above. The following variable elements were available as part of senior executives' remuneration package:

- (a) On average senior executives were entitled to the following leave entitlements:
 - Annual Leave (AL): entitled to 20 days (2010: 20 days) each full year worked (pro-rata for part-time SES);
 - Personal Leave (PL): entitled to 18 days (2010: 18 days) or part-time equivalent; and
 - Long Service Leave (LSL): in accordance with Long Service Leave (Commonwealth Employees) Act 1976.

- (b) Senior executives were members of one of the following superannuation funds:
- Commonwealth Superannuation Scheme (CSS): this scheme is closed to new members, and employer contributions were averaged 13.6 percent (2010 16.2 per cent) including productivity component. More information on CSS can be found at <http://www.css.gov.au>
 - Public Sector Superannuation Scheme (PSS): this scheme is closed to new members, and current employer contributions were set at 11.9 per cent (2010: 12.7 per cent) (including productivity component). More information on the PSS can be found at <http://www.pss.gov.au>
- (c) Various salary sacrifice arrangements were available to senior executives including super, motor vehicle and expense payment fringe benefits.

NOTE 10C: OTHER HIGHLY PAID STAFF

During the reporting period, there were no employees whose salary plus performance bonus were \$150,000 or more.

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 11: Remuneration of Auditors

	2011 \$'000	2010 \$'000
Financial statement audit services are provided free of charge to the Court.		
The fair value of the services provided was:	108,000	105,000
No other services were provided by the Auditor-General.		

Note 12: Financial Instruments

	2011 \$'000	2010 \$'000
--	----------------	----------------

NOTE 12A: CATEGORIES OF FINANCIAL INSTRUMENTS

Loans and receivables

Loans and receivables

Cash on hand or on deposit	810	587
Trade receivables	385	186
Carrying amount of financial assets	1,195	773

Financial liabilities

At amortised cost:

Finance leases	735	83
Trade creditors	940	5,994
Carrying amount of financial liabilities	1,675	6,077

NOTE 12B: FAIR VALUE OF FINANCIAL INSTRUMENTS

	CARRYING AMOUNT 2011 \$'000	FAIR VALUE 2011 \$'000	CARRYING AMOUNT 2010 \$000	FAIR VALUE 2010 \$'000
Other Liabilities				
Finance leases	735	735	83	83
Total	735	735	83	83

Fair value for Finance leases which was determined for disclosure purposes was calculated based on the present value of future principal and interest cash flows, discounted at 5.14% at the reporting date.

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 (2011: \$385,394 and 2010: \$186,106). The Court has assessed the risk of default on payment and has allocated nil in 2011 (2010: 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 2011 \$'000	NOT PAST DUE NOR IMPAIRED 2010	PAST DUE OR IMPAIRED 2011 \$'000	PAST DUE OR IMPAIRED 2010
Loans and receivables				
Cash	810	587	-	-
Trade receivables	257	152	128	34
Total	1,067	739	128	34

Ageing of financial assets that are past due but not impaired for 2011

	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	73	39	4	12	128
Total	-	-	-	-	128

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					
Trade receivables	4	3	-	27	34
Total	4	3	-	27	34

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

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 2011

	WITHIN 1 YEAR 2011 \$'000	1 TO 5 YEARS 2011 \$'000	TOTAL 2011 \$'000
Other liabilities			
Payables – Suppliers	940	–	940
Finance leases	186	549	735
Total	1,126	549	1,675

Maturities for non-derivative financial liabilities 2010

	WITHIN 1 YEAR 2010 \$'000	1 TO 5 YEARS 2010 \$'000	TOTAL 2010 \$'000
Other liabilities			
Payables – Suppliers	5,994	–	5,994
Finance leases	74	9	83
Total	6,068	9	6,077

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 or other price risk.

Interest Rate Risk

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

Note 13: Income Administered on Behalf of Government

	2011 \$'000	2010 \$'000
Non-Taxation Revenue		
Fees (filing and hearing fees)	10,514	6,961
Fines	2,032	785
Other	43	145
Total revenue administered on behalf of government	12,589	7,891

Note 14: Expenses Administered on Behalf of Government

	2011 \$'000	2010 \$'000
Expenses		
Fees and fines – provision for doubtful debts	98	22
Total expenses administered on behalf of government	98	22

Note 15: Assets Administered on Behalf of Government

	2011 \$'000	2010 \$'000
Financial Assets		
NOTE 15A: CASH AND CASH EQUIVALENTS		
Cash on hand or on deposit	23	40
Total cash and cash equivalents	23	40

NOTE 15B: RECEIVABLES

Fees (filing and hearing fees)	901	391
Less: Impairment allowance account	(98)	(22)
Total receivables (net)	803	369

All receivables are expected to be recovered within 12 months.

Receivables are aged as follows:

Not overdue	247	111
Overdue by:		
– Less than 30 days	211	80
– 30 to 60 days	88	57
– 60 to 90 days	38	19
– More than 90 days	317	124
Total receivables (gross)	901	391

The total of the impairment allowance is aged over 90 days.

Receivables are with entities external to the Australian Government. Credit terms are net 30 days (2010: 30 days).

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Reconciliation of the impairment allowance accounts:

	2011 \$'000	2010 \$'000
Opening balance	22	59
Increase/decrease recognised in net surplus	98	22
Amounts written off	(22)	(59)
Amounts recovered and reversed	-	-
Closing balance	98	22

Note 16: Liabilities administered on behalf of Government

	2011 \$'000	2010 \$'000
NOTE 16A: SUPPLIERS		
Refund of fees payable	1	-
Total suppliers	1	-

Note 17: Administered Reconciliation Table

	2011 \$'000	2010 \$'000
Opening administered assets less administered liabilities as at 1 July	409	303
Plus: Administered income	12,589	7,891
Less: Administered expenses	(98)	(22)
Administered transfers to/from the Australian Government		
Appropriation transfers from OPA	350	265
Transfers to OPA	(12,424)	(8,028)
Closing administered assets less administered liabilities as at 30 June	826	40

Note 18: Administered Financial Instruments

	2011 \$'000	2010 \$'000
NOTE 18A: CATEGORIES OF FINANCIAL INSTRUMENTS		
Financial Assets		
Loans and receivables		
Cash	23	40
Trade receivables	901	391
Carrying amount of financial assets	924	431

NOTE 18B: 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.

	2011	2010
	\$'000	\$'000
Financial Assets		
Loans and Receivables		
Receivables	901	391
Total	901	391

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

Receivables **\$98,310** in 2011 (2010: \$22,546)

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

	NOT PAST DUE NOR IMPAIRED 2011	NOT PAST DUE NOR IMPAIRED 2010	PAST DUE OR IMPAIRED 2011	PAST DUE OR IMPAIRED 2010
	\$'000	\$'000	\$'000	\$'000
Loans and receivables				
Cash	23	40	–	
Trade receivables	247	111	654	280
Total	270	151	654	280

Ageing of financial assets that are past due but not impaired for 2011

	0 TO 30 DAYS	31 TO 60 DAYS	61 TO 90 DAYS	90+ DAYS	TOTAL
	\$'000	\$'000	\$'000	\$'000	\$'000
Loans and receivables					
Receivables	211	88	38	317	654
Total	211	88	38	317	654

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

	0 TO 30 DAYS	31 TO 60 DAYS	61 TO 90 DAYS	90+ DAYS	TOTAL
	\$'000	\$'000	\$'000	\$'000	\$'000
Loans and receivables					
Receivables	80	57	19	102	258
Total	80	57	19	102	258

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 19: Appropriations

Table A: Annual Appropriations ('Recoverable GST exclusive')

	2010-11 APPROPRIATIONS					APPROPRIATION APPLIED IN 2011 (CURRENT AND PRIOR YEARS) \$'000	VARIANCE \$'000
	APPROPRIATION ACT		FMA ACT		TOTAL APPROPRIATION \$'000		
	ANNUAL APPROPRIATION	APPROPRIATIONS REDUCED (A)	SECTION 30 \$'000	SECTION 31 \$'000			
DEPARTMENTAL							
Ordinary Annual Services	99,800	(1,707)	26	1,812	99,931	(101,782)	(1,851)
Other Services							
Equity	360	-	-	-	360	(272)	88
Total departmental	100,160	(1,707)	26	1,812	100,291	(102,054)	(1,763)

Notes:

(a) Appropriations reduced under Appropriation Act (No 1) 2010-11: section 10. Departmental appropriations do not lapse at year end. However, the responsible minister may decide that part or all of an appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2011 there was a reduction in departmental appropriation in accordance with a determination by the Finance Minister.

	2010-11 APPROPRIATIONS					APPROPRIATION APPLIED IN 2011 (CURRENT AND PRIOR YEARS) \$'000	VARIANCE \$'000
	APPROPRIATION ACT		FMA ACT		TOTAL APPROPRIATION \$'000		
	ANNUAL APPROPRIATION	APPROPRIATIONS REDUCED (A)	SECTION 30 \$'000	SECTION 31 \$'000			
DEPARTMENTAL							
Ordinary Annual Services	84,667	(1,047)	44	6,590	90,254	(91,371)	(1,117)
Other Services							
Equity	-	-	-	-	-	(2,154)	(2,154)
Total departmental	84,667	(1,047)	44	6,590	90,254	(93,525)	(3,271)

Notes:

(a) Appropriations reduced under Appropriation Act (No 1) 2006-07: section 9 (\$349,000), Appropriation Act (No 1) 2007-08: section 9 (\$350,000) and Appropriation Act (No 1) 2008-09: section 10 (\$348,000). Departmental appropriations do not lapse at year end. However, the responsible minister may decide that part or all of an appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. In 2010 there was a reduction in departmental appropriation in accordance with a determination by the Finance Minister.

(b) The amount of appropriation applied against equity is from amounts appropriated to the Court in previous financial years.

Table B: Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')

AUTHORITY	2011 \$'000	2010 \$'000
Appropriation Act (No 4) 2005-06	1	1
Appropriation Act (No 1) 2009-10	–	28,735
Appropriation Act (No 1) 2010-11	28,482	–
Appropriation Act (No 2) 2010-11	88	–
Total	28,571	28,736

Note 20: Special Accounts

The Federal Court has recently become aware that there is an increased risk of non-compliance with Section 83 of the Constitution where payments are made from special accounts in circumstances where the payments do not accord with conditions included in the relevant legislation.

The Court will investigate these circumstances and any impact on its special accounts shown below, seeking legal advice as appropriate.

OTHER TRUST MONEYS ACCOUNT	2011 \$'000	2010 \$'000
-----------------------------------	------------------------	------------------------

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	19,433	69,706
Other receipts	646,073	492,749
Total credits	665,506	562,455
Payments made	646,690	543,022
Balance carried to next period	18,816	19,433
Represented by:		
Cash – held by the Court	18,816	19,433
Total	18,816	19,433

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2011	2010
	\$'000	\$'000

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

	2011	2010
	\$'000	\$'000

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	29,131,650	2,311,920
Other receipts	8,216,865	48,054,091
Total credits	37,348,515	50,366,011
Payments made	33,023,544	21,234,361
Balance carried to next period	4,324,971	29,131,650
Represented by:		
Cash – held by the Court	4,324,971	29,131,650
Total	4,324,971	29,131,650

	2011	2010
	\$'000	\$'000

Legal authority: *Financial Management and Accountability Act, 1997, section 39*

Purpose: 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	31,261,736	54,958,400
Other receipts	35,567,914	26,029,624
Total credits	66,829,650	80,988,024
Payments made	41,222,644	49,726,288
Balance carried to next period	25,607,006	31,261,736
Represented by:		
Cash – held by the Court	25,607,006	31,261,736
Total	25,607,006	31,261,736

Note 21: Compensation and Debt Relief

	2011	2010
	\$'000	\$'000
No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the <i>Financial Management and Accountability Act 1997</i> . (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*. (2010: No Waivers).

- -

1,306 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*. (2010: 2,302)

1,819,777 2,132,499

Departmental

No payments were made under the 'Defective Administration Scheme' during 2010-11 (2009-10 nil).

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 22: Reporting of Outcomes

NOTE 22A: 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.

OUTCOME 1	OUTCOME 1	
	2011 \$'000	2010 \$'000
Expenses		
Administered	98	22
Departmental	114,978	114,245
Total	115,076	114,267
	33,023,544	21,234,361
Income from non-government sector	4,324,971	29,131,650
Administered	12,589	7,891
Departmental	1,316	725
Total	13,905	8,616
Other own-source income		
Administered	-	-
Departmental	1,216	10,655
Total	1,216	10,655
Net cost/(contribution) of outcome delivery	100,004	94,996

NOTE 22B: MAJOR CLASSES OF DEPARTMENTAL EXPENSES, INCOME, ASSETS AND LIABILITIES BY OUTCOME

OUTCOME 1	OUTCOME 1	
	2011 \$'000	2010 \$'000
Departmental expenses		
Judges and Employees	58,830	58,806
Suppliers	45,221	45,464
Depreciation and Amortisation	2,845	2,345
Finance costs	18	13
Other Expenses	5,116	13
FMC Transfer	2,948	7,604
Total	114,978	114,245
Departmental income		
Income from government	104,079	104,104
Sale of goods and services	2,532	11,383
Total	106,611	115,487

OUTCOME 1	OUTCOME 1	
	2011 \$'000	2010 \$'000
Departmental assets		
Cash and cash equivalents	810	587
Trade and other receivables	29,591	33,691
Property, plant and equipment	18,118	20,836
Intangibles	1,596	1,621
Other non-financial assets	1,825	1,679
Total	51,940	58,414
Departmental liabilities		
Suppliers	940	5,994
Leases	735	83
Judge and employee provisions	15,805	16,296
Other payables	915	1,030
Total	18,395	23,403

NOTE 22C: MAJOR CLASSES OF ADMINISTERED EXPENSES, INCOME, ASSETS AND LIABILITIES BY OUTCOME

OUTCOME 1	OUTCOME 1	
	2011 \$'000	2010 \$'000
Administered expenses		
Doubtful debts expense	98	22
Total	98	22
Administered income		
Non-taxation revenue	12,589	7,891
Total	12,589	7,891
Administered assets		
Cash and cash equivalents	23	40
Trade and other receivables	803	369
Total	826	409
Administered liabilities		
Refund of fees payable	1	–
Total	1	–

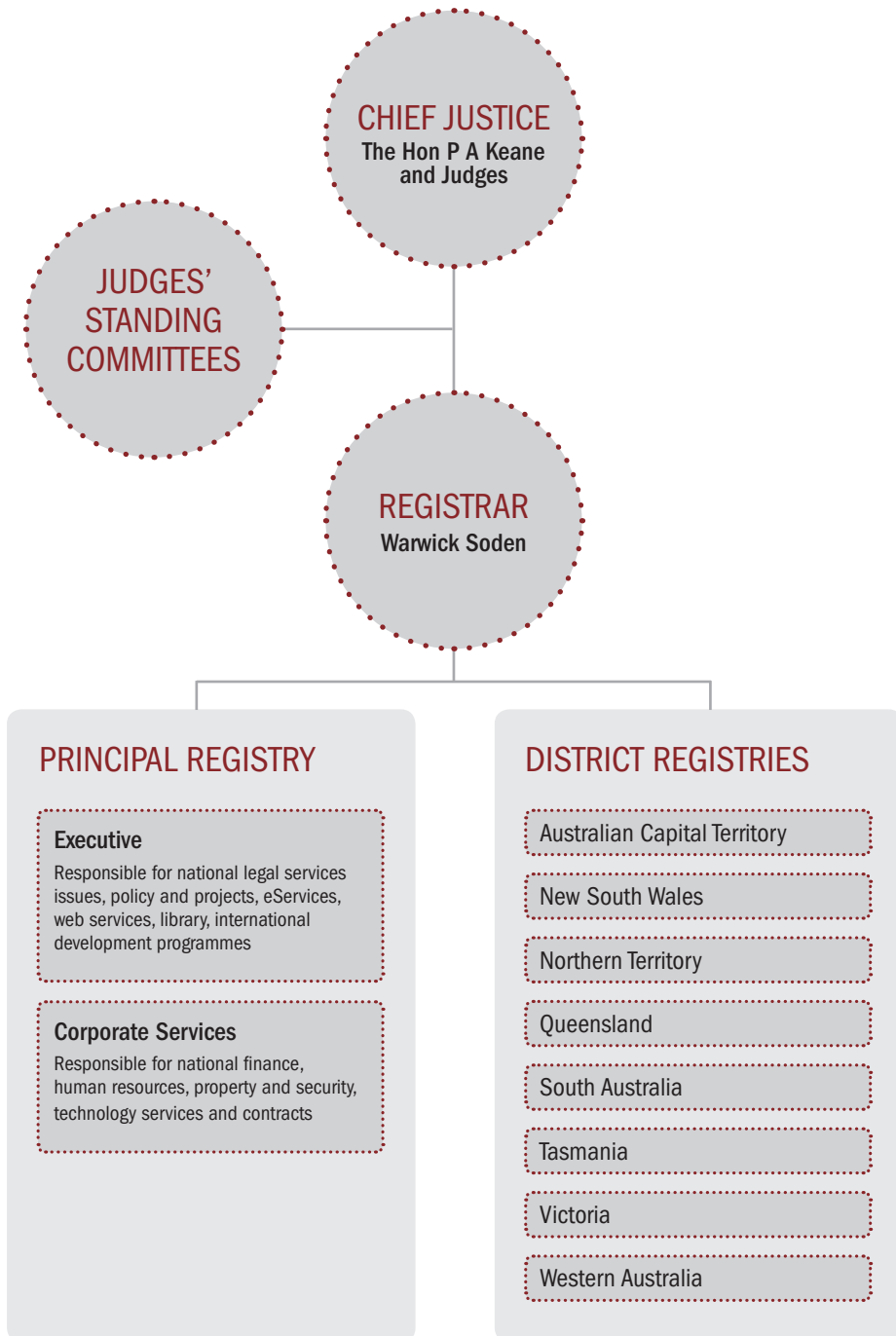
NOTE 23: COMPREHENSIVE INCOME (LOSS) ATTRIBUTABLE TO THE COURT

TOTAL COMPREHENSIVE INCOME ATTRIBUTABLE TO THE COURT	2011 \$'000	2010 \$'000
Total comprehensive income (loss)	(8,072)	1,242
Plus non-appropriated expenses		
Depreciation and amortisation expenses	2,845	–
Total comprehensive income (loss) attributable to the Court	(5,227)	1,242

APPENDIX 2 – AGENCY RESOURCE STATEMENT

	ACTUAL AVAILABLE APPROPRIATIONS FOR 2010-11 \$'000	PAYMENTS MADE 2010-11 \$'000	BALANCE REMAINING \$'000
ORDINARY ANNUAL SERVICES¹			
Departmental			
Prior year departmental appropriation	29 322	29 322	–
Departmental appropriation	93 554	65 687	27 867
s 31 relevant agency receipts	2 532	2 532	–
Total	125 408	97 541	27 867
Total ordinary annual services	125 408	97 541	27 867
OTHER SERVICES			
Departmental non-operating			
Departmental Capital appropriation	6 246	3 924	2 322
Equity Injection Appropriation	360	271	89
Previous year's outputs	–	–	–
Total	6 606	4 195	2 411
Total other services	6 606	4 195	2 411
Total Resourcing and Payments	132 014	101 736	30 278

APPENDIX 3 – FEDERAL COURT MANAGEMENT STRUCTURE



APPENDIX 4 – REGISTRARS OF THE COURT

AS AT 30 JUNE 2011

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
Principal Registry		
Registrar	Warwick Soden	
Deputy Registrars	John Mathieson	Deputy Registrar A Registrar, Federal Magistrates Court
	Louise Anderson	Deputy Registrar
	Angela Josan	Deputy Registrar
	Ian Irving	Deputy Registrar A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
Sheriff of the Federal Court of Australia	Geoff Gray	Deputy Registrar
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

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS		
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		
	Timothy Luxton	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal		
	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	Heather Baldwin	A Registrar, Federal Magistrates Court		
Deputy District Registrars	Christine Fewings			
	Murray Belcher	A Registrar, Federal Magistrates Court		
	Katie Lynch	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
			Russell Trott	A Registrar, Federal Magistrates Court
	David Blades	A Registrar, Federal Magistrates Court		

APPENDIX 4 – REGISTRARS OF THE COURT

AS AT 30 JUNE 2011

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
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
Tasmania		
District Registrar	Catherine Scott	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
	Paddy Hannigan (Based in Sydney)	A Registrar, Federal Magistrates Court
	Thomas Morgan (Based in Sydney)	A Registrar, Federal Magistrates Court
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 2011

(ONLY PRINCIPAL ACTS ARE INCLUDED)

<i>Aboriginal and Torres Strait Islander Act 2005</i>	<i>Aviation Transport Security Act 2004</i>
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	<i>Banking Act 1959</i>
<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>	<i>Bankruptcy Act 1966</i>
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	<i>Broadcasting Services Act 1992</i>
<i>ACIS Administration Act 1999</i>	<i>Building and Construction Industry Improvement Act 2005</i>
<i>Administrative Appeals Tribunal Act 1975</i>	<i>Building Industry Act 1985</i>
<i>Administrative Decisions (Judicial Review) Act 1977</i>	<i>Charter of the United Nations Act 1945</i>
<i>Admiralty Act 1988</i>	<i>Child Support (Registration and Collection) Act 1988</i>
<i>Advance Australia Logo Protection Act 1984</i>	<i>Circuit Layouts Act 1989</i>
<i>Age Discrimination Act 2004</i>	<i>Civil Aviation (Carriers' Liability) Act 1959</i>
<i>Aged Care Act 1997</i>	<i>Coal Industry Repeal Act 2001</i>
<i>Agricultural and Veterinary Chemicals Act 1994</i>	<i>Commonwealth Authorities and Companies Act 1997</i>
<i>Air Navigation Act 1920</i>	<i>Commonwealth Electoral Act 1918</i>
<i>Airports Act 1996</i>	<i>Commonwealth Places (Mirror Taxes) Act 1998</i>
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	<i>Commonwealth Serum Laboratories Act 1961</i>
<i>Anti-Personnel Mines Convention Act 1998</i>	<i>Competition and Consumer Act 2010</i>
<i>Australian Crime Commission Act 2002</i>	<i>Copyright Act 1968</i>
<i>Australian Energy Market Act 2004</i>	<i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>
<i>Australian Federal Police Act 1979</i>	<i>Corporations Act 2001</i>
<i>Australian Human Rights Commission Act 1986</i>	<i>Crimes Act 1914</i>
<i>Australian National Railways Commission Sale Act 1997</i>	<i>Criminal Code Act 1995</i>
<i>Australian Postal Corporation Act 1989</i>	<i>Cross-Border Insolvency Act 2008</i>
<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>	<i>CSL Sale Act 1993</i>
<i>Australian Securities and Investments Commission Act 2001</i>	<i>Customs Act 1901</i>
<i>Australian Sports Anti-Doping Authority Act 2006</i>	<i>Dairy Industry Service Reform Act 2003</i>
	<i>Dairy Produce Act 1986</i>
	<i>Defence Act 1903</i>
	<i>Defence Force Discipline Appeals Act 1955</i>

