



# FEDERAL COURT OF AUSTRALIA ANNUAL REPORT 2011-2012



Symbol	Price	Change
100.AU	09.09	-06
47	05.27	-02
46	06.67	-07.0
.23	09.10	-09
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7.40	07.53	-01

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

14 September 2012

The Hon Nicola Roxon MP  
Attorney-General  
Parliament House  
CANBERRA ACT 2600

Dear Attorney-General

I have the pleasure in submitting, in accordance with section 18S of the *Federal Court of Australia Act 1976*, a report of the management of the administrative affairs of the Court during the financial year 2011–2012 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-third annual report.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'P. A. Keane'.

**P A Keane**  
Chief Justice

## PART 1

# Overview of the Federal Court of Australia

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### Establishment

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* and began to exercise its jurisdiction on 1 February 1977.

It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy.

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

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### Functions and powers

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts appears in Appendix 5 on page 122.

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

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.

Manage the resources allotted by Parliament efficiently.

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## THE COURT'S OUTCOME AND PROGRAM STRUCTURE

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

This report uses the outcome and program structure to outline the Court's work and performance during 2011–2012. 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 2012 there were forty-four 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-four 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 2012)

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
<b>Chief Justice</b>		
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 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
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 President Administrative Appeals Tribunal – Presidential Member Aboriginal Land Commissioner – Part-time
The Hon Arthur Robert EMMETT	Sydney	Copyright Tribunal – President

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon John Alfred DOWSETT AM	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 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
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 COLLIER	Brisbane	Australian Law Reform Commission – Part-time Commissioner Supreme and National Courts of Justice of Papua and New Guinea – Judge
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 Defence Force Discipline Appeal Tribunal – Member
The Hon Anthony James BESANKO	Adelaide	Supreme Court of the ACT – Additional Judge
The Hon Christopher Neil JESSUP	Melbourne	

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
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	Administrative Appeals Tribunal – Presidential Member Defence Force Discipline Appeal Tribunal – Member Supreme and National Courts of Justice of Papua and New Guinea – Judge
The Hon Geoffrey Alan FLICK	Sydney	
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 Australian Competition Tribunal – Part-time Deputy President
The Hon Michael Laurence BARKER	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon John Victor NICHOLAS	Sydney	

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
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 MURPHY	Melbourne	
The Hon Iain James Kerr ROSS AO	Melbourne	Fair Work Australia – President
The Hon John Edward GRIFFITHS	Sydney	
The Hon Duncan James Colquhoun KERR	Hobart	Administrative Appeals Tribunal – President

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

<b>1–10 July 2011</b>	<b>The Hon Justice North</b>
<b>28–30 September 2011</b>	<b>The Hon Justice Gray</b>
<b>22–30 October 2011</b>	<b>The Hon Justice Gray</b>
<b>28 December 2011–29 January 2012</b>	<b>The Hon Justice Gray</b>
<b>26 May–30 June 2012</b>	<b>The Hon Justice Finn</b>

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 2011-12

During the year three judges were appointed to the Court:

- **The Honourable Justice Iain James Kerr Ross** (resident in Melbourne) was appointed on 1 March 2012.
- **The Honourable Justice John Edward Griffiths** (resident in Sydney) was appointed on 23 April 2012.
- **The Honourable Justice Duncan James Colquhoun Kerr** (resident in Hobart) was appointed on 10 May 2012.

During the year five judges retired from the Court:

- **The Honourable Justice Raymond Finkelstein** resigned his commission as a judge of the Court with effect from 1 July 2011.
- **The Honourable Justice Michael Moore** resigned his commission as a judge of the Court with effect from 31 July 2011.
- **The Honourable Justice Geoffrey Giudice AO** resigned his commission as a judge of the Court with effect from 28 February 2012.
- **The Honourable Justice Margaret Stone** retired upon reaching the compulsory retirement age for federal judges on 22 March 2012.
- **The Honourable Justice Garry Keith Downes AM** resigned his commission as a judge of the Court with effect from 15 May 2012.