APPENDIX 5 – STATUTES OF THE COURT

AS AT 30 JUNE 2011

(ONLY PRINCIPAL ACTS ARE INCLUDED)

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 (Registered Organisations) Act 2009
Fair Work Act 2009
Federal Court of Australia (Consequential Provisions) Act 1976
Federal Court of Australia Act 1976
Federal Proceedings (Costs) Act 1981
Financial Sector (Business Transfer and Group Restructure) Act 1999
Financial Sector (Collection of Data) Act 2001
Financial Sector (Shareholdings) Act 1998
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 (Removal of Conclusive Certificates and Other Measures) Act 2009
Freedom of Information Act 1982
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 Broadband Network Companies Act 2011

National Environment Protection Measures (Implementation) Act 1998

National Greenhouse and Energy Reporting Act 2007

National Health Act 1953

National Health Security Act 2007

National Measurement Act 1960

National Rental Affordability Scheme Act 2008

National Security Information (Criminal Proceedings) Act 2004

National Transmission Network Sale Act 1998

National Vocational Education and Training Regulator Act 2011

Native Title Act 1993

Navigation Act 1912

Northern Territory National Emergency Response Act 2007

Nuclear Non-Proliferation (Safeguards) Act 1987

Offshore Petroleum and Greenhouse Gas Storage Act 2006

Olympic Insignia Protection Act 1987

Ombudsman Act 1976

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Paid Parental Leave Act 2010

Parliamentary Privileges Act 1987

Patents Act 1990

Payment Systems (Regulation) Act 1998

Petroleum Resource Rent Tax Assessment Act 1987

Pig Industry Act 2001

Plant Breeder's Rights Act 1994

Privacy Act 1988

Private Health Insurance Act 2007

Proceeds of Crime Act 2002

Protection of the Sea (Civil Liability for Bunker Oil Pollution Damage) Act 2008

Protection of the Sea (Harmful Anti-fouling Systems) Act 2006

Protection of the Sea (Oil Pollution Compensation Funds) Act 1993

Qantas Sale Act 1992

Radiocommunications Act 1992

Referendum (Machinery Provisions) Act 1984

Removal of Prisoners (Territories) Act 1923

Renewable Energy (Electricity) Act 2000

Resale Royalty Rights for Visual Artists 2009

Retirement Savings Accounts Act 1997

Royal Commissions Act 1902

Safety, Rehabilitation and Compensation Act 1988

Service and Execution of Process Act 1992

Shipping Registration Act 1981

Snowy Hydro Corporatisation Act 1997

APPENDIX 5 – STATUTES OF THE COURT

AS AT 30 JUNE 2011

(ONLY PRINCIPAL ACTS ARE INCLUDED)

Space Activities Act 1998

Spam Act 2003

Superannuation (Resolution of Complaints) Act 1993

Superannuation Contributions Tax (Assessment and Collection) Act 1997

Superannuation Industry (Supervision) Act 1993

Surveillance Devices Act 2004

Sydney Airport Demand Management Act 1997

Tax Agent Services Act 2009

Taxation Administration Act 1953

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Interception and Access) Act 1979

Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997

Telecommunications Act 1997

Telstra Corporation Act 1991

Termination Payments Tax (Assessment and Collection) Act 1997

Therapeutic Goods Act 1989

Trade Marks Act 1995

Transport Safety Investigation Act 2003

Treasury Bills Act 1914

Veterans' Entitlements Act 1986

Water Act 2007

Water Efficiency Labelling and Standards Act 2005

Wine Australia Corporation Act 1980

Wool International Privatisation Act 1999

Wool Services Privatisation Act 2000

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 sixteen 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 87 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 Part 3 and Table 6.4. All other tables and figures in this Appendix and through the Report are based on major CoA.

APPENDIX 6 – WORKLOAD STATISTICS

Table 6.1 – Summary of Workload Statistics – Original and Appellate Jurisdictions
Filings of Major CoAs (including Appellate and Related Actions)

CAUSE OF ACTION	2006-07	2007-08	2008-09	2009-10	2010-11
Total CoAs					
Filed	4925	4428	3862	3646	4941
Finalised	5229	4737	4131	3533	4648
Current	3228	2919	2650	2763	3056
Corporations					
Filed	1926	1695	1673	1676	2838
Finalised	2087	1682	1745	1396	2543
Current	518	531	459	739	1034
Bankruptcy					
Filed	282	247	208	188	217
Finalised	343	263	236	169	205
Current	120	104	76	95	107
Native Title					
Filed	66	33	42	36	83
Finalised	93	73	92	68	91
Current	586	546	496	464	456
Total CoAs (excluding Corporations, Bankruptcy & Native Title)					
Filed	2651	2453	1939	1746	1803
Finalised	2706	2719	2058	1900	1809
Current	2004	1738	1619	1465	1459

Table 6.2 – Summary of Workload Statistics – Excluding Appeals and related actions
Filings of Major CoAs (excluding Appeals and Related Actions)

CAUSE OF ACTION	2006-07	2007-08	2008-09	2009-10	2010-11
Total CoAs (excl. Appeals & Related Actions)					
Filed	3543	3074	2988	2951	4303
Finalised	3846	3257	3206	2782	4036
Current	2697	2514	2296	2465	2732
Corporations (excl. Appeals & Related Actions)					
Filed	1903	1678	1636	1642	2797
Finalised	2065	1662	1717	1370	2499
Current	506	522	441	713	1011
Bankruptcy (excl. Appeals & Related Actions)					
Filed	223	201	148	127	144
Finalised	289	205	172	128	130
Current	87	83	59	58	72
Native Title (excl. Appeals & Related Actions)					
Filed	50	27	37	33	73
Finalised	80	63	87	63	82
Current	576	540	490	460	451
Total CoAs (excl. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	1367	1168	1167	1149	1289
Finalised	1412	1327	1230	1221	1325
Current	1528	1369	1306	1234	1198

APPENDIX 6 – WORKLOAD STATISTICS

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

CAUSE OF ACTION	2006-07	2007-08	2008-09	2009-10	2010-11
Total Appeals & Related Actions					
Filed	1382	1354	874	695	638
Finalised	1383	1480	925	751	612
Current	531	405	354	298	324
Corporations Appeals & Related Actions					
Filed	23	17	37	34	41
Finalised	22	20	28	26	44
Current	12	9	18	26	23
Migration Appeals & Related Actions					
Filed	1050	997	515	376	254
Finalised	1079	1099	615	421	267
Current	342	240	140	95	82
Native Title Appeals & Related Actions					
Filed	16	6	5	3	10
Finalised	13	10	5	5	9
Current	10	6	6	4	5
Total Appeals & Related Actions (excl. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	293	334	317	282	333
Finalised	269	351	277	299	292
Current	167	150	190	173	214

Table 6.4 – Summary of supplementary workload statistics

Filings of supplementary causes of action

	2006-07	2007-08	2008-09	2009-10	2010-11
Total actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	11	2	5	6	3
Cross Claims	198	177	190	205	241
Notices of Motion	1713	1523	1525	1544	1794
Native Title (NT) Joinder of party applications	89	135	482	364	628
Appeals & Related Actions					
Cross Appeals	15	18	21	15	38
Notices of Motion	139	148	170	150	161
Total actions (including Appeals & Related Actions)					
Cross Appeals	26	20	26	21	41
Cross Claims	198	177	190	205	241
Notices of Motion	1852	1671	1695	1694	1955
NT Joinder of party applications	89	135	482	364	628
Totals	2267	2080	2478	2346	2963

Note: There was an error in the Notice of Motion (NoM) filings in the 2009–10 Annual Report. The filings included NoMs that had been voided by staff and thus were overstated. The error has been rectified and the above table more accurately reflects the filings for the last five financial years.

APPENDIX 6 – WORKLOAD STATISTICS

Finalisations of supplementary causes of action

	2006-07	2007-08	2008-09	2009-10	2010-11
Total Actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	5	8	1	5	7
Cross Claims	208	217	174	171	160
NT Joinder of party applications	89	135	482	364	628
Appeals & Related Actions					
Cross Appeals	16	20	23	9	26
Total actions (including Appeals & Related Actions)					
Cross Appeals	21	28	24	14	33
Cross Claims	208	217	174	171	160
NT Joinder of party applications	89	135	482	364	628
Totals	318	378	671	537	821

Current Cross Appeals & Cross Claims as at 30 June 2011

Appeals & Related Actions

Cross Appeals	33
---------------	----

Total Supplementary CoAs (excluding Appeals & Related Actions)

Cross Appeals (original jurisdiction)	4
Cross Claims	342

Total Supplementary CoAs (including Appeals & Related Actions)

Cross Appeals	37
Cross Claims	342
Totals	379

Figure 6.1 – Matters filed over the last five years

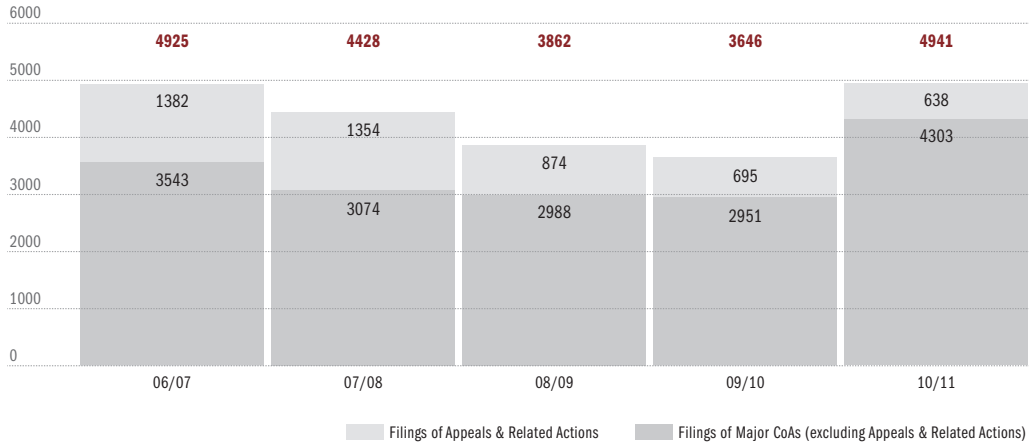
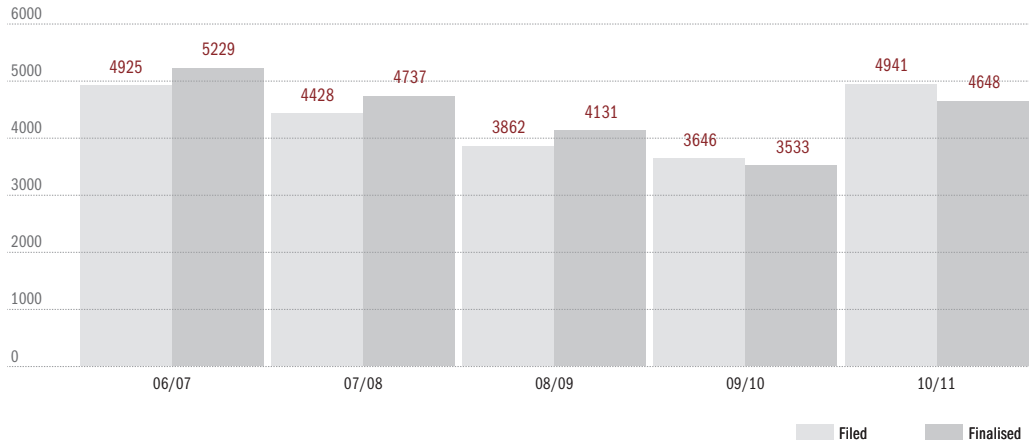


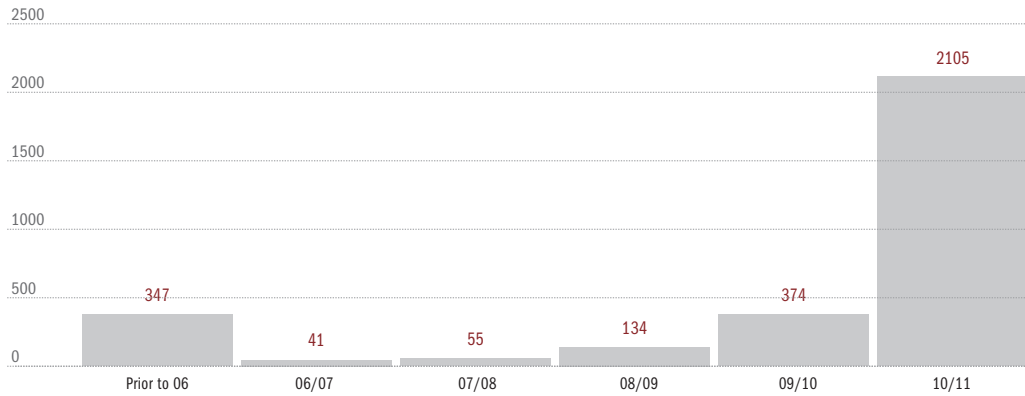
Figure 6.2 – Matters filed and finalised over the last five years



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

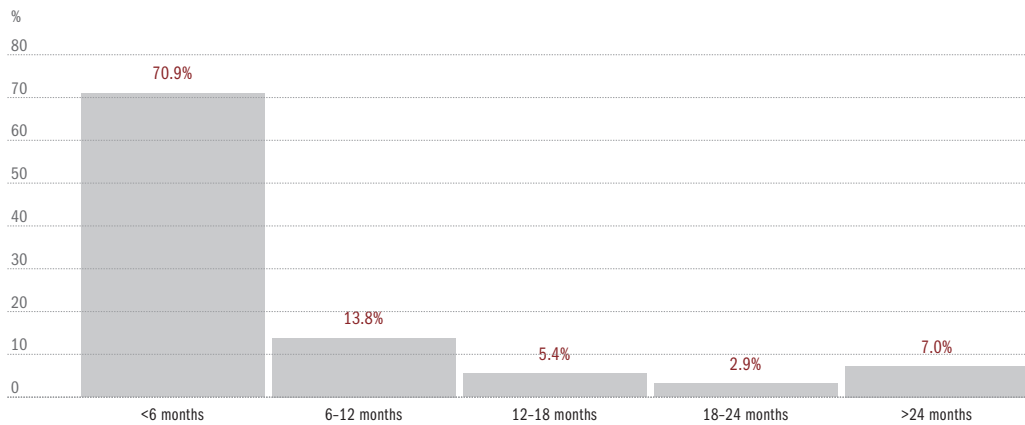
APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.3 – Age and number of current matters at 30 June 2011



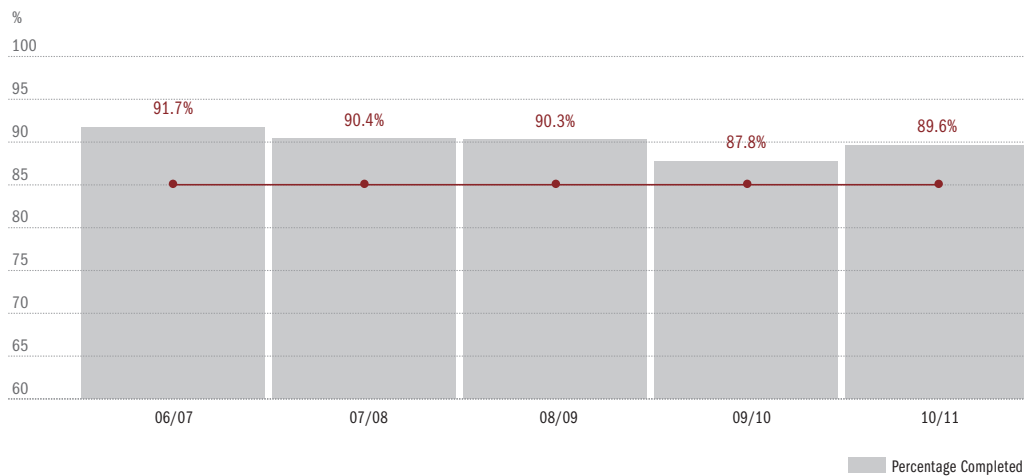
A total of 3056 matters remain current at 30 June 2011. There were 347 applications still current relating to periods before those shown in the graph. Over ninety-six per cent of cases prior to 2006 are native title matters.

Figure 6.4 – Time span to complete – Matters completed (excl. native title) over the last five years



A total of 21 903 matters were completed during the five year period ending 30 June 2011, 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 against the benchmark (excl. native title) over the last five years



The Court has a benchmark of eighty-five per cent of cases (excluding native title) being completed within eighteen months of commencement. The above chart sets out the Court’s performance against this time goal over the last five years. 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 (including appeals and related actions and excluding native title matters)

PERCENTAGE COMPLETED	2006-07	2007-08	2008-09	2009-10	2010-11
Under 18 months	4722	4226	3653	3045	4089
% of Total	91.7%	90.4%	90.3%	87.8%	89.6%
Over 18 months	427	448	391	425	477
% of Total	8.3%	9.6%	9.7%	12.2%	10.4%
Total CoAs	5149	4674	4044	3470	4566

APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.6 – Bankruptcy Act matters (excl. appeals) filed over the last five years

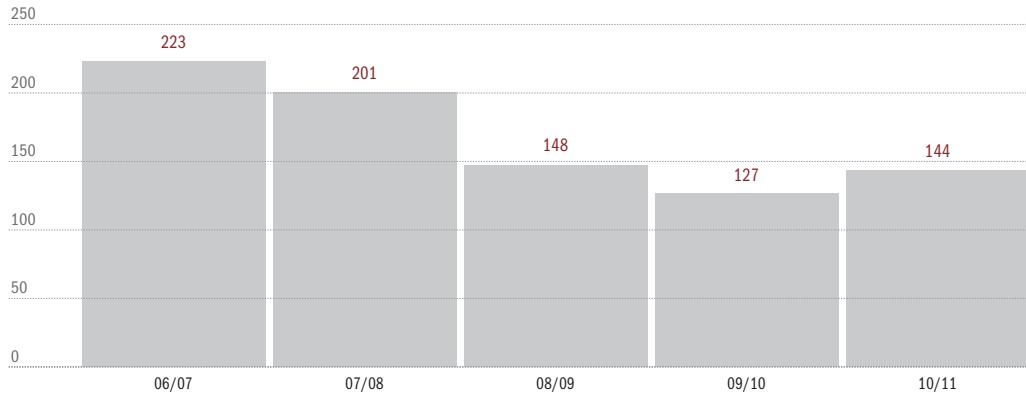
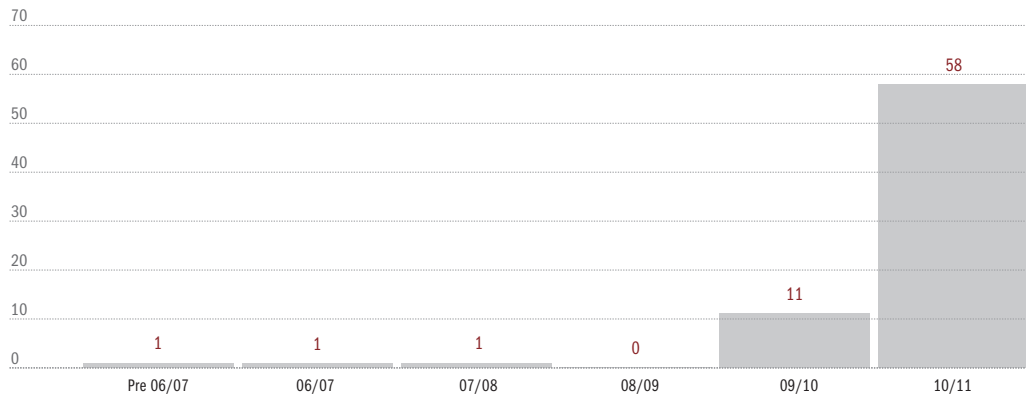


Figure 6.6.1 – Current Bankruptcy matters (excl. appeals) by year of filing



A total of 72 Bankruptcy Act matters remain current as at 30 June 2011.

Figure 6.7 – Corporations Act matters (excl. appeals) filed over the last five years

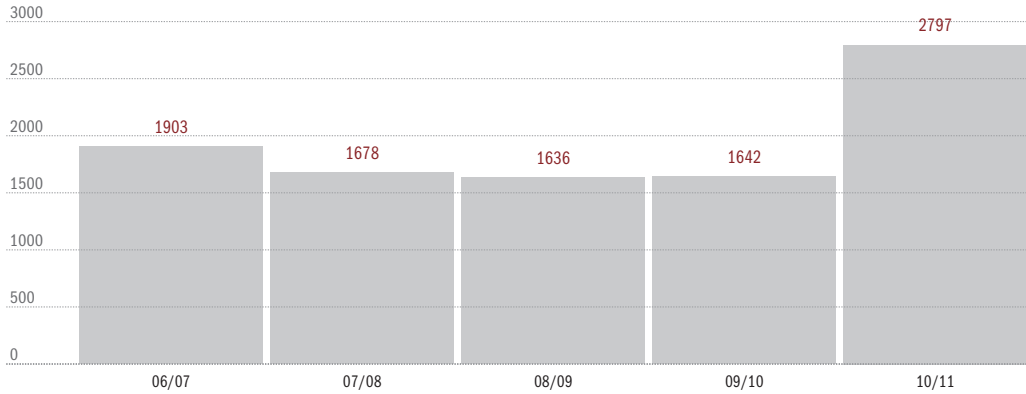
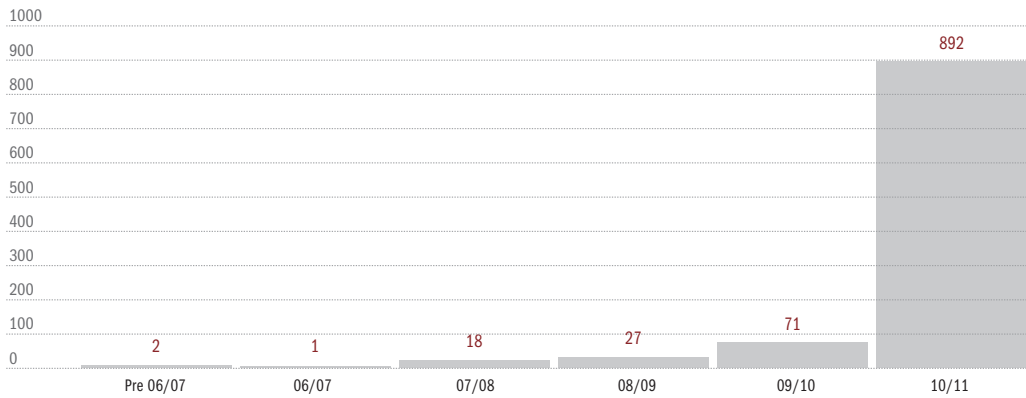


Figure 6.7.1 – Current Corporations Act matters (excl. appeals) by year of filing



A total of 1011 Corporations Act matters remain current as at 30 June 2011.

APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.8 – Consumer Law matters (excl. competition law and appeals) filed over the last five years

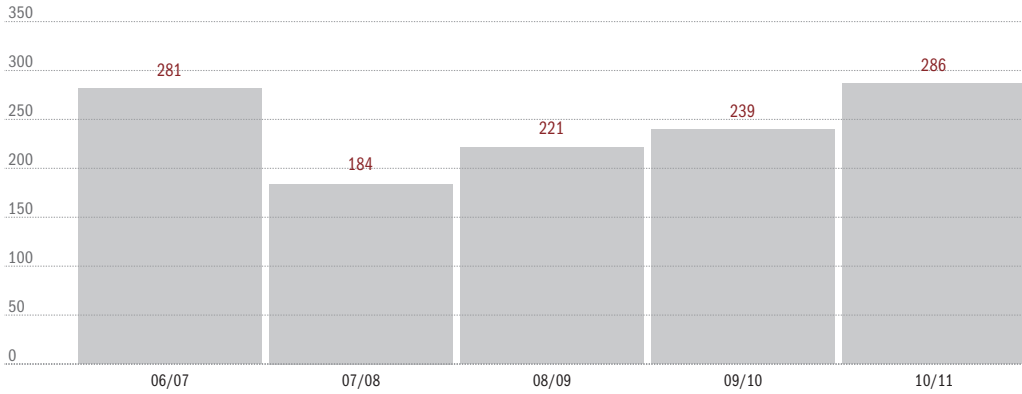
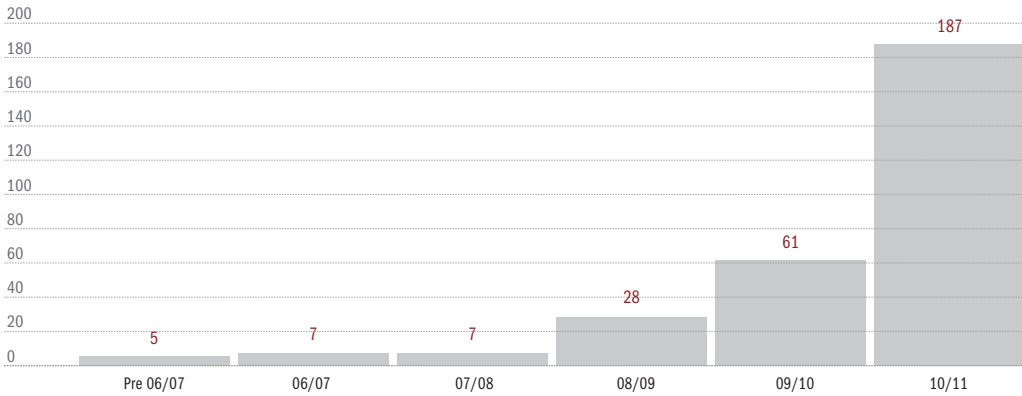
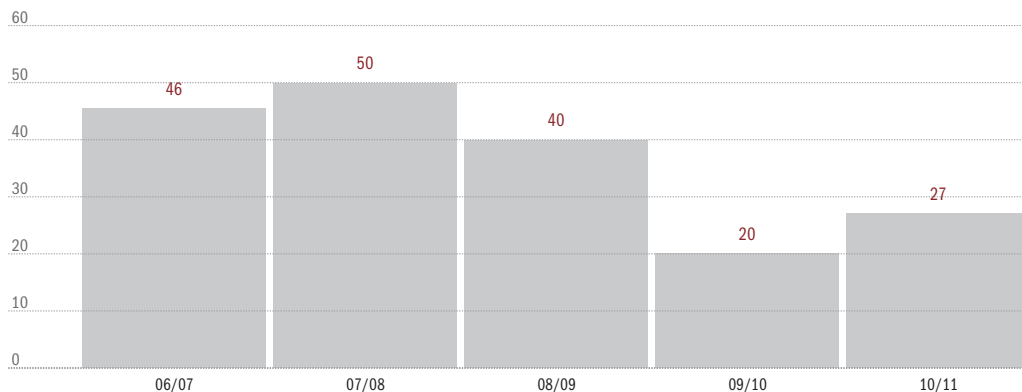


Figure 6.8.1 – Current Consumer Law matters (excl. competition law and appeals) by year of filing



A total of 295 Consumer Law matters remain current as at 30 June 2011.

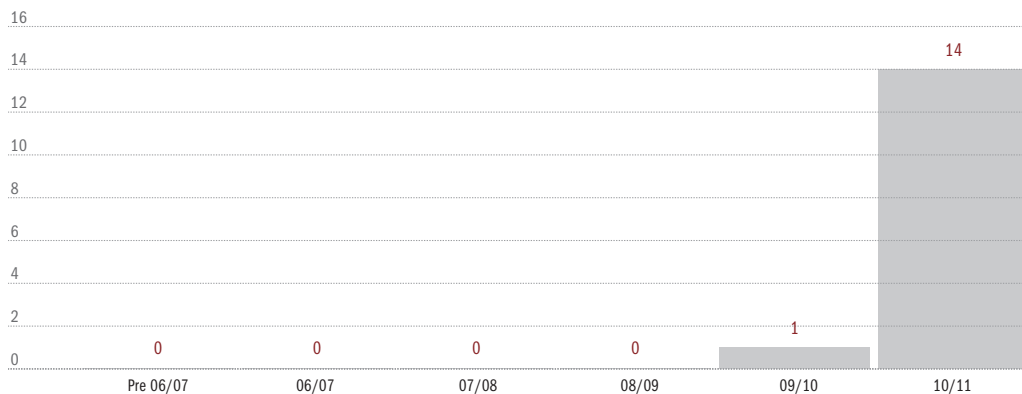
Figure 6.9 – Migration Act matters (excl. appeals) filed over the last five years



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 15 Migration Act matters remain current as at 30 June 2011.

APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.10 – Admiralty Act matters (excl. appeals) filed over the last five years

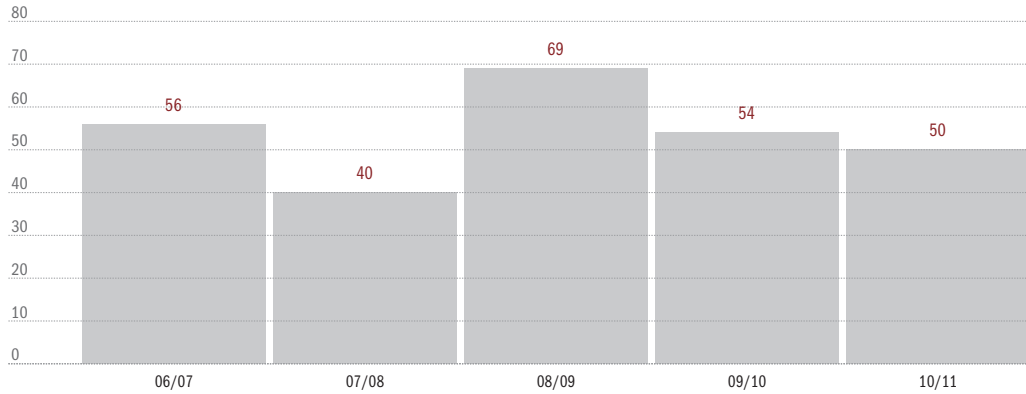
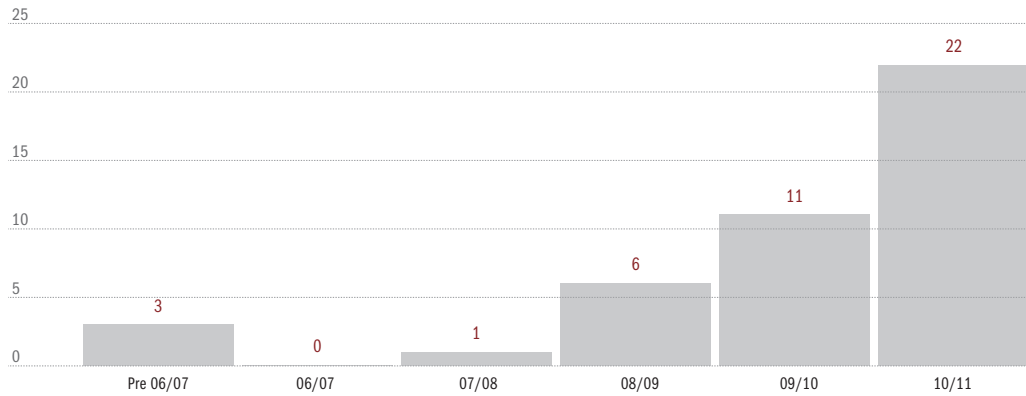


Figure 6.10.1 – Current Admiralty matters (excl. appeals) by year of filing



A total of 43 Admiralty Act matters remain current as at 30 June 2011.

Figure 6.11 – Native Title Act matters (excl. appeals) filed over the last five years

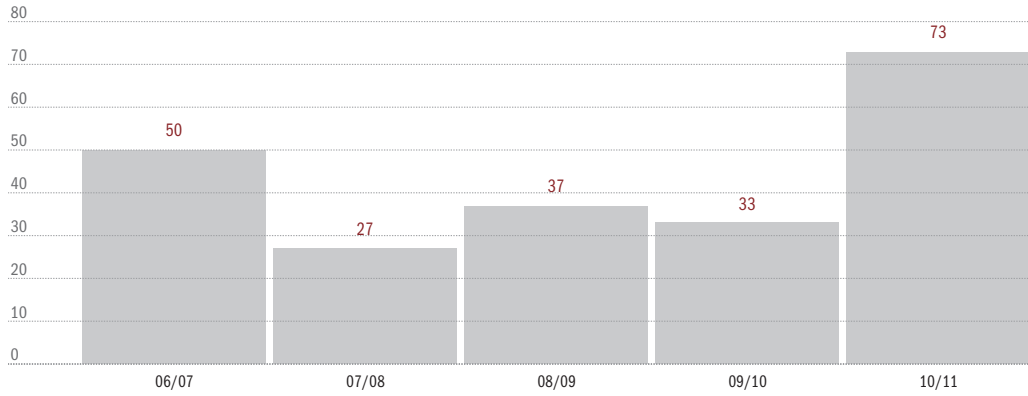
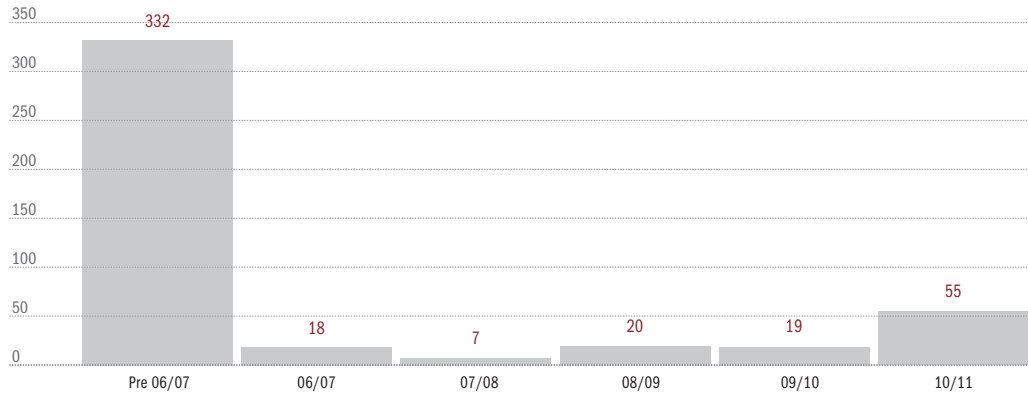


Figure 6.11.1 – Current Native Title matters (excl. appeals) by year of filing



A total of 451 Native Title matters remain current as at 30 June 2011.

APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.12 – Workplace Relations/Fair Work matters (excl. appeals) filed over the last five years

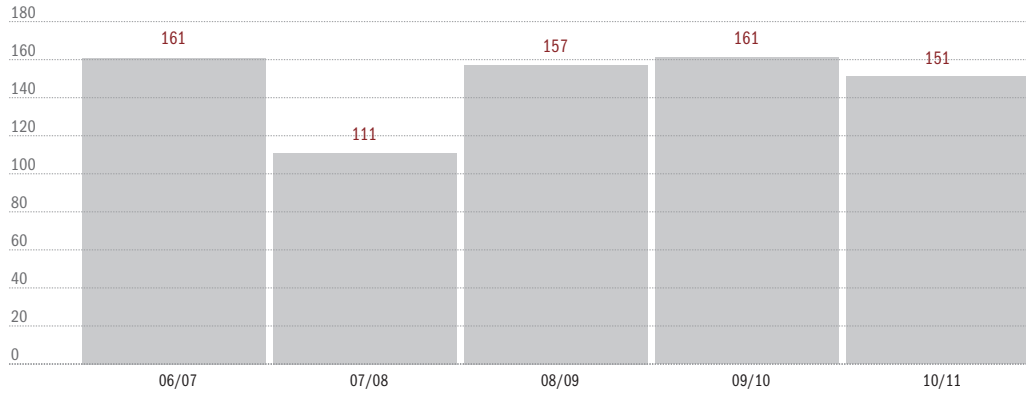
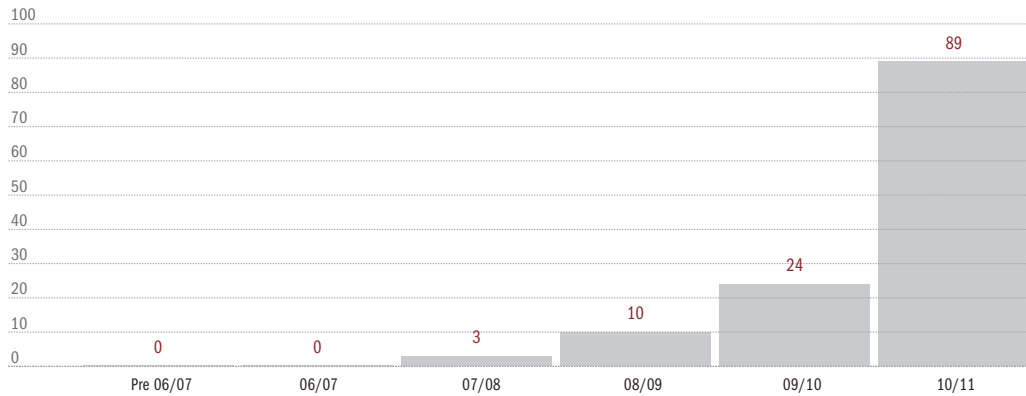


Figure 6.12.1 – Current Workplace Relations/Fair Work matters (excl. appeals) by year of filing



A total of 126 Workplace Relations/Fair Work cases remain current as at 30 June 2011.

Figure 6.13 – Taxation matters (excl. appeals) filed over the last five years

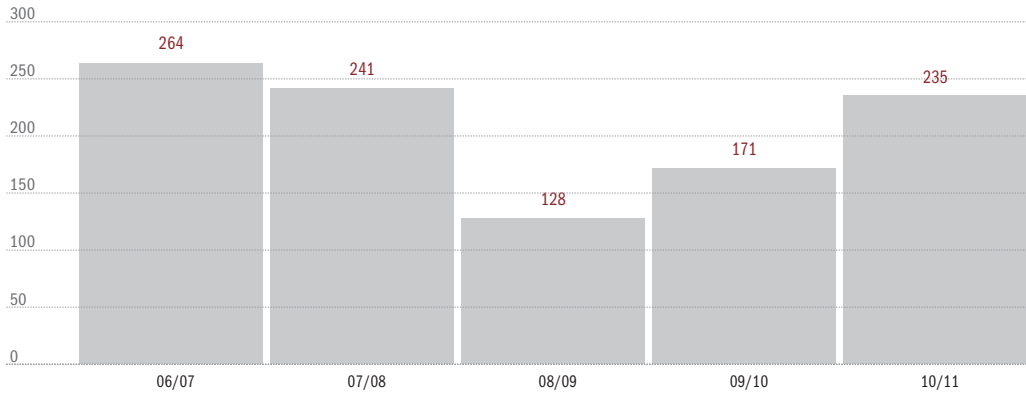
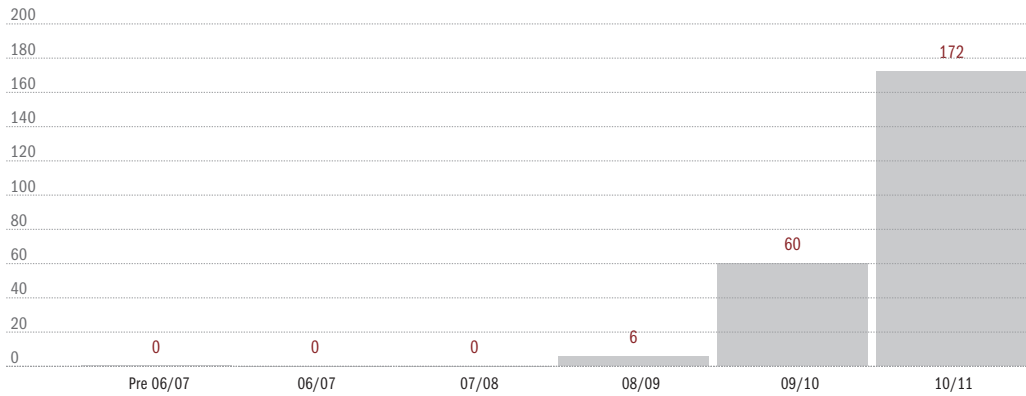


Figure 6.13.1 – Current taxation matters (excl. appeals) by year of filing



A total of 238 taxation cases remain current as at 30 June 2011.

APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.14 – Intellectual Property Matters (excl. appeals) filed over the last five years

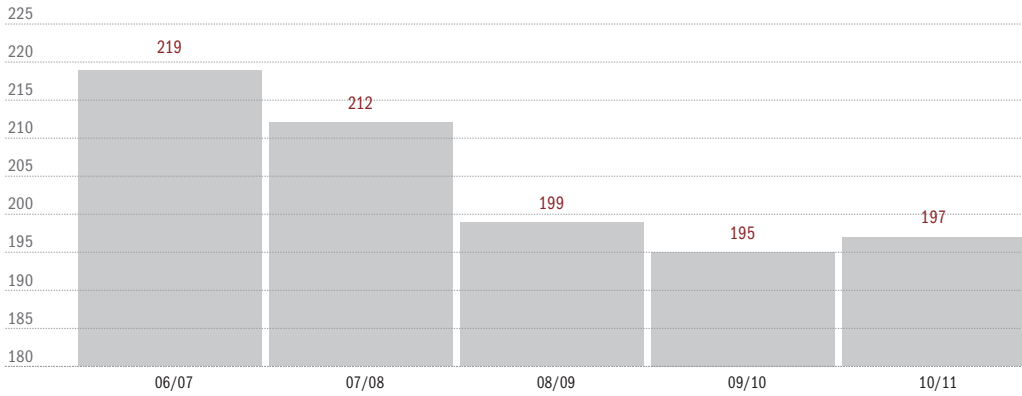
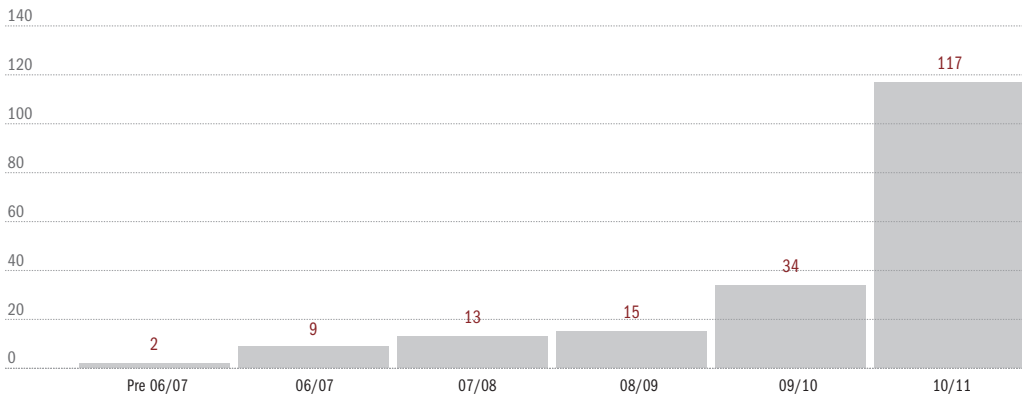


Figure 6.14.1 – Current Intellectual Property matters (excl. appeals) by year of filing



A total of 190 intellectual property cases remain current as at 30 June 2011.