Other appointments, resignations and retirements during the year included:

- **Chief Justice Keane** was awarded, by the University of Queensland, the citation of Award of Doctor of Laws *honoris causa* on 8 December 2011.
- **Justice Finkelstein** resigned his commission as part-time President of the Australian Competition Tribunal, with effect from 1 July 2011.
- **Justice Moore** resigned his commissions as a judge of the Industrial Relations Court of Australia and as an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 31 July 2011.
- **Justice Mansfield** was appointed as part-time President of the Australian Competition Tribunal for a period of three months, with effect from 11 July 2011. The appointment was transmuted to a period of five years, with effect from 11 October 2011.
- **Justice Foster** was re-appointed as a part-time Deputy President of the Australian Competition Tribunal for a period of three months, with effect from 8 October 2011.
- **Justice Mansfield** was appointed as Aboriginal Land Commissioner on a part-time basis, from 23 November 2011 to 28 December 2013.
- **Justice Cowdroy** was appointed as a member of the Defence Force Discipline Appeal Tribunal until he attains the compulsory retirement age for federal judges, with effect from 1 September 2011.
- **Justice Logan** was appointed as a member of the Defence Force Discipline Appeal Tribunal for a period of five years, with effect from 1 September 2011.
- **Justice Giudice** resigned his commission as President of Fair Work Australia, with effect from 28 February 2012.
- **Justice Ross** was appointed President of Fair Work Australia with effect from 1 March 2012.
- **Justice Foster** was re-appointed as a part-time Deputy President of the Australian Competition Tribunal for a period of three months, with effect from 8 March 2012. The appointment was transmuted to a period of five years with effect from 8 June 2012.
- **Justice Stone** resigned her commission as an Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 22 March 2012.
- **Justice Downes** resigned his commissions as a judge of the Supreme Court of Norfolk Island and as President of the Administrative Appeals Tribunal, with effect from 15 May 2012.
- **Justice Kerr** was appointed as President of the Administrative Appeals Tribunal for a period of five years, with effect from 16 May 2012.

- **Justice Perram** was re-appointed Deputy President of the Copyright Tribunal for a period of three years, with effect from 8 June 2012.
- **Justices Collier** and **Logan** were appointed to the office of a judge of the Supreme and National Courts of Justice of Papua and New Guinea for a period of three years, with effect from 27 September 2011.
- **Justice Dowsett** was appointed a Member of the Order of Australia in the 2012 Queen's Birthday Honours list.

## 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 Defence Force Discipline Appeal Tribunal. The South Australia Registry is the Principal Registry for the Australian Competition Tribunal. Most other District Registries are also registries for these two 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 119 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 2012 there were 359 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.



## **PART 2**

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# The Year in Review

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# 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 2011–12 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

### **Work of the Court dealing with Commercial Disputes**

This Annual Report will highlight the work of the Court dealing with commercial disputes, and how that important work contributes to the economic and social wellbeing of all Australians.

During 2011–12 eighty-eight per cent of first instance cases commenced in the Court were commercial in nature. The case types included corporations law, intellectual property, competition law, consumer protection, taxation, admiralty, and bankruptcy.

This is not an unusual proportion. Over the last five years, the total percentage of commercial cases commenced (other than appeals) has varied between a low of eighty-four per cent in 2008–09 and a high of eighty-eight per cent this reporting year. Over the same period the number of commercial cases has increased from 2635 in 2007–08 to 4104 in 2011–12.

It is clear from these numbers that there has been a substantial increase in commercial disputes commenced in the Federal Court. The primary cause of that increase is not known for certain; however, an increase in corporation insolvency related cases leads to the reasonable conclusion that the increase is related to the recent and current economic climate, which could be described as fiscally restrained and uncertain.

On 22 March 2010 Chief Justice Keane at his swearing in ceremony highlighted important aspects of the history leading up to the establishment of the Court and went on to state:

'These extraordinary circumstances, among other things, led to the creation of this Court as an organ of government charged by the Australian people, through the Parliament of the Commonwealth, with the special task of ensuring that the laws of the Commonwealth are applied equally and fairly for the protection and welfare of all our citizens, to ensure not merely that the power of the State does not unlawfully interfere with the liberty of the individual, but to develop a jurisprudence in which all our citizens enjoy, in equal full measure, the beneficent effect of the laws passed by the Parliament; to ensure, for example, that the taxes with which we buy our civilisation are borne fairly and equally according to law; to ensure that the laws by which our corporations are organised and operate, and the laws which regulate the exercise of rights of intellectual property, and the laws which ensure competition and integrity in business are enforced so that the aggregation of economic power in private hands is not allowed to menace our common welfare and institutions. Similarly, this Court enforces the irreducible standards of conduct in business prescribed by the *Trade Practices Act*.'