Figure 6.15 – Appeals and Related Actions filed over the last five years

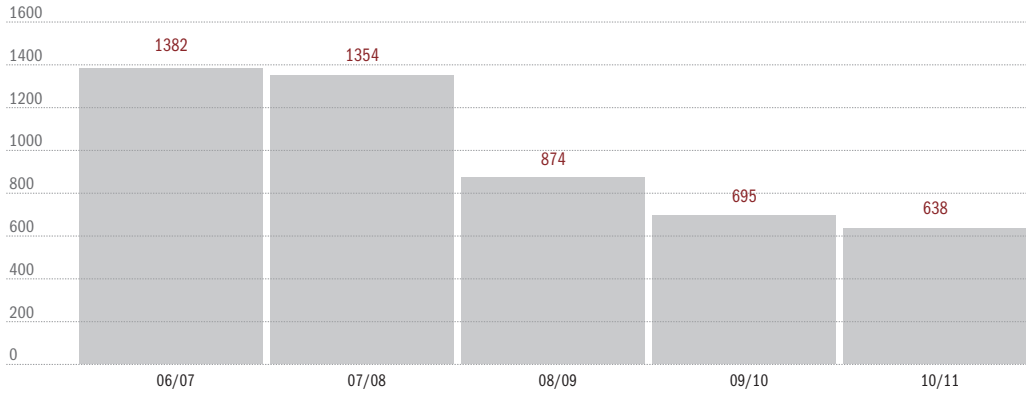
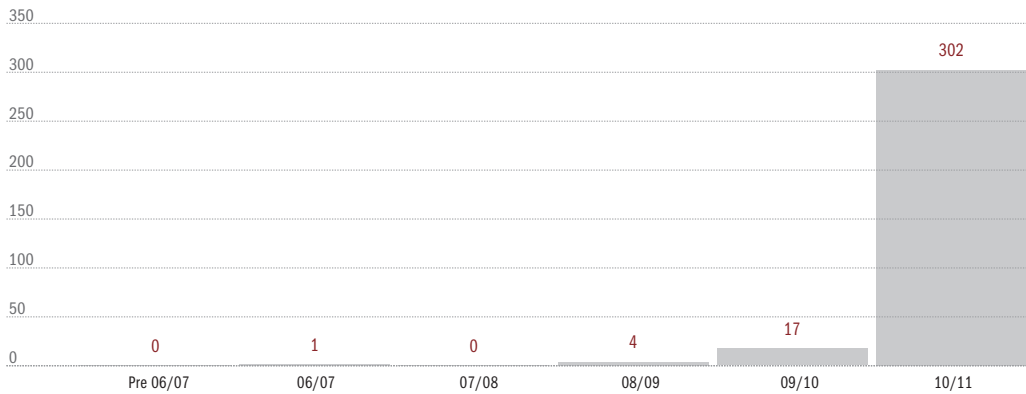


Figure 6.15.1 – Current Appeals and Related Actions by date filed



A total of 324 Appeals and Related Actions remain current as at 30 June 2011.

APPENDIX 6 – WORKLOAD STATISTICS

Figure 6.16 – Source of Appeals and Related Actions over the last five years

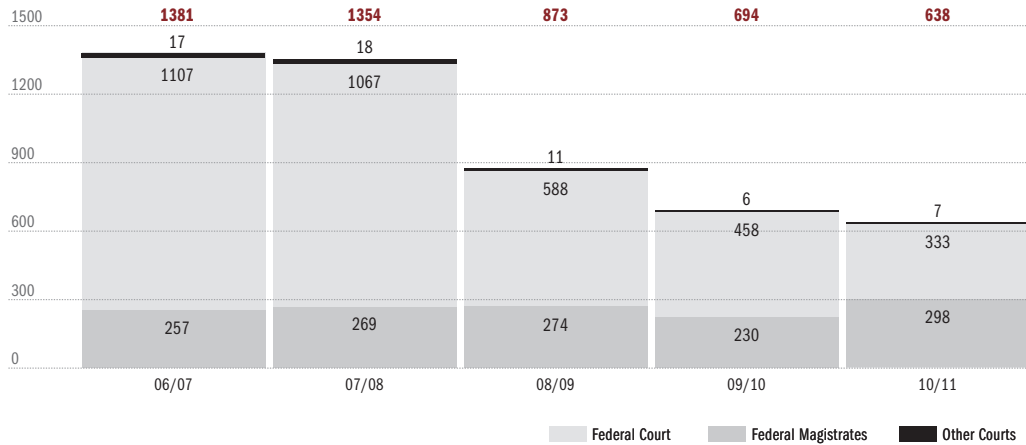


Table 6.6 – Appeals and Related Actions

SOURCE	2006-07		2007-08		2008-09		2009-10		2010-11	
Federal Court	257	18.6%	269	19.9%	274	31.4%	230	33.1%	298	46.7%
Federal Magistrates Court	1107	80.2%	1067	78.8%	588	67.4%	458	66.0%	333	52.2%
Other Courts	17	1.2%	18	1.3%	11	1.3%	6	0.9%	7	1.1%
Total by Period	1381		1354		873		694		638	

APPENDIX 7 – WORK OF THE 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 1965* and continues under the *Competition and Consumer Act 2010 (the Act)* 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 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 s. 93 of the Act in relation to exclusive dealing.
- Determinations by the ACCC granting or refusing clearances for company mergers and acquisitions.

The Tribunal also hears applications for authorisation of company mergers and acquisitions which would otherwise be prohibited under the Act.

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 Tribunal also has power to inquire into, and report to the Minister on, whether a non-conference ocean carrier has a substantial degree of market power on a trade route.

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 Act and regulations within the discretion of the Tribunal. The Competition and Consumer Regulations 2010 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.

APPENDIX 7 – WORK OF THE TRIBUNALS

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 2010–11 Justice Lindsay Foster was appointed a part-time Deputy President for a six month term from 7 April 2011.

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 76.

Activities

Four matters were current at the start of the reporting year. During the year, ten matters were commenced and five matters were finalised, nine 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 ActewAGL Distribution [2010] ACompT 4 (17 Sept 2010)

Application by Ergon Energy Corporation Limited [2010] ACompT 6 (13 Oct 2010)

Application by ETSA Utilities [2010] ACompT 5 (13 Oct 2010)

Application by Energex Limited (No 2) [2010] ACompT 7 (13 Oct 2010)

Application by Ergon Energy Corporation Limited (Customer Service Costs) (No 2) [2010] ACompT 10 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Labour Cost Escalators) (No 3) [2010] ACompT 11 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Non-system property capital expenditure) (No 4) [2010] ACompT 12 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Service Target performance Incentive Scheme) (No 5) [2010] ACompT 13 (24 Dec 2010)

Application by Ergon Energy Corporation Limited (Street Lighting Services) (No 6) [2010] ACompT 14 (24 Dec 2010)

Application by Energex Limited (No 4) [2011] ACompT 4 (11 Feb 2011)

Application by Jemena Gas Networks (NSW) Ltd (No 3) [2011] ACompT 6 (25 Feb 2011)

Application by Jemena Gas Networks (NSW) Ltd (No 4) [2011] ACompT 8 (29 April 2011)

Application by Energex Limited (Gamma) (No 5) [2011] ACompT 9 (12 May 2011)

Application by Jemena Gas Networks (NSW) Ltd (No 5) [2011] ACompT 10 (9 June 2011)

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. On 8 December 2010 the following changes occurred to the membership. All of the following appointments or reappointments were for a period of three years:

- Justice Arthur Emmett was reappointed President of the Tribunal
- Justice Jayne Jagot was appointed a Deputy President of the Tribunal
- Dr Rhonda Smith was reappointed as a lay member of the Tribunal
- Dr Hugh Sibly was reappointed as a lay member of the Tribunal
- Ms Catherine Riordan was appointed as a lay member of the Tribunal.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 76.

Activities

Three matters were current at the start of the reporting year. During the year one matter was commenced and one matter was remitted back to the Tribunal by a Full Court of the Federal Court. One matter was finalised in 2010–11, and there are four matters pending.

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

APPENDIX 7 – WORK OF THE TRIBUNALS

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: 15–16 September 2011; 27–28 October 2011; 15–16 December 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 76.

Activities

One matter was current at the start of the reporting year. During the year, three matters were commenced and three finalised. There is one matter pending.

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

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

NATIVE TITLE – ‘society’ – Torres Strait Island communities – 1, 4 or 13 societies – significance to be attributed to perceptible differences between particular laws and customs acknowledged and observed by the communities – sovereignty acquired over different geographical areas at differing times commencing in 1872 – whether sovereignty is over an area or over a person as well – whether new native title rights and interests can be acquired after 1872 in respect of areas not then subject to British sovereignty – whether ‘sovereign rights’ under *Seas and Submerged Lands Act 1973* (Cth) to be distinguished from ‘sovereignty’ for Native Title Act purposes.

INTERNATIONAL LAW – status of Exclusive Economic Zone – sovereign rights – whether native title in EEZ able to be recognised.

Akiba v State of Queensland (No 2)
(2 July 2010, Justice Finn)

The application was made on behalf of Torres Strait Islanders who are descendants of an extensive list of named ancestors who were themselves Torres Strait Islanders. To prevent further delay in the hearing of the application, the original claim area was divided into Parts A and B. The reasons relate only to Part A. It encompasses the greater part of the original claim area.

The principal respondents in this Part were the State of Queensland, the Commonwealth of Australia, a large group of people and companies collectively described as The Commercial Fishing Parties and a small number of parties from Papua New Guinea.

For *Native Title Act 1993* (Cth) (NT Act) purposes, Torres Strait and the Torres Strait Islanders are distinctive in many respects. That this is so, and the consequences of it, are markedly apparent in Justice Finn’s reasons.

The subject matter of the proceeding was itself distinctive. It sought a determination of native title rights and interests in a major part of the sea area of Torres Strait. The sea in turn is the integral presence in the lives and livelihoods of the Islander communities. It has rightly been said that their occupation of the region has had ‘an essentially maritime character’.

Unlike in native title claims in Aboriginal Australia, the laws and customs advanced by the communities do not reflect an overarching spiritual connection with the waters. There is no creation story. Yet there are still some, for the most part minor, traditional spiritual beliefs revealed in the evidence. In consequence, the laws and customs of concern were informed in quite some degree by considerations of utility and practicality. This had unusual ramifications in the application of accepted NT Act jurisprudence. No more was this so than in relation to the ‘connection’ requirement of s 223(1)(b) of the NT Act.

The Applicant’s evidence was likewise distinctive. British and then Australian sovereignty over the islands of Torres Strait was acquired for the most part in progressive steps taken, first, in 1872 and then in 1879. By these dates the grandparents of some of the indigenous witnesses were alive and were directly, or via the witness’ parents, the sources of oral traditions recounted by those witnesses. From the time of Luis Baez de Torres’ passage through the Strait in 1606, Islander contact with Europeans was the subject of recorded account and observation. Notable amongst these after Cook’s rediscovery of Torres Strait were the writings of British naval officers and other mariners.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

In 1864 a joint Imperial-colonial outpost was established at Somerset on the eastern tip of Cape York. At much the same time colonial occupation commenced in the Strait. It related initially to the establishment of bêche-de-mer shore fishing stations. In 1868 the pearl shell industry commenced. In 1871 the evangelisation of the Strait began with the advent of the London Missionary Society. In consequence a significant pre- and early sovereignty literature was generated and is in evidence. The most significant body of works in this are the six volumes of reports of the Cambridge Anthropological Expedition to Torres Strait. These were based largely on observations made in the Strait in 1898 by A.C. Haddon (a former zoologist) and six others. The main purpose of the Expedition was to assemble a picture of life before colonisation from the memories of the older men.

Unlike so much of Aboriginal Australia, the acquisition of sovereignty over the islands of the Strait did not lead to the Islanders being dispossessed of their lands or sea domains, or deprived of their traditional means of livelihood. Their continuing presence in the Strait is self-evident as are their detailed knowledge of, and exploitation of the marine resources of, the Strait.

As is now well known, native title was first accepted and recognised in relation to the Murray Islands in Torres Strait in the decision of *Mabo v Queensland [No 2]* (1992) 175 CLR 1. That decision and the twenty-two Consent Determinations since made under the subsequently enacted NT Act have resulted in the recognition of native title in all of the presently inhabited islands of interest in this proceeding and in most of the uninhabited islands. Characteristically the native title holders in these Determinations were found to be members of single island communities. In several instances, though, the title is shared by members of several island communities.

Though the land Determinations were of some contextual importance in this proceeding, it is to be emphasised that this application relates to sea water areas.

Because of its present importance, Justice Finn emphasised that the NT Act defines ‘waters’ to include not only ‘sea ... a tidal inlet, a bay, an estuary’ but also ‘the bed or subsoil under ... any waters’ and ‘the shore, or subsoil under ... the shore, between high water and low water’: s 253. The term is used with this meaning in his reasons. It also required emphasis that, to the Islanders, land and sea are seamlessly and culturally associated: there is no ‘sea-land dichotomy’.

Justice Finn concluded that the Applicant, for the most part, established its claim. There is a single Torres Strait Islander society to which the native title claim group belongs. Under that society’s traditional laws acknowledged and traditional customs observed, the claim group in aggregate holds native title rights and interests in the waters of Torres Strait with which Justice Finn was concerned, save in those parts specified in these his reasons. As this proceeding does not involve the entirety of the native title claim area, it was inappropriate that he made a finding that the claim group alone constitutes the relevant society. It may be the case – and His Honour expressed no view on this – that when the balance of the claim is heard and determined in relation to those areas where it overlaps other claims, the evidence may establish that one or both of the Kaurareg and Gudang peoples also belongs to the society for NT Act purposes.

Justice Finn rejected the State of Queensland’s contention that there were multiple societies (thirteen in number) each constituted by the Islanders of an inhabited island. He likewise rejected the Commonwealth’s contention that there were four societies each of which was made up of a regional cluster group of islands, e.g. the Eastern Islands. There was an irony in all of this. The issue of authorisation apart, the answer to the question of native title rights and interests in the waters of Torres Strait – which is, after all, the concern of the present application and of the NT Act – would in all probability have been largely, if not exactly, the same whether his conclusion had been one, or four, or thirteen, societies.

Justice Finn rejected the Applicant's claim insofar as it asserted that what it called reciprocity based rights and interests constitute native title for the purposes of s 223(1) of the NT Act. Put inexactly, those are rights based upon reciprocal personal relationships with persons who have native title rights in their own land and marine territories. The native title rights he found were the non-exclusive rights of the group members of the respective inhabited island communities first, to access, to remain in and to use their own marine territories or territories shared with another, or other, communities; and, secondly; to access resources and to take for any purpose resources in those territories. In exercising these rights the group members are expected to respect their marine territories and what is in them.

Importantly, and this requires emphasis, none of these rights confer possession, occupation, or use of the waters to the exclusion of others. Nor do they confer any right to control the conduct of others.

The rights will be recognised by the common law beyond Australia's territorial seas in its Exclusive Economic Zone. The possibility that native title might exist in such an area was contemplated by the Australian Parliament in s 6 of the NT Act. In the northern part of the claim area known colloquially as the 'Top Hat', the native title rights are qualified by the provisions of Australia's Treaty with Papua New Guinea which came into effect in 1985. It settled the Seabed Boundary Lines between the two countries and provided for Australian 'fisheries jurisdiction' in the 'Top Hat'.

Justice Finn found that the right to take resources included the right to take marine resources for trading or commercial purposes and that such use of them would be recognised by the common law. His Honour rejected the contentions of the State and of the Commonwealth that the ever expanding regulatory controls placed upon commercial fishing by legislation extinguished any native title right to take fish for commercial purposes. Those legislative controls were not directed at the underlying rights of the native title holders who were obliged to comply with the regulatory measures imposed on them if they were to enjoy their native title rights. The various Acts severally or together did not evince a clear and plain intention to extinguish native title rights to take fish for commercial purposes in the Part A Claim Area. Having said this, Justice Finn emphasised that, to the extent that those legislative regimes regulate the manner in which, and the conditions subject to which, commercial fishing can be conducted in a fishery in the native title holders' marine estates, or prohibit qualifiedly or absolutely particular activities in relation to commercial fishing in the fishery in those estates, the native title holders must, in enjoying their native title rights, observe the law of the land. This is their obligation as Australian citizens. Complying with those regimes provides them with the opportunity – qualified it may be – to exercise their native title rights.

A distinct part of the judge's reasons dealt with the extent to which the construction, operation and maintenance by the Australian Maritime Safety Authority under Commonwealth legislation of aids to navigation in Torres Strait waters have extinguished or otherwise affected the enjoyment of native title in the areas of, or adjacent to, such aids. His conclusions on these matters are contained in his reasons. All that need be noted here is that, while he reached conclusions in relation to ten of these aids, he has not in relation to another four. In consequence he gave the parties liberty to apply for the purposes of establishing the boundaries of the areas at each of the four sites where native title has been extinguished.

While Justice Finn found that the Application made in this matter was not in fact authorised as required by the NT Act, he was satisfied that, for the purposes of s 84D of the NT Act, it was in the interests of justice that the Application be determined despite the defect in authorisation.

Finally, there were seven PNG parties to this proceeding. In the case of five of them, Justice Finn ordered that they cease to continue as parties to the proceedings. In relation to the remaining two, His Honour declared that they were not members of the native title claim group.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

SHIPPING AND NAVIGATION – Carriage of goods by sea – In refrigerated container supplied by carrier – controller on container becoming stuck in defrost mode due to incompatible software – Whether goods properly and carefully carried, kept, cared for and discharged – Exception of latent defect – Whether malfunctioning of container not discoverable by due diligence – Hague-Visby Rules Arts III rr (1) and (2) and IV rr (1) and (2)(p)

Seafood Imports Pty Ltd v ANL Singapore Pte Ltd
(5 July 2010, Justice Ryan)

The plaintiff claimed damages for the deterioration of frozen seafood ('the goods') carried from Yokohama, Japan, to Melbourne. The goods had been received on board the CSCL Yantal ('the ship') pursuant to a bill of lading endorsed 'Shipment in a Reefer Container at a temperature of Minus 18 Celsius or Lower'.

The goods had been kept for three days in a cold store at Yokohama and then despatched for loading onto the ship. The temperature of the container was recorded by various means including a 'sensor' log, an 'events' log and a running 'reefer' log. According to the reefer log, for the whole of November 2005, except from 3 to 9 November, the container had maintained a temperature between -18° and -20°C. Information for some of the missing days indicated a temperature of -5° before returning to a consistent -20° from 5 to 6 November, presumably after power had been reconnected. The events log from 4 to 6 November recorded an apparently normal range of temperatures as the container alternated between operating ('cool') and defrost mode. On 6 November, the same log recorded the activation of alarms with no return to normal cool or defrost mode.

After power was disconnected for discharge at P & O Ports' Melbourne terminal, the only recorded abnormality was on 5 December when the container was continuously in defrost mode for over twelve hours. On 6 December, it was collected from the terminal and delivered to the plaintiff's premises. On out-turn the goods were revealed to have deteriorated after having thawed for an extended period before being refrozen.

Although the issue was not foreclosed by the bill of lading's notation that the goods were shipped on board 'in apparent good order and condition', Justice Ryan found that the goods had not deteriorated when stuffed into the container and delivered to the ship. Rather, his Honour inferred, there had been a breach of Art III, r 2 of the Hague-Visby Rules which provides:

'Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.'

The main breach by the defendant was a failure adequately to monitor the temperature and functioning of the container. The crew should also have rectified the abnormality of the container's being stuck in defrost mode which proper monitoring would have revealed. That abnormality, his Honour considered, was due to an incompatibility between the container's controller and its software which was not a 'latent defect nor discoverable by due diligence' within the exception in Art IV r 2(p) of the Hague-Visby Rules. An argument that the Hague-Visby Rules had no application outside the 'tackle to tackle' period from loading to discharge was held to be unavailable on the facts.

TAXATION – Goods and Services Tax – entitlement of government entity to input tax credits in respect of payments to taxi-cab operators under program for transport of individuals with disabilities – whether government entity made a ‘creditable acquisition’ of transport of disabled passengers

Commissioner of Taxation v Secretary to the Department of Transport (Victoria)
(9 July 2010, Justices Kenny, Jessup and Dodds-Streeton)

In this appeal from a judgment of a single judge of the Court, the question was whether the Victorian Department of Transport was entitled to input tax credits under the A New Tax system (Goods and Services Tax) Act 1999 (Cth) (the Act) in respect of the tax component of payments it had made to taxi operators pursuant to its multi-purpose taxi program, under which it paid one-half of the taxi fares of qualifying disabled persons who, at the point of hiring taxis, presented the card which entitled them to be carried under such arrangements.

By majority decision, the Full Court held that, on each such occasion, the Department made a ‘creditable acquisition’ within the meaning of s 11-5 of the Act. It acquired a service constituted by the transport of the disabled person. The supply of that service was a ‘supply’ within the meaning of s 9-10 of the Act. The fact that, when a taxi was hired, a service was provided to the disabled person did not mean that there was not, at the same time, also a service supplied to the Department, being the transport of that person. That was the case in the facts upon which the appeal was based. Accordingly, agreeing with the primary judge, the Full Court held that the Department was entitled to the input tax credits which it claimed.

REAL PROPERTY – Torrens title – consideration of exceptions to indefeasibility in s 42(2) *Transfer of Land Act 1958* (Vic) – whether tenants were ‘tenants in possession’ within the meaning of s 42(2)(e) – whether lease for life void for uncertainty of duration – whether mortgagee’s registered interest over leased properties had priority over unregistered interest of tenants for life – whether vendor’s equitable lien had priority over registered mortgage

MORTGAGES – mortgage over tenanted properties – whether mortgagee had notice of tenants in possession – constructive notice – whether tenants engaged in postponing conduct by failing to caveat

EQUITY – priority of interests – general principles for determining priority of equitable interests – relevance of time of creation of interest – whether mortgage created before lease where contract for sale giving entitlement to lease and mortgage completed on same day

Perpetual Trustee Co Ltd v Smith & Ors
(21 July 2010, Justices Moore, Dowsett and Stone)

This case involved a scheme operated by Money for Living (Australia) Pty Ltd and Money for Living Property Holdings Pty Ltd (MFLPH) under which retirees sold their homes to MFLPH in return for a lump sum, an annuity for a fixed period and a life tenancy over the property. Perpetual made a number of loans to MFLPH entities to finance the purchase of the retirees’ properties and took first registered mortgages over these properties.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

Representative proceedings were commenced on behalf of retirees against nineteen respondents seeking to protect their leasehold interest in properties that had been sold. The majority of claims were settled, however, the dispute between Perpetual and a number of retirees was the subject of this case.

The retirees claimed that the registered mortgages held by Perpetual were subject to their interest as lessees. Perpetual claimed that upon registration of the mortgages it obtained indefeasible title as an innocent mortgagee pursuant to the *Transfer of Land Act 1958* (Vic) (the TL Act).

The primary Judge found that the interests of the retirees came into existence prior to the creation and registration of the mortgages and the interest of Perpetual was therefore subject to the interest of the retirees as tenants in possession for the purposes of s 42(2)(e) of the TL Act. His Honour also found that each retiree held an equitable vendor's lien in respect of the unpaid balance of the purchase price; however, Perpetual's mortgages ranked in priority to those liens.

Perpetual challenged the finding that its mortgages were subject to the interests of the retirees, and the retirees, by cross-appeal, challenged the finding that the mortgages ranked in priority to their equitable liens.

The first issue for the Full Court to consider was whether the retirees were 'tenants in possession' for the purposes of the exception in s 42(2)(e) of the TL Act. Justices Moore and Stone, with whom Dowsett J agreed, found that the retirees were tenants in possession for the purposes of the Act. The contract between MFLPH and the retirees was determinative of the parties' obligations and it was the intention of the parties that the right of MFLPH, as owner of the land, was subject to the right of the retirees as tenants in possession. An implied tenancy at common law was also brought into existence by occupation under the agreement to lease.

The Court rejected Perpetual's argument that the lease was void because its duration was uncertain. It found the lease was valid as it was for the duration of the retirees' lives.

Justices Moore and Stone also considered whether the retirees were tenants in possession before the appellant acquired its mortgages, in circumstances where completion of the sale and completion of the mortgage occurred on the same day. The only logical way to view the chronology was that the sale was completed immediately before the mortgage; otherwise no entitlement to register the mortgage would have arisen. Any tenancy created on completion of the contract of sale was therefore created before the mortgage. Justice Dowsett disagreed and commented that registration could not affect the time at which any relevant equitable interest arose for the purpose of determining priority. His Honour considered that the matter should be remitted to the primary Judge for reconsideration of the issue of priorities and expressed no final view concerning the issue.

The second issue for consideration was whether the tenancies took priority over the subsequent mortgages. Justices Moore and Stone considered whether Perpetual had any prior notice of the retirees' interest, despite Perpetual's failure to raise the question of notice. Their Honours found that in the absence of any evidence to the contrary, Perpetual did have notice of the retirees' interests. While the very name of the company which gave the mortgages, Money for Living Property Holdings Pty Ltd, should have alerted Perpetual to the need to make further enquiries, the fact that the retirees occupied their homes was constructive notice of their interest. In the absence of an obligation to caveat, there was no postponing conduct on the part of the retirees, and their interest ranked in priority.

Justice Dowsett took issue with this view because, as far as his Honour could ascertain, the primary Judge did not proceed on the basis that Perpetual took with notice of any prior equity, but rather limited his enquiry to whether the competing equities were such as to displace the priority otherwise attaching to each of the retirees' equities. His Honour observed that had the retirees established that Perpetual took with notice, it would not have been necessary for the respective merits of competing equities to be considered. On the issue of postponing conduct and the retirees' failure to caveat, his Honour commented that consideration had to be given to the issue of the retirees' conduct in equipping MFLPH with the indicia of title and memorandum of transfer. In his Honour's view, the two points were inextricably connected and the primary Judge had failed to address the true significance of this failure to caveat.

In respect of the third issue for determination, namely, whether the vendors' liens ranked in priority to Perpetual's mortgages, Justices Moore and Stone considered that as the liens were unregistered interests and no exception to indefeasibility applied, the registered mortgages prevailed.

The appeal and cross-appeal were dismissed.

COPYRIGHT – whether reproduction of headlines constitutes copyright infringement – whether copyright subsists in individual newspaper headlines, in an article with its headline, in the compilation of all the articles and headlines in a newspaper edition and in the compilation of the edition as a whole

ESTOPPEL – whether applicant estopped from asserting copyright infringement by respondent – whether respondent relied on an assumption that the applicant will not assert copyright infringement by reproduction by headlines – whether applicant created or encouraged the assumption – detriment – whether unconscionable to depart from assumption

Fairfax Media Publications Pty Ltd v Reed International Books Australia Pty Ltd
(7 September 2010, Justice Bennett)

The applicant (Fairfax) is the publisher of the Australian Financial Review (AFR). The respondent (Reed) delivers a service known as ABIX, which provides subscribers with abstracts of AFR articles for the payment of a fee. The abstracts include the article's headline and by-line without alteration, along with a summary of the article written by a Reed employee. ABIX does not reproduce the look and feel of the words, photographs, advertisements or other elements of the AFR's layout.

Fairfax alleged that Reed's conduct infringed its copyright in four different works:

- each individual AFR headline;
- each AFR article, including the headline and by-line;
- the compilation of all AFR articles, headlines and by-lines in an AFR edition; and
- each AFR edition in its entirety.

The Court held that, like titles, headlines are generally too insubstantial and too short to qualify for copyright protection as literary works under the *Copyright Act 1968* (Cth). Although the Court recognised that the use of devices such as puns in newspaper headlines may be clever, this was of itself insufficient to accord copyright protection. The Court observed that headlines act as a way of identifying the work. Providing them with copyright protection would 'tip the balance too far against the interest of the public in the freedom to refer to articles by their headline'.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

In relation to each AFR article, the Court found that on the evidence available the article/headline combination was not a copyright work of joint authorship because the contribution of the headline's author and the article's author was separate.

Although the Court found that the AFR article compilation and each AFR edition were copyright works, the Court held that in presenting its abstracts to subscribers Reed had not infringed the copyright in these works as it had not reproduced their arrangement.

The Court noted that even if Fairfax had established that Reed had infringed copyright in the AFR's headlines, Reed could have relied upon the defence of 'fair dealing' under the Copyright Act because the provision of the ABIX service is for the purpose of, or is associated with, the reporting of news. However, the Court would not have accepted Reed's defence that Fairfax was estopped from asserting that Reed's reproduction and communication of AFR headlines constituted infringement of its copyright.

STATUTORY INTERPRETATION – citizenship and migration – whether the word 'parent' in s 16(2) of the Australian Citizenship Act 2007 (Cth) means only a biological parent or whether it has the meaning it bears in ordinary contemporary English usage.

H v Minister for Immigration and Citizenship
(15 September 2010, Justices Moore, Kenny and Tracey)

This appeal concerned two applications against decisions of the Administrative Appeals Tribunal (*NWH v Minister for Immigration and Citizenship* [2009] AAT 833 and *Re McMullen and Minister for Immigration and Citizenship* (2009) 111 ALD 475) involving the construction of s 16(2) of the *Australian Citizenship Act 2007* (Cth) (AC Act). They were heard together by the Full Court in its original jurisdiction.

Proceeding NSD 1320 of 2009 (NWH) was an appeal by NWH (an infant) against a decision of the Tribunal on 28 October 2009 to refuse his application for Australian citizenship. The President held that because the child did not have a biological parent who was an Australian citizen at the time of his birth, he was not eligible to become an Australian citizen under s 16 of the AC Act.

Proceeding VID 705 of 2009 (McMullen) was an appeal by the Minister for Immigration and Citizenship against the decision of the Tribunal that held on 27 August 2009 that the word 'parent' in s 16(2) was not limited to a biological parent. Ms McMullen, a citizen and resident of Fiji whose mother was also a citizen of Fiji had applied for Australian citizenship under s 16(1) of the AC Act naming Mr McMullen, an Australian citizen by birth, as her father. The Tribunal concluded that Ms McMullen's relationship with Mr McMullen satisfied s 16(2)(a) of the AC Act because of their 'father/daughter relationship' and at the time of birth she had a citizen parent. Mr McMullen had believed on reasonable grounds he was Ms McMullen's father and had assumed that role over an extended period of time.

The Full Court found that there is nothing in the legislative object, the legislative text, or the legislative structure of the AC Act that requires the court to conclude that, in the specific context of s 16(2), the word 'parent' only can mean biological parent. The word has the meaning it bears in ordinary contemporary English usage and is expressive of status and relationship to another, including social, legal and biological factors. There is a narrow time requirement. The claimant must demonstrate that at the time of birth, he or she had a citizen parent. This approach was considered to be in keeping with the development of citizenship legislation and the 'spirit and intendment of the current Citizenship

Act'. The ordinary meaning of the word 'parent' is a question of fact to be determined by the Tribunal after consideration of the evidence, including the supposed parent's conduct before and at the time of birth and possibly also conduct after the birth which may confirm parentage at the time of birth.

The appeal in NSD 1320 of 2009 was allowed, the decision of the Tribunal set aside and the matter remitted to a differently constituted Tribunal to be heard and determined according to law. The decision in VID 705 of 2009 was dismissed.

INDUSTRIAL LAW – occupational health and safety – determination of quantity of pecuniary penalty – two employees and three members of the public died at sea when vessel commissioned by respondent sank in the Torres Strait – breaches of s 16(1) and s 17 of the Occupational Health and Safety Act 1991 (Cth) admitted by respondent – principles in *Comcare v Commonwealth of Australia* (2007) 163 FCR 207 relevant to determining quantity of pecuniary penalty – seriousness of breach – consideration of mitigating factors

Comcare v Commonwealth of Australia
(2 December 2010, Justice Collier)

Proceedings in this case arose from the sinking of a vessel, the *Malu Sara*, on 15 October 2005. On that date the vessel, operated by the Department of Immigration and Citizenship (DIAC), sank on a voyage from Saibai Island to Badu Island in Torres Strait. All five people on board were cast into the water. Two persons on board were employees of the respondent, and the remaining three persons (including a child) were members of the public. Only one body was ever recovered.

The application in this matter was brought by Comcare, seeking declarations and pecuniary penalties against the respondent. Comcare claimed that the respondent contravened subclause 2(1)(a) and subclause 2(1)(b) of Part 1 of Schedule 2 of the *Occupational Health & Safety (Commonwealth Employment) Act 1991* (Cth) (the Act) by breaching s 16(1) and s 17 in relation to the manufacture and supply of the *Malu Sara*.

DIAC was, and remains, charged with the responsibility for managing immigration and border control throughout the Torres Strait. In 2004, DIAC decided to replace existing immigration response vessels operating in that area. A third party was contracted for the supply of the vessels. The contract with the third party contained descriptions of vessels and required the vessels to meet both international and Australian standards. A prototype vessel did not meet these requirements; however this omission was not disclosed at the time of sea trials of vessels including the *Malu Sara*.

The applicant claimed that the sinking of the vessel occurred as a result of structural and design defects of the vessel. The respondent subsequently admitted the breaches of the Act. The hearing was confined to determining the quantum of penalty under the Act.

The Judge held that the circumstances warranted imposition of the maximum statutory penalty under the Act. Although in determining penalty Courts commonly take into consideration acknowledgement of fault by a respondent and co-operation with the applicant, in light of the systematic failures in this case which had led to the events, and the gravity of the consequences, no reduction in the maximum penalty was warranted.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

INCOME TAX – exemption – whether taxpayer was a society or association established for the purpose of promoting the development of Australian agricultural resources – whether the taxpayer was carried on for the profit or gain of its individual members – taxpayer engages in wide range of activities which must be viewed as a whole – taxpayer is established for the development of the Australian grain industry and is not carried on for the profit or gain of its individual members.

Commissioner of Taxation v Cooperative Bulk Handling Ltd
(17 December 2010, Justices Mansfield, Siopis and McKerracher)

The question for determination was whether Co-operative Bulk Handling Limited (CBH) was established for the purpose of promoting the development of Australian agricultural resources so as to qualify for exemption from income tax. CBH was incorporated in 1933 to establish and conduct systems for the handling of wheat and grain in bulk. Prior to that time, most wheat harvested was bagged at the farm. A Royal Commission into the bulk handling of wheat was conducted in Western Australia in 1935 and concluded that the handling of wheat in bulk by CBH had been of advantage to the wheat growing industry in Western Australia.

CBH now derives substantial income which for many years has been tax exempt. More recent amendments to CBH's Constitution and state legislation resulted in mandating that CBH income or property may only be reapplied towards its objectives and not be distributed to its members.

The Commissioner argued that regardless of these changes and whatever the history may have been, CBH now operates for a 'purely commercial purpose' because of the significant commercial growth in business activities since it was established. It was also argued that the gains of better service and reduced rates received by members breached its not-for-profit requirement. The Court at first instance (Gilmour J) held that CBH was entitled to maintain its income tax exempt status. The Commissioner appealed to the Full Court.

The Full Court (Justices Mansfield and McKerracher, Justice Siopis dissenting) dismissed the appeal. The majority considered 'the totality of the discrete activities' to be directed to promoting the development of the grain growing industry, although operating in a commercially efficient and profitable business manner. The making of a surplus or profit and commercial nature of the business did not prevent an entity from having the requisite purpose. The majority accepted that members benefitted from the activities of CBH but this was not because of their individual membership. The word 'individual' in the tax legislation was emphasised. It was held that the objectives of CBH and legislative requirements imposed on it were to promote agricultural resources for the broader community, not just for its members. CBH services and facilities were available to grain producers irrespective of membership and benefits were obtained by all the industry. Incidental gains or benefits by members did not breach the not-for-profit requirement.

Therefore, the majority held that CBH was entitled to exemption from income tax as it was a society or association established for the purpose of promoting the development of Australian agricultural resources and did not carry on activities for the profit or gain of its individual members.

The Commissioner did not seek special leave to appeal to the High Court of Australia.

CONTRACTS – construction of margin lending loan and security agreement – whether margin calls validly made pursuant to agreement – whether failure to comply with margin calls constituted an event of default – whether sale of borrower’s securities by lender valid under the agreement – whether sale constituted unconscionable conduct within the meaning of s 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth)

BANKING AND FINANCIAL INSTITUTIONS – margin lending facility – whether agreement validly novated from one lender to another – whether agreement validly assigned from one lender to another – whether rights capable of assignment

EVIDENCE – whether primary judge’s factual conclusion was erroneous – *Fox v Percy* (2003) 214 CLR 118 – presumption article sent by pre-paid post received under s 160 *Evidence Act 1995* (Cth) – primary judge’s preference for demeanour evidence

Leveraged Equities Ltd v Goodridge and Anor
(18 January 2011, Justices Finkelstein, Stone and Jacobson)

This case concerned a Margin Lending Loan and Security Agreement (LSA) entered into between Mr Goodridge and Macquarie Bank Limited (Macquarie) on 12 May 2003. Under the terms of the agreement, Macquarie Bank was permitted to make margin calls on Mr Goodridge on short notice and was authorised to sell Mr Goodridge’s securities if he failed to satisfy the margin call within the time period specified.

In January 2009 Macquarie sold its margin loan book, comprising about 18,500 margin loans, including Mr Goodridge’s loan, to Leveraged Equities Limited (Leveraged Equities). Leveraged Equities made a margin call on Mr Goodridge on 5 February 2009 and two margin calls on 23 February 2009. To satisfy these later two calls, Leveraged Equities sold all of Mr Goodridge’s units in Macquarie Country Wide Trust. This sale had the effect of leaving Mr Goodridge with a shortfall on the balance outstanding on his loan. Mr Goodridge commenced legal proceedings against Macquarie and Leveraged Equities.

On appeal the Full Court reversed the decision of the primary judge and found in favour of Macquarie and Leveraged Equities.

The issues for determination fell into two groups: the margin call case; and the transaction case. Justice Jacobson wrote the leading judgment and Justices Finkelstein and Stone agreed.

The issues on the margin call case related to construction of the LSA, namely; whether the LSA conferred a discretion upon Leveraged Equities to shorten the period within which Mr Goodridge was required to comply with a margin call to less than three days, and whether the LSA conferred upon Leveraged Equities an independent power to sell Mr Goodridge’s security to satisfy the amount by which the total loan balance exceeded the market base limit, even if no margin call was made.

Justice Jacobson, with whom Justices Finkelstein and Stone agreed, found that while the LSA imposed a limit on the ability of the lender to shorten the period within which Mr Goodridge had to satisfy the margin calls, Leveraged Equities was entitled to require the margin calls to be satisfied by no earlier than one day following the call: this was shorter than the three day period provided for in the LSA. The

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

Full Court found that under the terms of the LSA, Leveraged Equities was not only entitled to sell Mr Goodridge's security if he failed to comply with a margin call, which constituted an event of default, it also had an independent power to sell where no margin call was made but the total loan balance exceeded the market base limit.

In relation to the transaction case, the issues were whether the Transaction Documents, under which Macquarie had sold its margin loan book to Leveraged Equities, were effective to novate or assign the LSA to Leveraged Equities, and whether Mr Goodridge, by signing the LSA, had given prospective consent to the introduction of a new lender.

The Full Court determined that the margin loan book had been effectively novated to Leveraged Equities by the Transaction Documents. While there was no clear distinction between 'assignment' and 'novation' in the LSA, their Honours took the view that it was sufficiently clear that the borrower had given prospective consent to all elements required to give effect to novation of the LSA to any third party who was prepared to assume the obligations of lender. Further, the Court found that the express terms of the LSA made it abundantly clear that Macquarie's rights under the LSA were capable of assignment and were effectively assigned to Leveraged Equities.

Justice Jacobson, with whom the other members of the Full Court agreed, found that the primary judge's conclusion that Mr Goodridge had not received actual notice of the assignment in accordance with s 12 of the Conveyancing Act 1919 (NSW) was based upon demeanour evidence. This finding was erroneous and set aside by the Full Court.

As to whether Leveraged Equities had engaged in unconscionable conduct within the meaning of s 12BC of the *Australian Securities and Investments Commission Act 2001* (Cth), Mr Goodridge acknowledged that the funds received under the LSA would be applied wholly or predominately for business or investment purposes, not for personal, domestic or household use as required by the Act. Moreover, Justice Jacobson found that there was nothing unconscionable in a margin lender enforcing its legal rights to protect itself against a fall in the value of its security.

CORPORATIONS LAW – continuous disclosure – misleading and deceptive conduct

Australian Securities and Investments Commission v Fortescue Metals Group Ltd
(18 February 2011, Chief Justice Keane, Justices Emmett and Finkelstein)

This appeal concerned Fortescue Metals Group Ltd (FMG), a publicly listed company on the Australian Stock Exchange (ASX) and, Mr John Andrew Henry Forrest (Forrest), the chairman and chief executive officer of FMG. He is also a substantial shareholder.

In early 2004, FMG commenced negotiations with three Chinese companies in relation to a mining project in Western Australia known as the Pilbara Infrastructure Project (the Project). These negotiations led to the execution of three agreements, referred to as the 'framework agreements'.

In August and November 2004, FMG released a series of announcements to the market and statements to investors indicating that the framework agreements were legally binding arrangements to build, finance and transfer the Project infrastructure. In March 2005 an article was published in the Australian Financial Review asserting that the framework agreements did not impose any legally binding obligations upon the Chinese entities.

In March 2006, the Australian Securities and Investments Commission (ASIC) commenced proceedings alleging that FMG had engaged in misleading and deceptive conduct in breach of s 1041H of the Corporations Act 2001 (Cth) (the Act), and s 52 of the Trade Practices Act 1974 (Cth) (the TP Act). Further, ASIC alleged that FMG had contravened s 674(2) of the Act by failing to disclose the true meaning or terms of the agreements or, that FMG had breached its continuous disclosure obligations in failing to correct earlier mis-statements as to the terms of the agreements.

ASIC alleged that Forrest was personally involved in FMG's contravention of s 1041H of the TPA and s 674(2) of the Act. It was further asserted that Forrest was in breach of his director's duties under s 180(1) of the Act.

At trial ASIC's case was comprehensively dismissed with the trial judge finding that the statements about the agreements were honestly held expressions of opinion. ASIC's case against FMG was rejected, meaning that the case against Forrest also failed.

Keane CJ (Justices Emmett and Finkelstein agreeing) allowed ASIC's appeal. It was held that the agreements could not accurately be described as binding agreements to build, finance, and transfer the infrastructure for the Project, and that FMG's announcements contravened s 1041H of the Act.

Once it was accepted that FMG contravened s 1041H of the Act, having made misleading statements to the ASX, it was obliged pursuant to s 674(2) to correct the position, which it had failed to do. This failure constituted a contravention of s 674 of the Act.

Forrest was held to be in breach of s 79(c) of the Act by virtue of his involvement in the negotiations for the framework agreements and authorisation or approval of the relevant announcements.

Additionally, as Forrest was involved in FMG's contravention of their continuous disclosure obligations, he personally breached s 674(2A). No defence was available under s 674(2B) of the Act in that Forrest was not able to point to any steps he took to ensure the framework agreements were, in law, binding agreements to the extent represented by FMG. Further, his own communications evidenced a belief inconsistent with the view that FMG had made a binding agreement for the construction of the infrastructure of the Project.