From 1 January 2011 the *Trade Practices Act 1974* has been replaced by the *Competition and Consumer Act 2010*, and the Court continues to enforce standards of conduct in business prescribed by the new Act.

While the nature of commercial disputes dealt with by the Court is important, so too is the way in which those cases are managed. The commercial dispute resolution procedures of the Court are a major aspect of the work of the Court.

The Court applies a number of techniques designed to deliver the just, quick and inexpensive disposition of commercial disputes. The individual docket system (all cases allocated to a judge upon commencement of the matter and remaining with the judge until disposed) together with an increasing array of case management techniques (including the very effective and timely use of assisted dispute resolution or fast track procedures) are techniques used to manage commercial disputes before the Court.

As well as special case management techniques, the Court is always prepared, in certain circumstances, to expedite hearings or appeals. The urgent and quick attention to commercial disputes is often very important, for the community, for government and for business interests. It is in this context, in many cases, that the Court contributes to the wellbeing of all Australians.

Information about the range of commercial cases dealt with by the Court appears in Appendix 8, Summary of Decisions of Interest found at page 149.

### **Native Title Review**

In response to the 2009 amendments to the *Native Title Act 1993* the Court put in place a number of practice initiatives to ensure, where possible, that resolution of native title cases is achieved more easily and delivered in a more timely, effective and efficient way.

The Court is proud of the results the key practice initiatives have delivered and acknowledges the substantial contribution made by the parties to these cases in maintaining the momentum required to finalise them. The outcomes clearly demonstrate the substantial effort made by all parties. In 2010–11 there were twenty-six determinations of native title and in the current reporting period 2011–12 there are thirty-seven determinations. From 1 July 2012 to 31 December 2012 there are thirty-two anticipated determinations, a significant increase.

On 8 May 2012 the Commonwealth Attorney-General announced further institutional reforms affecting the administration and mediation of native title claims which will be introduced from 1 July 2012. More information about the native title initiatives and workload appears in Part 3 at page 30.

# THE YEAR IN REVIEW

## **Electronic Court File**

As part of the Court's eServices strategy a major project commenced during the reporting year to develop an electronic court file (ECF). The ECF will replace the paper file and is the culmination of the Court's 'Myfiles' concept. The ECF will enable parties to lodge documents and correspondence electronically and remotely view the Court file. It will be particularly beneficial to members of the legal profession who may have multiple matters in the Court at the one time.

Work has commenced on developing a document management system which will provide the foundation for the ECF. In 2011–12 extensive consultation was undertaken within the Court to ensure that the system reflects the needs of the Court's judges and staff. External consultation (with members of the legal profession and other court users) about the electronic court file will be undertaken in the next reporting year.

Once the electronic court file is in place and the Court is satisfied that it is working as expected for the Court and the legal profession, the Court will move towards mandating the use of eLodgment (compulsory electronic filing). Measures will be put in place to ensure court users who may not have access to computers or the Internet are not disadvantaged by electronic filing. The Court will announce the date for the implementation of mandatory electronic filing with a reasonable lead time to enable everybody to be ready to participate.

## **Revision of the Federal Court Rules**

As noted in previous Annual Reports, the Court had been undertaking a substantial project to revise its Rules. This was the first major revision of the Court's Rules since they were promulgated on 1 August 1979. The revised Rules commenced on 1 August 2011. They have been well received and have not required any amendment. More information about their operation appears in Part 3.

## **Heads of Jurisdiction**

In late 2011, in response to a recommendation in the then draft Report of the Strategic Review of Small and Medium Agencies in the Attorney-General's Department by Mr Stephen Skehill (the Skehill Report), the Heads of Jurisdiction of the Federal Court (FCA), Family Court (FCoA) and Federal Magistrates Court (FMC) agreed to establish a Consultative Committee to formalise existing unofficial arrangements and foster greater administrative cooperation between the three Courts.