Finally, as Forrest had exposed FMG to pecuniary penalty, he was held to be in breach of his duty of care and diligence to the company under s 180(1). The business judgment rule did not apply. The decision not to disclose the true effect of the agreements could not properly be described as a 'business judgment', but rather a decision related to compliance with the obligations imposed by the Act.

COPYRIGHT – authorisation of infringement – whether internet service provider sanctioned, approved or countenanced its network users' acts of primary infringement

Roadshow Films Pty Ltd v iiNet Ltd
(24 February 2011, Justices Emmett, Jagot and Nicholas)

The appellants in this landmark copyright case were owners or exclusive licensees of the copyright in commercial films and television shows. They claimed that the respondent, internet service provider iiNet, had infringed copyright in their cinematographic films by authorising its customers' acts of primary infringement. The primary infringements involved iiNet users communicating the appellants' films to the public via the BitTorrent file sharing system.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

An organisation known as the Australian Federation Against Copyright Theft (AFACT) sent notices to iiNet which alleged specific acts of infringement of the copyright in the appellants' films by iiNet users and required iiNet to take certain action. iiNet's subsequent action (or inaction) was said by the appellants to amount to authorisation of infringement within the meaning of s 101 of the *Copyright Act 1968* (Cth).

The trial judge found that iiNet users had infringed copyright in the films by communicating them to the public but that such infringement was not authorised by iiNet. Accordingly, his Honour found that iiNet had not infringed copyright in the appellants' films. A fundamental consideration which led to the trial judge's conclusion was that it was the BitTorrent system, rather than iiNet, that provided the 'means' of infringement; thus, iiNet could not be taken to have authorised the infringement which occurred.

On appeal, the critical question for the Full Court to decide was whether the trial judge erred in finding that iiNet had not authorised acts of copyright infringement. That is, did iiNet sanction, approve or countenance the acts of primary infringement?

It was accepted that primary infringement had occurred. As to the extent of primary infringement, the Court found that individual iiNet users had made the appellants' entire films available online on multiple occasions, not just once as the trial judge had found. However, again contrary to the trial judge's conclusion, the Court found that it was not established on the evidence that the whole or a substantial part of any of the appellants' films had been electronically transmitted by any one iiNet user.

On the question of authorisation, the Court considered the prescribed matters in s 101(1A) of the Copyright Act which, in summary, consisted of: (a) iiNet's power to prevent the acts of primary infringement; (b) the nature of the relationship between iiNet and the people who infringed; and (c) whether iiNet took reasonable steps to prevent or avoid infringement. Other factors which the Court took into account were knowledge of, encouragement of, and inactivity or indifference to infringement.

Justices Jagot and Nicholas found that the trial judge had erred in his approach to determining authorisation by focusing on whether or not iiNet provided the 'means' of infringement. However, the Court (Justice Jagot dissenting) ultimately found that iiNet had not authorised acts of infringement and dismissed the appeal. Justices Emmett and Nicholas each concluded that the AFACT notices did not provide iiNet with enough information that iiNet could reasonably have been expected to take steps such as issuing warnings or suspending or terminating users' accounts. However, their Honours made it plain that this did not mean that an internet service provider could not be liable for authorising its users' acts of primary infringement in other circumstances. Justice Emmett even outlined a set of circumstances under which it may have been reasonable to expect iiNet to take the abovementioned steps.

The Court also decided that if iiNet had been found to have authorised infringement, it would not have been protected by s 112E or the 'safe harbour' provisions of the Copyright Act. Similarly the *Telecommunications Act 1997* (Cth), which iiNet invoked as preventing it from complying with the AFACT notices, was a defence that was held to be unavailable.

CONTRACT – whether restraint of trade clause harsh or unfair – application of *Independent Contractors Act 2006 (Cth)* to contracts terminated before application filed – restraint of trade – enforceability – legitimate interest – customer connexion – opportunistic disintermediation – legitimate interest for labour hire firm – employer interest in staff or contractor connexion

Informax International Pty Ltd v Clarius Group Limited
(4 March 2011, Justice Perram)

Clarius, a labour hire firm, had contracted an information technology project manager through her corporate vehicle, Informax, to Woolworths. The contract between Informax and Clarius was extended several times. After a period of fifteen months, Informax ceased contracting with Clarius and entered into a contract directly with Woolworths. Informax's contract with Clarius had contained a clause that it would not contract directly with one of Clarius' clients for a period of six months after the contract ceased; and Clarius' agreement with Woolworths contained a clause to the effect that Woolworths would not directly employ or engage a contractor for a period of twelve months after the cessation of their contract with Clarius.

Clarius uncovered, by chance, that Informax had contracted directly with Woolworths and indicated to Woolworths that this might be in breach of the surviving conditions of Informax's contract with Clarius. Woolworths immediately asked the contractor to leave.

Informax brought proceedings seeking damages from Clarius, on the basis that the restraint of trade clauses in either the contract between Informax and Clarius, or between Woolworths and Clarius, are invalid; and that the restraint of trade clause and/or the entire contract between Informax and Clarius was 'unfair' under the *Independent Contractors Act 2006 (Cth)*.

Clarius attempted to defend the restraint of trade clauses on the basis that it had a legitimate interest in maintaining a customer connexion with its clients or opportunistic disintermediation; that is, the middle-man's risk of being cut out. The Court recognised, for the first time in Australia, that a labour hire firm has a legitimate interest in protecting itself against the perils of opportunistic disintermediation. However, as the extent of disintermediation interest was not proved by Clarius, this legitimate interest could not be found to support either of the clauses in question.

The Court held that customer connexion could not be applied to the contract between Clarius and Woolworths, where it would operate as a covenant by the client not to be poached. The Court found that customer connexion had not been sufficiently proved to constitute a legitimate interest supporting the restraint of trade clause between Clarius and Informax.

As the restraint of trade clauses were not supported by a legitimate interest, the Court found that it was unfair, within the meaning of the *Independent Contractors Act*, for Clarius to seek to persuade Woolworths to break up the relationship between Woolworths and Informax when it had no legal entitlement to stop either from working with the other. The Court also held that relief under the Act could be granted for a contract which had already been terminated.

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

PRACTICE AND PROCEDURE – courts and judges – apprehended bias – application for leave to appeal against order by primary judge, refusing to disqualify himself – whether a party’s unilateral communication with a judge’s associate could found or contribute to a reasonable apprehension of bias, where no direct evidence that it involved any discussion of merits or substance – no impropriety in a party’s unilateral communication with chambers in relation to procedural, administrative or practical matters – unilateral communication does not per se constitute a ground sufficient to warrant disqualification of judge – primary judge understood and properly applied the correct test – application for leave to appeal refused

John Holland Rail Pty Ltd & Anor v Comcare
(11 March 2011, Justices North, Kenny and Dodds-Streeton)

This decision concerned the questions of whether, and in what circumstances, unilateral communication between a party or practitioner and judge’s chambers could give rise to a reasonable apprehension of bias in the judge.

The respondent, Comcare, had made an application for declarations and penalties against the appellants (collectively ‘John Holland’) under the *Occupational Health and Safety Act 1991* (Cth). A solicitor for Comcare contacted the associate to the docket judge, Justice Bromberg, to indicate that his client may require a directions hearing to be listed and to ascertain his Honour’s availability. Another similar communication followed. While the number and content of the communications were in dispute, it was apparent that their purpose was to request available dates for directions and not to discuss substantive issues in the litigation. John Holland was not aware of the communications at the time they were made.

John Holland made application to Justice Bromberg seeking that his Honour disqualify himself from the further conduct of the proceeding, on the basis that the unilateral communication between his associate and the solicitor for Comcare gave rise to a reasonable apprehension of bias. Justice Bromberg refused to disqualify himself and John Holland applied for leave to appeal against his Honour’s decision.

The Full Court unanimously refused leave to appeal. The Court held that there is no impropriety in a party’s unilateral communication with chambers in relation to procedural, administrative or practical matters, unless it is a sustained sequence of communications (which could, at some point, become unprofessional or improper). Conversely, in certain circumstances, unilateral communication in relation to the substantive issues in the litigation could found or contribute to a reasonable apprehension of bias or lack of procedural fairness. The latter type of communication should generally be circulated or made in the presence of the other parties unless the other parties have consented to its unilateral provision to chambers.

Contrary to John Holland’s submission, the Court held that no presumption of impropriety arises from unilateral communication with chambers, and indeed such communication is sometimes unavoidable. Further, their Honours held that to establish a reasonable apprehension of bias, ordinarily it would be necessary to demonstrate not just that improper communication was made with chambers but also that the impugned communication was conveyed to the judge personally. In the circumstances of this case, no legitimate basis was established for a reasonable apprehension of bias.

NATIVE TITLE – Aboriginals – Native title – Issue estoppel – Application to native title claims – Overlapping claims – Claims consolidated to extent of overlap – Finding that claimant not a traditional native title group that had existed since sovereignty – Claimant brought subsequent claim in relation to remainder of original area (excluding the overlap) – Claim dismissed as abuse of process – Issue estoppel unlikely to apply to native title claims, as determinations are in effect judgments in rem – Native Title Act 1993 (Cth), ss 61(1), 67(2)

Dale v State of Western Australia
(31 March 2011, Justices Moore, North and Mansfield)

The appellants as applicants for the Wong-goo-tt-oo Peoples initially claimed native title rights and interest over an area in Western Australian pursuant to s 61(1) of the *Native Title Act 1993* (Cth) (NT Act). As that claim area overlapped substantially with competing claims by other groups including the Ngarlum Peoples and the Yinjibarndi Peoples, the Court consolidated those claims to the extent of the area of the overlap pursuant to s 67(2) of the NT Act and O 29 r 5 of the Federal Court Rules. In the resultant consolidated proceeding, the Court found that the appellants were not a traditional native title group that had existed since sovereignty nor had they maintained the necessary connection to the claim area since that time: *Daniel v Western Australia* [2003] FCA 666 (*Daniel*). Final orders were made in 2005: *Daniel v Western Australia* [2005] FCA 536.

The appellants subsequently pursued their claim in relation to the remainder of the original claim area, excluding the overlap. The trial judge found however that the group was estopped from pursuing the claim, given the findings in the consolidated proceeding that the appellants were not, and had never been, a ‘society’ for purposes of the NT Act: *Dale v Western Australia* (2009) 261 ALR 21.

The Full Court dismissed the appellants’ appeal from that judgment. The Court held that the appellants in seeking to agitate the same issue as had been determined in *Daniel* constituted an abuse of process, such that the trial judge was correct to dismiss it. The evidence in the consolidated claim related to whether the appellants were a cognatic kin group with ongoing native title rights and interests generally in the broader area, rather than merely in relation to the consolidated claim area such that the relevant issue had already been determined.

Their Honours entertained real doubt as to the applicability of issue estoppel in native title determinations, given the statutory framework and the character of any determination made. Section 67(2) of the NT Act requires overlapping applications to be heard together. Any determination made as to the native title holders is then in effect a judgment in rem which will bind persons beyond parties to the proceedings. As such it operates outside the usual field of the principle of issue estoppel (which requires that the same parties were parties in the proceeding in which the issue was earlier determined).

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

INTELLECTUAL PROPERTY – infringement of copyright in musical works – whether recordings of a musical work infringed copyright in an earlier musical work by reproducing in material form a substantial part of the earlier work

EMI Songs Australia Pty Limited v Larrikin Music Publishing Pty Limited
(31 March 2011, Justices Emmett, Jagot and Nicholas)

This appeal required the Full Court to consider whether commercial recordings of Men at Work's landmark Australian song *Down Under* infringed copyright in the equally iconic *Kookaburra Sits In The Old Gum Tree*. It was common ground that, in five of *Down Under*'s 93 bars, its flute riff quoted *Kookaburra*'s first two melodic phrases; the dispute concerned whether this quotation constituted a reproduction of a substantial part of *Kookaburra*. The Full Court was taken to several matters relating to the appropriate judicial approach to resolving that question in the context of musical works.

A primary issue was the correctness of sequentially and separately determining two matters: (i) the existence of objective similarity between the works, and (ii) whether the part reproduced was a substantial part of the copyright work. Justice Jagot, with whom Justice Nicholas substantially agreed, found such an approach to be wholly orthodox and consistent with established authority. Justice Emmett, in determining *de novo* the question of infringement, adopted a more holistic approach, eventually concluding, albeit with some reluctance in light of the competing public interests intended to be balanced by copyright law, that infringement was made out. Accordingly, the appeal was dismissed unanimously.

The case raised numerous points of interest and, on several issues, Australian authority in a musical context was at best scant. The difficulty of giving precise content to the expression 'musical work', an essentially aesthetic term left undefined in the Copyright Act, was clearly revealed. The appellants argued that, since infringement requires that the part of the copyright work taken be original, and the only evidence adduced of *Kookaburra*'s originality lay in its composition as a four-part 'round', the absence of the features of a round in the *Down Under* quotation told decisively in their favour. Dealing with this argument involved some consideration of the degree to which a musical work is coterminous with a single notated rendering or a particular performance. Justice Emmett considered that reproduction of the constituent phrases, even without any round context, would constitute reproduction of the results of an application of skill, and therefore of that which makes *Kookaburra* original. Justices Jagot and Nicholas did not consider this issue in as much detail, as their Honours took the view that *Kookaburra*'s originality extended beyond its composition as a round.

Three further issues call for mention. First, the appellants contended that, in determining the question of objective similarity between the works according to the test of the ordinary, reasonably experienced listener, it is inappropriate to overly sensitise oneself to the works' similarities and to have regard to expert evidence. All three appellate judges considered that neither repeat exposure nor expert guidance violated the requirements of the test. Secondly, by reason of the appellants' reliance on observations of the High Court in the *IceTV* decision, especially as to *animus furandi*, the general applicability of the strain of authority known as the 'compilation cases' arose. Justice Jagot led the Full Court in declining to expand the scope of these cases. Lastly, the Full Court reaffirmed that, in order to make out infringement, it is not necessary to establish that the part taken constitutes a substantial part of the *infringing work* – a point not well taken in media glosses of the decision, which tended to be as inaccurate as they were enthusiastic.

PRACTICE AND PROCEDURE – application pursuant to ss 21 and 23 of the *Federal Court of Australia Act 1976 (Cth)*, O 21 rr 1 and 2 and O 35 r 1 of the *Federal Court Rules* to have respondent declared a vexatious litigant – whether proceedings vexatious – whether proceedings instituted ‘habitually, persistently and without reasonable grounds’

Soden v Kowalski

(7 April 2011, Justice Stone)

This case concerned two proceedings brought, respectively, by the Registrar of the Federal Court and by Mitsubishi Motors Australia Ltd, MMAL Staff Superannuation Fund Pty Ltd and AMP Superannuation Ltd to have the respondent, Mr Kazmir Kowalski, declared a vexatious litigant. The applicants also sought consequential orders preventing the respondent from instituting further proceedings without leave of the Court.

In support of their applications, the applicants identified a number of proceedings which were commenced by Mr Kowalski in the Federal Court and which had given rise to thirty-four judgments delivered by the Court. Mr Kowalski’s history of litigation began with his employment with Mitsubishi Motors in 1964. He claimed that during his employment with Mitsubishi or as a result of it he suffered various injuries and illnesses.

Justice Stone accepted that all but four of the proceedings identified by the applicants were vexatious. In making that determination her Honour considered that vexatiousness is a quality of the proceeding and not of the respondent’s intention. The test is whether a proceeding is so obviously untenable or manifestly groundless as to be utterly hopeless.

Her Honour found that Mr Kowalski had instituted the proceedings habitually and persistently; almost as a matter of course and persisted in pressing his claims when they had already been determined. He was not deterred by findings that his applications were unsustainable or groundless.

On the issue of whether discretion should nonetheless be exercised in granting the relief sought, her Honour considered that while the relief was extreme it was not absolute. The Federal Court Rules seek to strike a balance between the interests of a vexatious litigant and the countervailing need to protect the Court, potential respondents and the community in general from the consequences of frequent, habitual and groundless litigation. In this case the balance was in favour of restricting Mr Kowalski’s right to commence proceedings by requiring him first to obtain leave.

Her Honour granted the relief sought and made an additional order that Mr Kowalski not continue any proceeding instituted prior to the order without leave of the Court.

TRADE PRACTICES – Access to Services – *Trade Practices Act 1974 (Cth)* – Part IIIA – s 44H(4)

COMPETITION – role of Tribunal – function to resolve difficult and complex matters of judgment – Court’s role to ensure decision accords with the law – Court’s role not to reconsider merits of the case

APPENDIX 8 – SUMMARY OF DECISIONS OF INTEREST

EVIDENCE – role of expert evidence

Pilbara Infrastructure Pty Ltd v ACCC

(4 May 2011, Chief Justice Keane and Justices Mansfield and Middleton)

This important decision clarified the scope of the declaration provisions under Part IIIA of the *Trade Practices Act 1974* (the Act). Part IIIA provides for a two stage process to enable third parties to obtain access to ‘essential facilities’. Under stage one the National Competition Council must recommend, and the Treasurer must accept, that the declaration would satisfy each of the criteria in s 44H(4) of the Act. Under stage two an access dispute may be referred to the Australian Competition and Consumer Commission (ACCC) if negotiation cannot be reached.

The appellant, the Pilbara Infrastructure Pty Ltd, a wholly owned subsidiary of Fortescue Metals Group Ltd (collectively referred to as Fortescue), sought to invoke Pt IIIA of the Act in order to obtain access to four railways in the Pilbara region of Western Australia and all associated infrastructure necessary to allow trains and rolling stock to provide transport services of its own.

Only two lines were in issue on appeal, the Hamersley line and the Robe line, both operated by Rio Tinto Iron Ore (Rio Tinto). The Treasurer had decided to declare both lines for twenty years. Pursuant to s 44K of the Act Rio Tinto applied to the Australian Competition Tribunal (the Tribunal) for review of the Hamersley and Robe declarations.

On 30 June 2010 the Tribunal made determinations setting aside the declaration of the Hamersley line and varying the decision in relation to the Robe line so that it expired in ten, rather than twenty, years. Fortescue applied for judicial review of the Tribunal’s decision, challenging the Tribunal’s finding to set aside the Treasurers’ decision to declare the Hamersley line, and to vary the expiration date in relation to the Robe line. Rio Tinto brought a cross-appeal challenging the decision of the Tribunal not to completely set aside the Treasurers’ declaration in relation to the Robe line.

There were three key legal arguments before the Full Federal Court:

- whether s 44H(4)(b) in requiring ‘that it would be uneconomical for anyone to develop another facility to provide the service’, erects a test of private economic feasibility or productive efficiency from the viewpoint of society as a whole;
- whether the requirement of s 44(4)(f) that ‘access (or increased access) to the service would not be contrary to public interest’ involves a consideration of the costs of access which would be expected to be addressed by the ACCC under s 44V and s 44X at the second stage of the Pt IIIA process; and
- whether Rio Tinto’s communications with the Tribunal after the conclusion of the hearing, in relation to the likelihood that Fortescue would construct an additional railway, the Dixon line, by 2013/2014, raised an issue as to procedural fairness.

It was held by the Full Court, Chief Justice Keane and Justices Mansfield and Middleton all agreeing, that the declaration of the Hamersley line be set aside, and that Rio Tinto’s application seeking the Robe line not be declared in its entirety be granted.

As to s 44(4)(H)(b) the Court did not apply the ‘natural monopoly test’ adopted by the Tribunal and the ‘net social benefit test’ applied by the Tribunal in previous cases such as *Re Duke Eastern Gas Pipeline Pty Ltd* [2001] ACompT 2 at [64] and *Re Sydney International Airport* [2000] ACompT 1 at [204]-[206] (*Sydney Airport No 1*).

The Court at [86] preferred the narrower test of

‘whether “anyone” can be identified for whom the development of an alternative facility is economically feasible...[i]f an examination of the facts shows that there is such a person, whoever that might be, and whatever that person’s circumstances, then regulatory interference in the interplay of market forces is not warranted...’.

Further, in conformity with the view reached in the Tribunal in *Sydney Airport No 1*, the Court found that the reference to ‘anyone’ in s 44H(4)(b) **does not** include the incumbent owner.

As to the application of s 44H(4)(f) the Full Court accepted the approach taken by the Tribunal at [1172] of their reasons. The Court found that it was open to the Minister or Tribunal to consider the consequences likely to arise as a result of access. Accordingly, costs associated with the incumbent in providing access, negotiations about access to infrastructure, delays in expansions, or inefficiencies in technological development may all be taken into account. The Minister and the ACCC may have to consider the same evidence in relation to the costs of negotiation and arbitration at stage two but the perspective of the decision maker at each stage will be different.

In dealing with the procedural fairness argument the Court held that it is undesirable that any party engage in unsolicited correspondence with a Court or Tribunal after engagement has concluded and the decision reserved. The Tribunal was found to have relied upon the material erroneously provided to it by Rio Tinto. This material informed the Tribunals’ conclusions adverse to Fortescue in respect of s 44H(4)(f). However, as the procedural fairness complaints did not bear upon the Tribunal’s findings of fact in relation to s 44H(4)(b), upon which Fortescue was bound to fail, there was no prejudice to Fortescue by reason of Rio Tinto’s conduct.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

In Brisbane on 1 July 2010, via video link from the Federal Court in Sydney, Chief Justice **KEANE** welcomed the Commonwealth Attorney-General, the Hon Robert McClelland MP and participants to the Australian Maritime and Transport Arbitration Commission Annual Address 2010.

Chief Justice Keane travelled to China on 15 July 2010 to attend the Shanghai World Expo and delivered a paper on 16 July entitled *Recent Developments in International Arbitration in Australia*. The event was supported by the Australian International Legal Services Advisory Council (ILSAC) and the Australian Centre for International Commercial Arbitration (ACICA).

On 3 August 2010 Chief Justice Keane attended the launch of the Australian International Dispute Centre in Sydney by the Commonwealth Attorney-General.

On 9 September 2010 Chief Justice Keane delivered the Keynote Address entitled *Fundamental Legal Values: the Courts and the Law Reform Commission* at the Australasian Law Reform Agencies Conference at the State Library of Queensland in Brisbane.

On 20 September 2010, at the Federal Court in Brisbane, Chief Justice Keane met with Justice Khairul Haque, Judge of the Appellate Division of the Supreme Court of Bangladesh, and Justices Khondker Khaled, Mohammad Haque and Muhammad Ali, Judges of the High Court Division of the Supreme Court of Bangladesh.

In Melbourne on 23 September 2010 Chief Justice Keane, Chief Justice Bryant of the Family Court of Australia and the Hon Dr Harifin Tumpa, Chief Justice of the Supreme Court of the Republic of Indonesia, signed a further Annex to the Memorandum of Understanding between the Courts. Chief Justice Keane delivered an address to the judges of the Indonesian Courts on the management of appeals within the Federal Court of Australia.

On 8 October 2010 in Sydney Chief Justice Keane attended a breakfast meeting of the Anglo-Australasian Lawyers Society and delivered a speech entitled *A Bill of Rights: Founders’ Attitudes to Government in the United States and Australia*.

In Canberra on 14 October 2010 Chief Justice Keane gave the Keynote Address at the Australian Government Solicitor’s Administrative Law Forum. The Chief Justice’s paper was entitled *Reflections on Jurisdictional Error*.

On 15 October 2010 in Sydney Chief Justice Keane delivered the opening address entitled *Judicial Support for Arbitration in Australia* at the Financial Review International Dispute Resolution Conference 2010.

Chief Justice Keane attended the 12th International Criminal Law Congress in Noosa, Queensland on 21 October 2010 and delivered a commentary on the address by the Hon Paul de Jersey, Chief Justice of the Supreme Court of Queensland.

On 27 October 2010 Chief Justice Keane attended a meeting of the Council of Chief Justices of Australia and New Zealand in Wellington, New Zealand.

On 4 November 2010 at the Federal Court in Melbourne Chief Justice Keane and Registrar Warwick Soden met with Dame Sian Elias, Chief Justice of New Zealand, Judge Helen Winkelmann, Chief Judge of the High Court of New Zealand, and Justice Mark O’Regan, President of the New Zealand Court of Appeal, to discuss judicial administration.

Also on 4 November 2010 in Melbourne Chief Justice Keane attended the Australasian Institute of Judicial Administration Oration given by the Hon Mrs Justice Susan Denham, Senior Judge of the Supreme Court of Ireland.

In Brisbane on 9 November 2010, via video link from the Federal Court in Sydney, Chief Justice Keane welcomed participants to the National Admiralty and Maritime Seminar.

On 16 November 2010 in Brisbane Chief Justice Keane and Registrar Warwick Soden met with Chief Justice Vincent Lunabek and Chief Registrar John Obed Alilee of the Supreme Court of the Republic of Vanuatu to discuss the proposed Memorandum of Understanding between the courts.

In Brisbane on 17 November 2010 Chief Justice Keane and Registrar Warwick Soden met with Sir Salamo Injia, Chief Justice of the Supreme Court and National Court of Papua New Guinea, Mr Ronald Silovo, Secretary National Judicial Staff Service and Mr Paul Kelly, Development Practitioner, PNG Law and Justice Sector organisation, for discussions regarding judicial assistance to the Supreme Court and National Courts of Papua New Guinea.

On 19 November 2010 in Sydney Chief Justice Keane and Registrar Warwick Soden participated in the Federal Civil Justice System Roundtable convened by the Commonwealth Attorney-General.

Chief Justice Keane was the keynote speaker at the 2010 Monash University Global Courts Conference and Workshop in Sydney on 3 December 2010. The Chief Justice's speech was entitled *The Prospects for an International Legal Order*.

On 8 December 2010 Chief Justice Keane attended and spoke at the launch of the publication *Courting Reform: Indonesia's Islamic Courts and Justice for the Poor*, authored by Professor Tim Lindsey and Cate Sumner, at the Lowy Institute for International Policy in Sydney.

In January 2011 Chief Justice Keane attended the Annual Supreme Court and Federal Court Judges' Conference in Wellington, New Zealand.

Chief Justice Keane thanked Victorian barristers and solicitors for their ongoing commitment to the Federal Court's pro bono scheme at a function at the Commonwealth Law Courts in Melbourne on 14 February 2011.

On 18 February 2011 Chief Justice Keane attended the 2011 Constitutional Law Conference, organised by the Gilbert + Tobin Centre of Public Law with the support of the Australian Association of Constitutional Law, at the Art Gallery of New South Wales. That evening, the Chief Justice was the guest speaker at the conference dinner at New South Wales Parliament House which was hosted by the NSW Attorney-General, the Hon John Hatzistergos. The title of the Chief Justice's speech was *Originalism: Founders, Judges and Modesty*.

On 10 March 2011 the Chief Justice welcomed Judges, Federal Magistrates, Registrars, staff and members of the profession to the opening of the Level 6 Mediation Centre at the Commonwealth Law Courts in Melbourne.

Chief Justice Keane attended an afternoon tea to meet the 2011 Indigenous Law Clerks on 15 March 2011 at the Commonwealth Law Courts in Melbourne.

On 16 March 2011 at the Federal Court in Sydney Chief Justice Keane presented a paper entitled *A Question of Words: Conceptual Creep and Fiduciary Obligations* to the Society of Trust and Estate Practitioners.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

On 12 April 2011 the Chief Justice attended a meeting of the Council of Chief Justices of Australia and New Zealand at the Supreme Court in Perth, followed by a lunch held at the Federal Court. That evening, Chief Justice Keane attended a dinner for the Council of Chief Justices in Government House hosted by His Excellency the Governor of Western Australia and Mrs Julie Michael.

On 5 May 2011 in Brisbane, Chief Justice Keane welcomed participants to the Australasian Institute of Judicial Administration’s conference on Child Protection in Australia and New Zealand.

Also on 5 May 2011 at the Federal Court in Sydney Chief Justice Keane gave the keynote address at the International Commercial Law, Litigation and Arbitration Conference sponsored by the Federal Court of Australia and the Law Council of Australia.

In Sydney on 13 May 2011 the Chief Justice was the guest speaker at the New South Wales Bar Association’s 2011 Bench and Bar Dinner.

On 23 May 2011, at the invitation of the Hon Trevor Riley, Chief Justice of the Supreme Court of the Northern Territory of Australia, Chief Justice Keane attended events in Darwin to celebrate that court’s 100th anniversary.

In Townsville on 27 May 2011 Chief Justice Keane presented a paper entitled *Contemporary Perspectives of Judicial Power* at the North Queensland Law Association Conference 2011.

On 3 June 2011 Chief Justice Keane presented a paper entitled *Opportunity and Responsibility* at the Australian Institute of Aboriginal and Torres Strait Islander Studies’ (AIATSIS) Conference in Brisbane.

In Melbourne on 9 June 2011 Chief Justice Keane opened the 14th Annual Tribunals Conference of the Australasian Institute of Judicial Administration.

Justice **MOORE** sat on the Court of Appeal in Tonga from: 12– 16 July; 4–8 October 2010; and from 11– 15 April 2011.

Between 17 and 29 September 2010 Justice Moore conducted workshops for judges of the Supreme People’s Court of Vietnam on *The Arrest of Ships* in Hanoi, Danang and Ho Chi Minh City.

On 12 October 2010 Justice Moore addressed the members of the Migration Review Tribunal and the Refugee Review Tribunal in Sydney on the review of migration decisions in the Federal Court. In the same month Justice Moore discussed the use of information technology by judges in the Federal Court with visiting delegates from the Supreme People’s Court of Vietnam. Justice Moore presented a paper: *Judicial Independence – Breaking Free from the Executive Branch* at the 19th Pacific Regional Judicial Conference in Guam (5–10 November 2010).

During the reporting year Justice Finn was the Arthur Goodhart Visiting Professor of Legal Science, University of Cambridge, a Professorial Fellow, Gonville and Caius College, Cambridge and Professorial Fellow, University of Melbourne. He presented guest lectures at the universities of Cambridge, Oxford and Monash (Prato) and the Max Planck Institut, Hamburg. In June 2011 Justice Finn delivered a paper titled *Equity* at the Remedies Discussion Forum, Aix-en-Provence.

Justice **MARSHALL**, together with Justice Gray, hosted a visit to the Victoria District Registry on 13 July 2010 by judges from the Republic of Korea. In September 2010, Justice Marshall conducted workshops for judges of the Supreme People’s Court of Vietnam on *basic Australian copyright and trade mark law* in Hanoi, Danang and Ho Chi Minh City.

Also in September 2010 Justice Marshall presided over the Melbourne University Witness Examination Grand Final and the Melbourne University Law Students Society Moot Court Grand Final.

In late October 2010, together with Justice Bromberg, Justice Marshall hosted a visit by Ms Yu Bai from the Beijing Zhicheng Migrant Workers Legal Aid and Research Centre in co-operation with the Australian Human Rights Commission.

In April 2011 Justice Marshall gave an address to the students at the Tasmanian Legal Practice Course and hosted a reception for the Tasmanian Women Lawyers.

In 2010–11 Justice **MANSFIELD** participated in various functions for the Law Society of South Australia. In his capacity as Chair of Graduate Diploma and Legal Practice (GDLP), Justice Mansfield was the formal speaker at the GDLP Graduation Ceremonies held on 7 October 2010 and 12 May 2011 at the Law Society.

Justice Mansfield presented papers to the Law Society of the Northern Territory entitled *Australian Consumer Law* outlining changes to Australian Consumer Law on 8 March 2011 and *what's driving changes in the law under the reins of Chief Justice French* on 24 May 2011.

On 2 August 2010, Justice Mansfield was a speaker on Appellate Advocacy at the Inaugural Conference of the South Australia Bar Association at Victor Harbor. He also presented various sessions on the Federal Court to the South Australia Bar Readers Course and the South Australia New Practitioners.

Justice Mansfield presented a paper entitled *Cartel Offences – Issues for the Judge* to the Law Council Business Law Section Trade Practices Conference on 21 August 2010. He also attended, and gave opening remarks at, the University of South Australia Trade Practices Workshop on 15 October 2010.

The 19th Pacific Regional Judicial Conference was held in Guam from 7–10 November 2010. Justice Mansfield presented a paper entitled: *The Role of Judges in Climate Change*.

Justice Mansfield also presented a joint paper on *Extra Judicial Activities while a Serving Judge* to the annual Supreme Court Federal Court Judges Conference in New Zealand on 22–26 January 2011.

Justice Mansfield continues as Chair of the GDLP Course Committee of the Law Society of South Australia as well as Chair of the South Australia 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 Advisory Board at the University of South Australia.

On 25 October 2010 Justice **EMMETT** participated in the World Legal Forum, 'Expert Roundtable' at The Hague. On 5–6 November 2010, in his capacity as President of the Copyright Tribunal, he attended and presented a paper at the Second International Conference on Content Industries and Intellectual Property, *300 Years of Copyright: From Statute of Anne to Digital Copyright 2010* held at East China University of Political Science and Law, Shanghai, China.

In October 2010 and May 2011, Justice Emmett participated in the New South Wales Bar Association readers' course. On 25 February 2011, he attended and presented a paper on copyright at the Blue Sky Conference held at Balmoral, Sydney.

Justice Emmett is the Challis Lecturer in Roman Law at the University of Sydney and in first semester of 2011 presented his regular course on Roman private law.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

Justice **DOWSETT** continues to be a member of the Programs Advisory Committee of the National Judicial College of Australia. In November 2010 Justice Dowsett was appointed as Chair of the Steering Committee of the National Judicial Orientation Program (NJOP), which is conducted by the College. In April 2011 Justice Dowsett attended the program held at Coogee Beach, Sydney. His Honour chaired several sessions, including *Judicial Conduct In and Out of Court* and *Court Craft – The Trial from Hell*.

Justice Dowsett celebrated 25 years on the Bench in July 2010, having been appointed to the Supreme Court of Queensland in July 1985 and to the Federal Court in September 1998.

On 24 September 2010 Justice Dowsett attended the Asia-Pacific Forum in Vladivostok. The Forum was conducted by the Supreme Commercial Court of the Russian Federation and had as its focus ‘Property Rights in the Modern Economy’. Justice Dowsett presented a paper entitled *Practical Effects of Native Title Legislation upon Land Development and Use in Australia*.

In December 2010 Justice Dowsett was granted life membership of the Bar Association of Queensland.

On 12 and 13 February 2011 Justice Dowsett attended a program concerning expert evidence conducted by the NJOP at the Australian National University, Canberra. On 14 February 2011 he attended a conference conducted by the Centre for European Studies in the Australian National University. The conference was entitled ‘Reappraising the Judicial Role’. Justice Dowsett presented a paper entitled *The Australian Judges – Who Do They Think They Are?*

On 5 March 2011 Justice Dowsett attended the Annual Conference of the Bar Association of Queensland held on the Gold Coast where he facilitated a session entitled *Evidence Reforms – How are they Working?*

On 25 March 2011 Justice Dowsett attended the Annual General Meeting of the College of Law in Sydney and was elected as a Community Member of that Board.

From 5–7 May 2011 Justice Dowsett attended the International Commercial Law, Litigation and Arbitration Conference held in Sydney.

On 3 June 2011 Justice Dowsett attended the Keynote Session of the 12th annual Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Conference held at the Brisbane Convention and Exhibition Centre.

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* for the purposes of the reference that resulted in ALRC Report 115, *Managing Discovery: Discovery of Documents in Federal Courts*.

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.

In August 2010, Justice Kenny participated in a Roundtable entitled ‘The US Supreme Court in Critical Perspective’ at the Centre for Comparative Constitutional Studies, University of Melbourne Law School. In the same month, Justice Kenny, with her associate, Mr Alex Prieto, judged a Witness Examination Competition for the Monash University Law Students Society.

In September 2010, Justice Kenny spoke at the Australian Law Reform Agencies Conference on *The Relationship between Law Reform Agencies and the Judiciary*.

In October 2010, Justice Kenny participated in the deliberations of the Australian Selection Committee for Menzies Scholarships in Law for the 2011 academic year. In the same month she presented a seminar in the Victorian Bar's seminar series *The New Evidence Act: What you must know*. In late October, Justice Kenny presented the Future Justice awards at the Castan Centre for Human Rights Law Dinner.

On 27 January 2011 Justice Kenny judged a practice moot for the 2011 Deakin University Team, in preparation for the Australian Rounds of the Philip C. Jessup International Law Moot Competition.

In March 2011, at the invitation of the Australian Government Solicitor, Justice Kenny and Professor Rosalind Croucher, President, Australian Law Reform Commission, presented a session at the National Information Law Conference. Justice Kenny delivered a paper on *Secrecy Provisions: Policy and Practice*.

Justice Kenny in her capacity as a member of the Advisory Board of the Centre for International Public attended a lecture in April 2011 on *Universal Jurisdiction and the Suppression of Modern-day Piracy* given by His Excellency Kriangsak Kittichaisaree, Thai Ambassador to Australia.

In May 2011, Justice Kenny was the guest speaker at the Melbourne University Law School's annual awards ceremony.

On 27 July 2010 Justice **STONE** attended a talk given by Professor Michael Dirkis – *The Demise of International Tax Avoidance?* – held at the Sydney University Law School. Also in July, Justice Stone attended a Corporations Workshop held under the auspices of the Corporations Committee of the Business Law Section of the Law Council of Australia at the Hyatt Hotel, Canberra.

Justice Stone attended the 2010 Ross Parsons Corporate Law Address entitled *Fraud on the Market in the US – Can it be Fixed?* given by Professor Reinier Kraakman, Ezra Ripley Thayer Professor of Law at Harvard Law School and held on 3 August 2010 in Court 1 of the Federal Court, Sydney. In the same month, Justice Stone attended the Challis Taxation Dinner held at the Australia Club in Sydney and delivered a paper to women barristers at the Essoign Club, Melbourne.

From 23–25 September 2010 Justice Stone attended the Asia-Pacific Forum in Vladivostok and presented a paper on *Property rights as the basis for modern economic relations*. Justice Stone participated in the Judicial Colloquium held by the Judicial Conference of Australia in Hobart from 7–9 October 2010 and on 30 November 2010, attended the Annual Julius Stone Address entitled *Could He Forgive Her* at the Sydney University Law School.

From 22–26 January 2011 Justice Stone attended the Supreme and Federal Court Judges' Conference in Wellington, New Zealand and, in May 2011, the International Commercial Law Conference hosted by the Federal Court in Sydney.

On 29 March 2011 Justice Stone met with Chief Judge Rader of the Court of Appeals for Federal Circuit (USA) in Sydney.

During the reporting year Justice Stone represented the Federal Court on the Governing Council and Executive Committee of the Judicial Conference of Australia.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

On Wednesday 27 October 2010 Justice **JACOBSON**, in his capacity as Chief Justice of Norfolk Island, took part in events on Norfolk Island to commemorate the 50th Anniversary of the Supreme Court of Norfolk Island.

On 12 July 2010 Justice **BENNETT** met with a delegation of Korean Judges at the Court in Sydney. On 30 July 2010, at the invitation of the Intellectual Property Association of Australia and New Zealand (IPSANZ) and the New Zealand Bar Association, Justice Bennett chaired and moderated a workshop on how best to manage and run civil litigation titled ‘Litigation Practice – Where to now?’

Justice Bennett is a member of the Advisory Board of the Law School of the Chinese University of Hong Kong and attended a Board meeting in Hong Kong during December 2010.

Justice Bennett was a speaker at the Advocacy Conference at the University of Adelaide in February 2011 on the topic *Gender Evolution Revolution [marking the centenary of the Female Practitioners Act 1911]*.

On 30 March 2011, Justice Bennett spoke at the University of NSW Law Faculty’s Intellectual Property Forum – on the topic *Intellectual Property in the Commercial Context: Where we have been and where we are going*. Justice Bennett was invited to facilitate a panel discussion at the Institute of Patent and Trade Mark Attorneys of Australia (IPTA) 2011 Annual Conference held in Yulara, Northern Territory on 8 April 2011 – with the topic of discussion being ‘Babies, Bathwater and the Review of Patentable Subject Matter’.

While in New York during April 2011, Justice Bennett attended and spoke as a member of the Faculty at the 19th Annual Conference on Intellectual Property Law and Policy held at the Fordham University School of Law, New York.

Justice Bennett also attended the 6th International Judges Conference on Intellectual Property Law which was held in Brussels, Belgium on 23– 25 May 2011. This Conference was held in co-operation with, and under the auspices of, the United States Court of Appeals for the Federal Circuit.

During the reporting year Justice Bennett continued 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 until April 2011; 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. In 2010–11 Justice Bennett was also a member of the judging panel for the Australian Veuve Clicquot Award for Business Woman of the Year.

Justice **LANDER** co-presented a seminar at the Law Society of South Australia on *the Use and Abuse of Interlocutory Applications – When and how they should be used* on 21 July 2010. In August 2010 Justice Lander spoke at the South Australian Bar Association Conference. On 24 August 2010 Justice Lander chaired a session for the Industrial Law Committee of the Law Council of Australia. In October 2010 Justice Lander conducted, in collaboration with District Registrar Christie, an in-house lunch time session for the South Australian legal profession on Insolvency.

On 11 November 2010 Justice Lander chaired a session for the Law Society of South Australia’s Education Department on *Australian Consumer Law*. On 24 November 2010 he chaired a further session for the Law Society on *Amendments to Australian Arbitral Legislation*.

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 2011 Conference in New Zealand from 22–26 January 2011. On 22 February 2011 Justice Lander attended a meeting of the Society of Construction Law held at the Federal Court, at which he delivered a paper *Federal Court Jurisdiction and Practice relating to Contractual Claims*.

During the course of the year, as Patron of the Flinders Law Students' Association, Justice Lander attended at the University's Law School for a prize-giving ceremony, delivered a lecture on *Federal Court Litigation* and judged various moot and witness examination competitions. As Convenor of the Court's Rules Revision Committee, Justice Lander delivered a number of presentations around Australia to the legal profession in relation to the introduction of the revised Federal Court Rules on 1 August 2011.

On 11 February 2011 Justice **SIOPIS** presented a paper at the Law Society of Western Australia's CPD Corporate and Commercial Law Symposium titled *A Practitioner's Guide to Schemes of Arrangement. What Criteria do You Need to Satisfy the Court?*

Justice **GREENWOOD** is an Adjunct Professor in the TC Beirne School of Law at the University of Queensland, a member of the Advisory Board of the University of Queensland Law School, an Advisory Member of the Griffith University Law School Council and a member of the Board of the Key Centre for Law Ethics and Governance at Griffith University. In 2010 Justice Greenwood was appointed to chair a national review of the Griffith University Law School.

Justice Greenwood has been appointed by the Attorney-General for the Commonwealth as a member of the National Alternative Dispute Resolution Advisory Council (NADRAC) and participated in council meetings in 2010. Justice Greenwood was appointed as a member of the Governing Council of the Arts Law Centre of Australia in 2011.

In 2010 Justice Greenwood: delivered the Keynote Opening Address at the 2010 Competition Law Conference in Sydney on the topic of *Recent Developments in Market Definition*; presented an after dinner paper as guest speaker at the Queensland Intellectual Property Dinner; and attended the Annual National Competition Law Conference sponsored by the Business Law Section of the Law Council of Australia.

In 2011 Justice Greenwood: participated in a forum concerning the commercialisation of science and technology at which the Chief Scientist was the keynote speaker; chaired a session of the International Commercial Law Conference held at the Federal Court in Sydney; and participated in the Queensland Public Interest Law Clearing House (QPILCH) 'Walk for Justice' in support of QPILCH's activities in providing services to self-represented litigants before the Federal Court of Australia.