The Committee meets quarterly and is supported by the Chief Executive Officers of the three Courts. Senior officials from the Attorney-General's Department attend the Committee's meetings as observers. Three meetings were held in the reporting year (November 2011 and February and May 2012).

In addition to including information about the Committee's activities in the Courts' Annual Reports, the Committee provides a Report to the Commonwealth Attorney-General twice in each calendar year. The first of these Reports was submitted in March 2012.



Since the Committee's formation in late 2011, reviews have commenced of the Courts' Information Technology systems, library services and space utilisation within Commonwealth Law Courts (CLC) buildings. Arrangements have also been made for closer cooperation in media management, a review of library holdings to avoid duplication and increased sharing of court facilities in the Brisbane and Melbourne CLC buildings.

The review of the CLC buildings has highlighted their extensive use by bodies external to the Courts. This includes providing rooms and workspace to organisations assisting litigants, and court and conference rooms for public lectures, university mooting competitions and workshops for the legal profession. These activities highlight the important public function that CLC buildings serve.

## THE COURT'S PERFORMANCE

### Workload

In 2011–12 the total number of filings (including appeals) in the Federal Court increased by seven per cent to 5277. Filings in the Court's original jurisdiction (excluding appeals) increased by eight per cent. The Court's corporations workload continued to grow with a seventeen per cent increase in filings. In the five year period since 2007–08 the Court's workload has increased by almost twenty per cent.

Further information about the Court's workload, including the management of appeals, can be found in Part 3 on page 24.

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 11 656 this year.

During the reporting year there were 5277 actions (including appeals) commenced in the Court and 6993 in the general federal law jurisdiction of the FMC, a total of 12 270. This represents a six per cent increase on the combined workload in 2010–11.

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 4594 FMC bankruptcy matters which equates to ninety-two per cent of the FMC's bankruptcy caseload, or almost sixty-eight 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.

# THE YEAR IN REVIEW

## **Time goal 1: Eighty-five per cent of cases completed within eighteen months of commencement**

During the reporting year, the Court completed ninety-four per cent of cases in less than eighteen months, compared with ninety per cent in the previous year. As shown in Figure 6.5 and Table 6.5 in Appendix 6 on page 133, over the last five years the Court has consistently exceeded its benchmark of eighty-five per cent, with the average over the five years being ninety-one per cent.

## **Time goal 2: Judgments to be delivered within three months**

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and the pressure of other business upon the Court. During 2011–12 the Court handed down 2158 judgments for 1890 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 seventy-seven per cent of appeals (both full court and single judge) were delivered within three months and eighty-three 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, 210 migration appeals and related applications from the FMC or the Court were disposed, with the average time from filing to final disposition being 102 days, and the median time from filing to final disposition being ninety-five 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 \$0.940 million was sought for 2011–12 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. A major issue, unrelated to the Court's normal operations, had a significant impact on the Court's end of year result. The value of the Court's liability for long service leave is based on the 10 year Commonwealth bond rate. The bond rate fell from 5.21% in June 2011 to 3.04% in June 2012. As a result the Court's long service leave liability increased by \$0.764 million dollars with a reciprocating charge against the Court's operating results. Leaving this adjustment aside, the Court achieved an operating loss of \$0.347 million before taking into account depreciation, 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. Due to the 'fixed' nature of sixty 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 more than doubled.



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## PART 3

# The work of the court in 2011–12

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# THE WORK OF THE COURT IN 2011–12

## 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 through the operation of s 39B of the *Judiciary Act 1903*.

Central to the Court's civil jurisdiction is s 39B(1A)(c) of the Judiciary Act. 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* 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 136 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.

In addition, the Court 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 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 141 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 142 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 and to be responsible for their mediation, to hear and determine 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 30. Figure 6.11 on page 139 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 Marshalls made nineteen arrests. See Figure 6.10 on page 138 for a comparison of Admiralty Act matters filed over 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 135 for a comparison of corporations matters filed over 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 134 for a comparison of bankruptcy matters filed over 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 140.

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 and from other courts exercising certain federal jurisdiction. 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 143 shows the appeals filed in the Court since 2007–08.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction in addition to the jurisdiction vested under the Constitution through s 39B of the Judiciary Act are listed in Appendix 5 on page 122.

# THE WORK OF THE COURT IN 2011–12

## Changes to the Court's jurisdiction in 2011–12

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

- *Business Names Registration Act 2011*
- *Clean Energy Act 2011*
- *Coastal Trading (Revitalising Australian Shipping) Act 2012*
- *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Act 2012*
- *National Vocational Education and Training Regulator Act 2011*
- *Product Stewardship Act 2011*
- *Tertiary Education Quality and Standards Agency Act 2011*
- *Tobacco Plain Packaging Act 2011*
- *Work Health and Safety Act 2011*

## Amendments to the Federal Court of Australia Act

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

The *Acts Interpretation Amendment Act 2011* removed subsections 18M(2) and (3) of the Federal Court of Australia Act (which made provision about the maximum duration of any appointment of an Acting Registrar of the Court as well as the validity of acts done by a person purporting to act in the office of Registrar) and inserted, at the foot of subsection 18M(1), a note indicating that rules that apply to acting appointments are to be found in section 33A of the *Acts Interpretation Act 1901*. This amending Act also removed the note at the foot of subsection 23EG(4). That note had referred to subsection 46(3) of the Acts Interpretation Act which was repealed by the amending Act.

The *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* inserted into section 4 of the Federal Court of Australia Act a definition for 'CSC', being short for Commonwealth Superannuation Corporation. The term is defined to have the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*. This amending Act also amended subsections 18K(4), (5), (6) and 37I (3), (4), (5) by replacing references to the Boards as defined under the *Superannuation Act 1976*, *Superannuation Act 1990* and *Superannuation Act 2005* respectively with references to CSC.

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 Trans-Tasman Proceedings Act and the Transitional Act have still not yet commenced.

## Amendments to the Federal Court of Australia Regulations

During the reporting year there were no amendments to the Federal Court of Australia Regulations 2004. As a result of the Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 1), however, the Federal Court of Australia Regulations will be amended to include in Schedule 1 a new fee for filing an application to register a New Zealand judgment under the *Trans-Tasman Proceedings Act 2010*. These amendments will take effect only when that latter Act commences (see above).



The filing and other fees set out in Schedule 1 of the Federal Court of Australia Regulations will be increased in accordance with the formula for biennial adjustment set out in Schedule 2 of those Regulations. These changes will take effect from 1 July 2012.

### 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 Legislative Instruments.

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.

As discussed in the 2010–11 Annual Report, the former Federal Court Rules were replaced by a modern set of rules written in plain English and gender neutral language, the Federal Court Rules 2011, which commenced on 1 August 2011.

During the reporting year, no amendments were made to the Federal Court Rules 2011.

The forms under the previous Rules were repealed with the introduction of the Federal Court Rules 2011. Subrule 1.52(2) of the Federal Court Rules 2011 provides for the Chief Justice to approve a form for the purposes of a provision of these Rules. On 1 August 2011 the Chief Justice approved 143 forms for use under the new Rules.

The Approved Forms are available on the Court's website at:

**<http://laredef.typepad.com/fedcourt/2011/07/federal-court-rules-summary-of-resources.html>**.

Practice Notes supplement the procedures set out in the Rules of Court and are issued by the Chief Justice upon the advice of the judges of the Court under the Court's inherent power to control its own processes. All Practice Notes in force before the commencement of the Federal Court Rules 2011 were revoked and re-issued on 1 August 2011. These re-issued Practice Notes reflect changes introduced by the new Rules as well as updated references to relevant rules in the Federal Court Rules 2011.

At the same time, the Chief Justice issued three new Practice Notes:

- GEN 1 – Court sittings and registry hours
- GEN 2 – Documents
- GEN 3 – Use of Court forms.

Since the commencement of the Federal Court Rules 2011, the Chief Justice issued the following new or revised Practice Notes:

- a revised Practice Note ARB 1 – Proceedings under the *International Arbitration Act 1974*. Issued on 24 May 2012.
- a new Practice Note CM 18 – Title of proceedings for relief under section 39B of the Judiciary Act against Fair Work Australia. Issued on 21 September 2011.
- a new Practice Note CM 19 – Appointment of a judge as an examiner to take evidence overseas. Issued on 21 September 2011.