In 2010 and 2011 Justice Greenwood chaired two evening Continuing Legal Education Seminars on intellectual property on behalf of the Bar Association of Queensland. Justice Greenwood also chaired the first of three lectures forming part of the 2010 McPherson Lecture Series of public addresses.

Justice Greenwood judged, in Ceremonial Court Number 1 in Brisbane, during 2010 and 2011 the final moot (before departure of the mooting teams to the International Forums for each moot) of the Admiralty Mooting Competition, the Intellectual Property Mooting Competition and the Jessup Mooting Competition. Justice Greenwood participated in round table evening workshops sponsored by the Queensland University of Technology Law School and other Law Schools to introduce graduates of Law Schools to members of the profession and the judiciary.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

Justice Greenwood presented a paper published in the *Intellectual Property Forum and the Australian Bar Review on the topic of Reflections on Patentable Subject Matter in United States’ and Australian Patent Law*.

On 6 July 2010 Justice **RARES** was one of the judges for the finals of the 2010 International Maritime Law Arbitration Moot Competition, organised by Murdoch University and the University of Queensland and hosted by the University of Technology Sydney. On 16 July 2010 Justice Rares chaired the afternoon session of the 1979 Offshore Constitutional Settlement Seminar, hosted by the University of Queensland’s Marine and Shipping Law Unit in Brisbane.

On 23 August 2010 Justice Rares presented a paper entitled *Using the Hot Tub – How Concurrent Evidence Aids Understanding Issues* to the New South Wales Bar Association at a CPD seminar. He also presented this paper at the Bar Association of Queensland’s Annual Conference in March 2011 and at a CPD session at the Law Society of South Australia on 29 June 2011. In March 2011 the paper was published in *The Judicial Review* (10(2) TJR 171).

In September 2010 Justice Rares travelled to Singapore to represent the Court at the Asia-Pacific Courts Conference where he presented a paper entitled *What is a quality judiciary?* A revised version of this paper was published in the *Journal of Judicial Administration* ((2011) 20 JJA 133).

On 14 and 15 October 2010 Justice Rares attended the 2010 Annual Maritime Law Association of Australian and New Zealand Conference in Melbourne. On 9 November 2010 Justice Rares and Justice Ryan chaired the Admiralty and Maritime Law Seminar on ‘Current Issues in Admiralty’, hosted by the Federal Court in Sydney.

On 11 March 2011 Justice Rares presented a paper at the 2011 Biennial Mini Conference of the Maritime Law Association of Australia and New Zealand on *The need for an international convention to deal with off-shore hydrocarbon leaks*. This paper was published in Edition 866 (24 March 2011) of the *Lloyd’s List Daily Commercial News* and in the *Lloyd’s Maritime and Commercial Law Quarterly* under the title *An international convention on offshore hydrocarbon leaks?* ([2011] LMCLQ 361).

From 5–7 May 2011 Justice Rares attended the International Commercial Law, Litigation and Arbitration Conference, hosted by the Federal Court in Sydney, and chaired a session on ‘Offshore Oil and Gas Catastrophes’.

On 27 May 2011 Justice Rares represented the Court at the 31st annual meeting of the Consultative Council of Australian Law Reporting in Darwin and was elected as Chairman of the Council. Justice Rares continues to represent the Court as a member of the Council of the Australian Institute of Judicial Administration and as a member of the Steering Committee of the National Judicial Orientation Program.

Justice **COLLIER** is a member of the Advisory Board to the bankruptcy and insolvency law scholarship unit at the Adelaide Law School. In August 2010 she gave a public lecture at the Queensland University of Technology entitled: *Making Decisions in the Federal Court: A Personal Perspective* and presented a paper entitled: *Corporate Insolvency: Restructuring the Financial Sector and Understanding the Long Term Effects of the GFC – Insolvency Reforms on the Table* at the Australian Women Lawyers Conference. During October and November 2010 Justice Collier attended a Queensland University of Technology Business Leaders’ Forum and the Richard Cooper Memorial Lecture.

In January 2011 Justice Collier attended the Supreme and Federal Court Judges' Conference in Wellington, New Zealand. On 17 February 2011 she gave the opening address at the Superannuation Committee of the Law Council of Australia conference 'Super – A Paradise Lost?' held at Surfers Paradise. In May 2011 she opened the Una Prentice Award function for the Women Lawyers Association of Queensland and presented a paper entitled: *Prioritisation of Native Title Cases in Queensland* at a Native Title Seminar.

Justice **TRACEY** is a member of the Advisory Board for the Centre of Comparative Constitutional Studies in the Faculty of Law in the University of Melbourne.

On 26 October 2010 Justice Tracey delivered a paper entitled *The Exploration of Credibility in the Course of a Hearing*, jointly written with Justice Moore, at the Annual Conference of Members of the Migration Review Tribunal and the Refugee Review Tribunal.

On 2 March 2011 Justice Tracey delivered a paper entitled *Conduct of Litigation by Prosecutorial Agencies* to the Fair Work Ombudsman's Legal Officer's Conference in Melbourne. Also in March 2011 Justice Tracey delivered the keynote address at the Annual Leo Cussen Employment Law Conference in Melbourne and a paper entitled *Public Interest – FOI and Beyond* at the Attorney-General's Department National Information Law Conference in Canberra.

From 19–23 July 2010, Justice **MIDDLETON** attended a Workshop on the United States Supreme Court in Historical Perspective at the Melbourne Law School conducted by the Honourable John G Roberts, Jr, Chief Justice of the United States. Also in July, Justice Middleton participated in the Eleventh Australian Competition and Consumer Commission Regulatory Conference in Surfers Paradise, Queensland.

On 23 September 2010 Justice Middleton hosted, at the Federal Court in Melbourne, a number of Bangladeshi judges.

From 8–9 October 2010 Justice Middleton attended the Judicial Conference of Australia 2010 Colloquium and from 4–5 November 2010, the Fifth Australian Institute of Judicial Administration Appellate Judges' Conference in Melbourne.

On 12 November 2010, Justice Middleton participated in a round table discussion on Private Enforcement of Competition Law at a conference held at the Melbourne Law School, University of Melbourne.

In November 2010 and March 2011 Justice Middleton delivered a paper in conjunction with Mr David O'Callaghan SC to the Victorian Bar Readers' Course on *Written Advocacy*.

From 2–3 December 2010 Justice Middleton attended The Cranlana Program 'Justice and Society Symposium'. From 22–26 January 2011 Justice Middleton attended the Supreme and Federal Court Judges' Conference in Wellington, New Zealand.

On 18 February 2011 Justice Middleton attended the Constitutional Law Conference in Sydney. On 5 March 2011 Justice Middleton presented a paper on advocacy at the Inaugural Victorian Bar Conference 'New Horizons: Aiming for excellence and fulfilling your potential'.

From 6–7 May 2011 Justice Middleton participated in the International Commercial Law, Litigation and Arbitration Conference held at the Federal Court in Sydney. Also in May 2011 Justice Middleton participated in the Sixth International Judges' Conference on Intellectual Property Law in Brussels, Belgium.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

During the reporting year Justice **GORDON** delivered the following addresses or papers:

- 3 June 2010 – Tax Bar Association of Victoria – *Drafting an Appeal Statement and Preparation for the Scheduling Conference*.
- 15 October 2010 – 8th Annual University of South Australia Trade Practices Conference – *Criminalisation of Cartel Conduct*.
- 20 January 2011 – 23rd Australasian Tax Teachers Association Conference – *Tax is more than numbers – but it is also more than tax*.
- 10 March 2011 – Department of Treasury – *Simplifying Tax Law*.
- 3 May 2011 – Melbourne University – Presentation to Juris Doctor Students about case management, the individual docket system and assisted dispute resolution.
- 6 May 2011 – Freehills – Speech and discussion on Criminalisation of Cartel Conduct.
- 20 May 2011 – Victorian Bar Readers – Welcome Speech.
- 17 June 2011 – Law Institute of Victoria – Government Lawyers Conference – *Be Civil – The Civil Dispute Resolution Act 2011*.

Recent publications include *Criminalisation of Cartel Conduct* (2011) 34 Australian Bar Review.

Justice Gordon is the Chair of the Academic Advisory Board, Faculty of Business and Law, Deakin University and a member of the Elders and Respected Persons Panel of Tarwirri – The Indigenous Law Students and Lawyers Association of Victoria.

On 16 November 2010 Justice Gordon hosted Judge Shimobaba from the Nagasaki District Court of Japan, Judge Gen Ueno a visiting scholar at the Asian Law School, Melbourne University and Mr Karube a Court Clerk from the Sendai District Court of Japan. Justice Gordon presented sessions to the judges about the individual docket system, case management and an integrated court environment (eCourt).

From 31 January 2011 to 11 March 2011 Justice Gordon and Justice Gray participated in the Indigenous Clerkship Program in conjunction with the Supreme Court of Victoria and the Victorian Bar.

On 16 February 2011 Justice Gordon hosted the University of Melbourne Chuo Summer School for Japanese students.

Justice **LOGAN** attended, at his own expense, the International Bar Association Conference in Vancouver in October 2010. On 18 November 2010 as guest speaker at the conference dinner for the Taxation Institute of Australia’s Annual Taxation Intensive on the Gold Coast, he delivered a speech entitled, *A Trip Down Memory Lane (Why have judges determining taxation appeals?)*. In January 2011 Justice Logan attended the Supreme and Federal Court Judges’ Conference in Wellington, New Zealand.

Justice Logan continued to serve as a judicial member of the Queensland Bar Association’s CPD Committee throughout the year with responsibility for assisting in the planning of the Bar’s annual conference. He attended that conference on the Gold Coast in March 2011, including participating as a panel member at a conference session entitled, ‘10 things I don’t like about you’ (particular practices of barristers which irritate judges).

Other legal educational activities in which Justice Logan engaged were: to preside over the judging panel for the final of the Red Cross, Queensland Branch International Humanitarian Law Moot Competition for Secondary Schools on 12 August 2010; to act as a moot judge for the local phase

of the Jessup International Moot Competition on 31 January 2011; to deliver a seminar presentation on Federal Court practice to members of the legal profession in Townsville on 26 March 2011; and to chair the Queensland Bar's CPD seminar on the Australian Consumer Law Amendments to what is now the *Competition and Consumer Act 2010* on 11 May 2011.

Justice Logan also continued to serve throughout the year as a member of the Board of Governors of Cromwell College within the University of Queensland.

On 6 August 2010 Justice **PERRAM** delivered the annual address to the Challis Tax Discussion Group at the Australia Club entitled *Text and Complexity: why more law is bad law*. In September 2010 Justice Perram delivered an address to the Government Solicitors Conference at the Hilton Hotel in Sydney.

From 6–10 September 2010 Justice Perram attended a meeting of the International Institute for the Unification of Private Law (UNIDROIT) at its seat in Rome, Italy on behalf of the Australian Government and the Court. The meeting concerned negotiations towards the drafting of a convention on the treatment of intermediated securities.

Justice Perram was the judicial scholar in residence at Flinders University in Adelaide from 18–22 October 2010.

In August 2010 Justice **FOSTER** made a presentation to interested members of the New South Wales Bar Association on the Federal Court's jurisdiction under the *International Arbitration Act 1974*. In the same month, he attended the New South Wales Supreme Court Annual Corporate Law Conference. The theme of the Conference on this occasion was: 'Restructuring Companies in Trouble: Director and Creditor Perspectives'. In late August 2010 Justice Foster attended a weekend Trade Practices Workshop organised by the Trade Practices Committee of the Business Law Section of the Law Council of Australia.

From 26–29 September 2010 Justice Foster participated in the 'Australia/ New Zealand Faculty Development Program 2010' conducted by the National Judicial Institute (Canada) in collaboration with the National Judicial College of Australia, the Judicial Commission of New South Wales, the Judicial College of Victoria and the Institute of Judicial Studies, New Zealand.

On 13 October 2010 Justice Foster was a panel member in a New South Wales Law Society hypothetical held at the Federal Court which canvassed issues faced by practitioners, clients, mediators and judges in a typical dispute, with a focus on assisted dispute resolution. Also in October Justice Foster attended the *Australian Financial Review* International Dispute Resolution Conference 2010.

In November 2010 Justice Foster attended the annual Clayton Utz International Arbitration Lecture at the Supreme Court of New South Wales and in January 2011, the Supreme and Federal Court Judges' Conference in Wellington, New Zealand.

From 21– 23 March 2011 Justice Foster attended the Third Judicial Seminar on Commercial Litigation in Sydney organised by Chief Justice Spigelman AC, Chief Justice of New South Wales. The Seminar was attended by delegates from Australia, Hong Kong, India, Japan, Macao, Malaysia, New Zealand, Papua New Guinea, Singapore, South Korea and Sri Lanka. In association with Justice Chong from Singapore and Justice Reyes from Hong Kong, Justice Foster made a presentation on *International Commercial Arbitration: Recent Developments*.

APPENDIX 9 – JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2010–2011

On 31 March 2011, Justice Foster was a speaker at a University of New South Wales Continuing Legal Education (CLE)/CPD seminar at the Grace Hotel, Sydney on the topic of *Aspects of Ethics and Professional Responsibility – Rule 42.1.6.1*, covering: confidentiality and privilege; communications and duty to follow instructions; and relationship with the Court and professional colleagues.

Justice Foster chaired a session on ‘International Commercial Arbitration’ at the International Commercial Law, Litigation and Arbitration Conference held in Sydney from 5–7 May 2011.

During 2010–11 Justice **BARKER** regularly contributed, as a member of the Committee, to the work of the Committee on Indigenous Justice Issues in Western Australia convened by the Chief Justice of Western Australia.

In October 2010 Justice Barker convened and participated in a Native Title Forum at the Western Australia Registry at which consent determination procedures and options for future native title case management were discussed with a range of practitioners and party representatives in light of proposals of the State of Western Australia concerning land management.

In November 2010 Justice Barker presented a paper, *What makes a good government lawyer* to the Australian Government Solicitors, Essentials for the Government Lawyer Conference, Canberra. In the same month, Justice Barker made a presentation to the LegalWise Seminar, Perth, *How Judges Make Decisions*.

Justice Barker attended the Supreme and Federal Court Judges’ Conference in Wellington, New Zealand from 22–26 January 2011.

In April 2011 Justice Barker convened and participated in a second Western Australia Registry Native Title Forum. Consent determination procedures and options for future native title case management were discussed with a range of practitioners and party representatives in light of the abolition of the old Office of Native Title in the State Department of the Attorney General, and creation of a new Land Access and Native Title Unit in the Department of Premier and Cabinet.

On 10 May 2011 Justice Barker was the Guest Speaker at the University of Western Australia Law School, Award Ceremony for the 2010 Academic Year.

On 13 October 2010 Justice **KATZMANN** addressed Legal Aid Solicitors on *Mental Health and Wellbeing in the Legal Profession* during Mental Health Month New South Wales. Justice Katzmann is a member of the board of the Tristan Jepson Memorial Foundation.

On 23 October 2010 Justice Katzmann participated in a panel discussion on ‘Unrepresented Litigants’ at the Environment and Planning Law Association Conference in Kiama and on 13 November 2010, addressed the 2010 Annual Assembly Conference of NSW Young Lawyers on advocacy.

In October 2010 and May 2011 Justice Katzmann provided assistance to the New South Wales Bar Association Bar Practice course.

APPENDIX 10 – STAFFING PROFILE

Table 10.1 – Staffing by gender, classification and location

LEVEL	GENDER	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	TOTAL
SES2	Male	1	1									2
	Female			1								1
SES1	Male	1		1			1					3
	Female	1	1		1	1						4
FCL2	Male	3	4	5	1		3				1	17
	Female		3		2	1	1				2	9
FCL1	Female							1				1
FCM2	Male	5	1	1			1				1	9
	Female	1		1	1	1						4
FCM1	Male	9		1								10
	Female	5		2	1	1	1				3	13
FCS6	Male	2	1	2		1	3				1	10
	Female	11	21	14	6	4	5		1	1	2	65
FCS5	Male	2	14	7	5	2	1					31
	Female	7	17	13	2	3	7	1			3	53
FCS4	Male		3	1	1	2	1					8
	Female	2	4	7	8	4	2	1	1	4		33
FCS3	Male	1	7		2	1						11
	Female	1	8	3	2		2	1		1		18
FCS2	Male		8	3	4	4	4		2			25
	Female		16	9	1	1	3					30
FCS1	Male			1								1
Total		52	109	72	37	26	35	4	4	6	13	358

Key: PR Principal Registry
 SES Senior Executive Service officer
 FCS Federal Court Staff
 CCO Casual Court Officer
 FCM Federal Court Manager
 FCL Federal Court Legal
 NAT National
 Includes the following staff:
 – National Native Title
 – Chambers of Chief Justice
 – Appeals

APPENDIX 10 – STAFFING PROFILE

Table 10.2 – Staffing by gender, classification and employment type

LEVEL	GENDER	ONGOING		NON-ONGOING		INTERMITTENT	TOTAL
		FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	INTERMITTENT / IRREGULAR	
SES2	Male	2					2
	Female	1					1
SES1	Male	3					3
	Female	4					4
FCL2	Male	12		3	1	1	17
	Female	6	2			1	9
FCL1	Female	1					1
FCM2	Male	9					9
	Female	3	1				4
FCM1	Male	10					10
	Female	10	3				13
FCS6	Male	8		1		1	10
	Female	57	6	2			65
FCS5	Male	13		17	1		31
	Female	21	2	30			53
FCS4	Male	7		1			8
	Female	22	3	8			33
FCS3	Male	9		2			11
	Female	7	3	6	1	1	18
FCS2	Male					24	24
	Female					29	29
FCS2	Male	1					1
	Female	1					1
FCS1	Male	1					1
Total		208	20	70	3	57	358

Table 10.3 – Representation of EEO Groups within occupational groups

OCCUPATIONAL GROUP	TOTAL STAFF	WOMEN	NESB1	NESB2	ATSI	PWD
SES	10	5	1	2		
FCS and related	321	216	37	54	4	1
Professional	27	10	3	4		
Total	358	231	41	60	4	1

Table 10.4 – Representation of EEO Groups within salary levels

SALARY	TOTAL STAFF	WOMEN	NESB1	NESB2	ATSI	PWD
FCS1	1					
FCS2	55	30	8	15	1	
FCS3	29	18	8	7	1	
FCS4	41	33	4	7	1	
FCS5	84	53	13	19		1
FCS6	75	65	3	6	1	
FCM1/FCL1	24	14	1	0		
FM2/FCL2	39	13	3	4		
SES	10	5	1	2		
Total	358	231	41	60	4	1

Note: EEO groups are not mutually exclusive. Any individual officer may be included in more than one group.

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 – INFORMATION ON CONSULTING SERVICES FOR 2010 – 11

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 2010–11 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 2010–11

CONSULTANT NAME	DESCRIPTION	CONTRACT PRICE \$	SELECTION PROCESS (1)	JUSTIFICATION (2)
			Open	
APMG Australasia Ltd	P3M3 Verification and Assessment Consultancy	10 345	Tender	(C)
			Select	
Australian Valuation Office	Provision of Asset Valuation Services	24 200	Tender	(B)
			Select	
CSC Australia Pty Ltd	Review of the FCA's WAN Service	52 110	Tender	(B)
			Select	
O'Connor Marsden Pty Ltd	Provision of Internal Audit Services	264 000	Tender	(C)
e-Law	Provision of Project Management Services	58 698	Direct	(B)
Loquinar Pty Ltd	Citrix XenApp Upgrade Proposal	27 844	Direct	(B)
Deloitte Touche Pty Ltd	Review of Judges' Pension Act	13 860	Direct	(C)
Enterprising IT Services Pty Ltd	Document Management System Scoping Review	11 000	Direct	(C)
Paul Sestito (Sole Trader)	Review of the FCA Website	19 873	Direct	(A)
Stace Management Networks Pty Ltd	Strategic Planning Workshop – July 2011	14 475	Direct	(C)
The Leading Partnership Pty Ltd	FCA Special Planning Meeting	25 404	Direct	(B)
			Open	
Wired Consulting (Australia) Pty Ltd	P3M3 Assessment	22 770	Tender	(C)
Total		\$544 579		

1. Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (January 2005):

Open Tender: A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.

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* FOR THE PERIOD 1 JULY 2010 TO 30 APRIL 2011

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 Part 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 FOI 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 FOI Act will be affected by s. 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 204 at the end of this report.

INFORMATION PUBLICATION SCHEME (IPS)

From 1 May 2011 agencies subject to the FOI Act are required to publish information to the public as part of the IPS. This requirement is in Part II of the FOI Act and has replaced the requirement to publish a section 8 statement in an annual report. An agency plan showing what information is published in accordance with the IPS requirements is accessible from the Court’s website at <http://www.fedcourt.gov.au/courtdocuments/foi.html>.

APPENDIX 13 – COMPLIANCE WITH ANNUAL REPORT REQUIREMENTS

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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

Administrative Notices	See Practice Notes
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.
Cause of action	A term used in the Federal Court's case management system to classify proceedings commenced with the Court. There are sixteen main causes of action and five supplementary causes of action.
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).

GLOSSARY

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.
Full Court	Three or more judges sitting together to hear a proceeding.
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 said to be '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 said to be '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 Acts of the Commonwealth Parliament 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 (the mediator) 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'.

Practice Notes and Administrative Notices	The Court publishes Practice Notes and Administrative Notices. Practice Notes are issued by the Chief Justice on advice of the judges of the Court. Administrative Notices are issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notice relates.
Practice Notes	Provide guidance on practice and procedure required or followed by the Court nationally to supplement what might be contained in statutes or the Court's Rules.
Administrative Notices	Provide guidance on practice and procedure required or followed by the Court in the District Registry to which the notice relates to supplement what might be contained in statutes or the Court's Rules.
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, <i>Federal Court (Corporations) Rules 2000</i> (for proceedings under the <i>Corporations Act 2001</i>) and <i>Federal Court (Bankruptcy) Rules 2005</i> (for proceedings under the <i>Bankruptcy Act 1966</i>).
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.

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