# THE WORK OF THE COURT IN 2011–12

- a new Practice Note CM 20 – Ex parte applications for substituted service in bankruptcy proceedings and applications for summonses under s 81 Bankruptcy Act and ss 596BA and 596B Corporations Act. Issued on 9 December 2011.
- a new Practice Note CM 21 – Title of proceedings for relief under s 39B of the Judiciary Act or s 5 Administrative Decisions (Judicial Review) Act against Commonwealth Tribunals. Issued on 17 February 2012.

In addition, Administrative Notices are issued by each District Registrar at the request, or with the agreement, of judges in the District Registry to which the notice relates. These notices deal with local matters, such as arrangements for the duty judge and the listing of particular types of matters (for example in a subpoena or corporations list).

All but two Administrative Notices (VIC 1 and WA 1) in force before the commencement of the Federal Court Rules 2011 were revoked and re-issued on 1 and 2 August 2011. These re-issued Administrative Notices reflect changes introduced by the new Rules as well as updated references to relevant rules in the Federal Court Rules 2011.

The ACT District Registrar revised Administrative Notice ACT 1 – Administrative Arrangements. It was issued on 1 April 2012.

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.

There was one amendment to the Federal Court (Corporations) Rules 2000 commencing on 14 September 2011. It made minor changes as a consequence to the introduction of the Federal Court Rules 2011.

There was also one amendment to the Federal Court (Bankruptcy) Rules 2005 commencing on 1 January 2012. It made changes consequential upon the 2010 amendments to the Bankruptcy Act and Regulations as well as the introduction of the Federal Court Rules 2011.

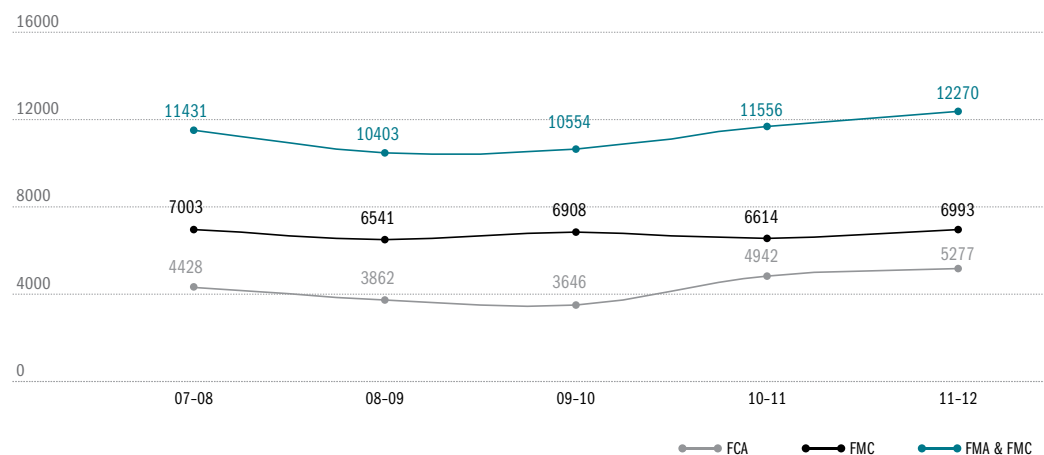
## **Workload of the Federal Court and Federal Magistrates Court**

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 2007–08.

In 2011–12, a total of 12 270 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 2012**  
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 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 2007 to 30 June 2012, ninety-one per cent of cases (excluding native title matters) were completed in less than eighteen months, eighty-six per cent in less than twelve months and seventy-three per cent in less than six months (see Figure 6.4 on page 132). Figure 6.5 on page 133 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2011–12, ninety-four per cent of cases were completed within eighteen months.

# THE WORK OF THE COURT IN 2011–12

## Delivery of judgments

In the reporting period, 2158 judgments were delivered. Of these, 740 judgments were delivered in appeals (both single judge and full court) and 1418 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 149 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, 4663 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 6.2 on page 127.

### 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, twenty-nine matters were remitted or transferred to the Court:

- four from the High Court
- eleven from the Federal Magistrates Court
- twelve from the Supreme Courts
- two 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 2011–12, sixteen matters were transferred from the Court:

- fourteen to the Federal Magistrates Court
- two to the Supreme Courts

### Matters completed

Table 6.2 on page 127 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 5113 against 4019 in the previous reporting year. The 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 2337 (see Table 6.2), compared with 2787 in 2010–11.

### 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 2012 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) by Cause of Action (CoA)**

CoA	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Administrative law	54	22	11	12	10	109
Admiralty	35	12	3	5	10	65
Bankruptcy	30	21	11	8	10	80
Competition law	2	3	1	3	14	23
Trade Practices	97	72	34	48	55	306
Corporations	368	96	32	47	55	598
Human rights	19	23	11	6	11	70
Workplace relations	2	5	3	1	10	21
Intellectual property	58	49	24	21	47	199
Migration	12	6	2	0	1	21
Miscellaneous	22	12	11	11	5	61
Taxation	54	27	38	43	34	196
Fair Work	64	31	23	4	4	126
<b>Total</b>	<b>817</b>	<b>379</b>	<b>204</b>	<b>209</b>	<b>266</b>	<b>1875</b>
% of Total	43.6%	20.2%	10.9%	11.1%	14.2%	100.0%
<b>Running Total</b>	<b>817</b>	<b>1196</b>	<b>1400</b>	<b>1609</b>	<b>1875</b>	
Running %	43.6%	63.8%	74.7%	85.8%	100.0%	

# THE WORK OF THE COURT IN 2011–12

The Court experienced a thirty-six per cent increase in the number of matters over eighteen months old in 2011–12. Table 3.1 shows that at 30 June 2012 there were 475 first instance matters over 18 months old compared with 348 in 2011 (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 action	30	55	16	16	345	462
% of Total	6.5%	11.9%	3.5%	3.5%	74.7%	100.0%
Running Total	30	85	101	117	462	
Running %	6.5%	18.4%	21.9%	25.3%	100.0%	

There were 361 native title matters over eighteen months old at 30 June 2012 compared with 384 in 2011.

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 125.

## 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 2012 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 eleven occasions outside of the Full Court and appellate sitting periods. Hearing these appeals involved a total of sixteen days with three judges sitting on each day.

### The appellate workload

During the reporting year 797 appellate proceedings were filed in the Court. They include appeals and related actions (614), cross appeals (11) 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 (172).

The Federal Magistrates Court is a significant source of appellate work accounting for forty-six per cent (449) of the total number of appeals and related actions, cross appeals and other appellate motions filed in 2011–12. 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 144.

The above figures indicate that the Court's appellate workload in 2011–12 (797) decreased marginally, by approximately five per cent, when compared with 2010–11 (837).

During the reporting year the number of migration appeals and applications filed increased by twenty-six per cent from 269 matters filed in 2010–11 to 338 in 2011–12. As shown by Table 3.4, this workload is subject to fluctuation due to changes that may occur in government policy or the impact of decisions of the High Court.

In the reporting year 914 appeals, cross appeals and appellate applications were finalised, including 378 interlocutory applications.

At 30 June 2012, 328 appeals, cross appeals and appellate applications were current including ninety-eight interlocutory applications. The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2012 is set out in Table 3.3 below.

At 30 June 2012 there were seven sets of appellate proceedings (involving fourteen cases) that are eighteen months or older. These cases are awaiting either the outcome of decisions in the High Court or the Federal Court, further action on the part of the parties or a negotiated outcome is being pursued in a number of cases including native title.

**Table 3.3 – Age of current appeals, cross appeals and interlocutory appellate applications at 30 June 2012**

CURRENT AGE	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	TOTAL
Appeals, cross appeals and interlocutory appellate applications	231	65	18	8	6	328
% of Total	70%	20%	6%	2%	2%	100.0%

# THE WORK OF THE COURT IN 2011–12

## Managing migration appeals

In 2011–12 twelve 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 326 migration cases related to judgments of the Federal Magistrates Court.

Table 3.4 below shows the number of appellate proceedings involving the Migration Act as a proportion of the Court's overall appellate workload since 2007–08. 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 cross appeals and interlocutory applications)**

APPELLATE PROCEEDINGS	2007-08	2008-09	2009-10	2010-11	2011-12
Migration jurisdiction	1020	530	392	269	338
Per cent	67%	50%	46%	32%	43%
<b>Total Appellate Proceedings</b>	<b>1526</b>	<b>1067</b>	<b>860</b>	<b>837</b>	<b>797</b>

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

During the reporting period the Federal Court finalised seventy-nine native title determination applications (claimant). Of these thirty-seven were determined by consent after all parties reached agreement as to the existence of native title and forty-two claimant applications were otherwise finalised. The finalisations, other than determinations, are often by way of discontinuance and reflect agreements that have been reached as part of a non native title settlement. Sixty-five claimant applications were filed during the period.

The number of determinations has risen considerably since the introduction of the 2009 amendments increasing from eleven in 2008–09, to thirty-seven in 2011–12.

The creation of the Native Title Priority List is one example of the Court's response to its reinforced role arising from the 2009 amendments. At 1 July 2011 there were ninety-seven claimant applications on the



priority list of which forty-four were finalised during the reporting period. A further seventy-two matters were added to the list and, as at 30 June 2012, it contained 123 current priority matters.

On 8 May 2012 the Commonwealth Attorney-General announced further institutional reforms affecting the administration and mediation of native title claims which will be introduced from 1 July 2012.

The effect of these reforms is that, from 1 July 2012, the Court will be wholly responsible for native title mediation. This includes mediation of native title claims as well as mediation of Indigenous Land Use Agreements (ILUA) related to the resolution of native title matters.

The stated intent of the mediation reform is to support the resolution of native title claims in a timely and effective way. The Government has made clear its expectation that most native title matters will cease to be mediated in the National Native Title Tribunal (NNTT) as of 1 July 2012; however, some matters, for example those that are close to resolution, may remain with the NNTT for mediation and related ILUA negotiations until finalised.

Following the Government's announcement the Court commenced a review of all matters in mediation, either through scheduled review hearings or case management conferences in particular matters or for particular regions, to ensure that the progress of existing mediations is maintained and where possible increased. The outcomes of these reviews will be actively monitored by the Court and reported on in future Annual Reports.

The Court is confident that its enhanced case management powers and the expertise of its judges and native title registrars will continue to contribute to the increase in the resolution of these claims and to achieving quality outcomes for all involved in native title in a timely manner. In addition, and in support of these reforms, a number of NNTT staff have transferred to the Court to assist with the mediation function.

It is recognised that native title matters are complex and fact intensive cases which raise novel questions of fact and, at times, law. However, this complexity cannot be permitted to be a reason for delay. The Court continues to apply its usual case management strategies to progress these cases. It has also developed a specialist practice based upon assisting the parties to clearly identify what is in dispute between them and why; to identify and creatively resolve blockages; and, most importantly, to work with the parties to create momentum in developing consent determinations that contain broad and effective solutions.

Although there continues to be some debate, the overriding view of the Court is that mediated outcomes are much more successful in the context of a case management timetable. Such a timetable, when well managed, does not divert resources from the capacity to mediate successfully. The benefit of such an approach is the resolution of the native title claim without the need for a hearing.

### **Assisted Dispute Resolution (ADR)**

#### **Referrals to ADR and Mediation**

Assisted Dispute Resolution continues to be an important aspect of the work undertaken by the Court. Parties to civil proceedings must conduct those proceedings in a way that allows a just resolution of the dispute to be achieved as quickly, inexpensively and efficiently as possible (ss 37M and 37N of the Federal Court Act). ADR plays an essential role in assisting parties, consistent with that statutory obligation, in exploring resolution of the dispute in a timely manner. As part of its case management of any proceeding, the Court will examine the conduct of that proceeding and where it is appropriate, it will refer a dispute to a suitable ADR process, including an ADR process conducted by a registrar.

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The ADR options currently available to the Court under the Federal Court Act and Federal Court Rules which are complemented 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

Table 3.5 shows the numbers of ADR referrals across the Court by ADR type and registry. Mediation continues to be the most frequently used ADR referral made by judges of the Court. While referrals to mediation have decreased nationally by approximately four and half per cent from the previous reporting period, this trend is not uniform across the Court. Referrals to mediation have significantly increased in both Western Australia and Queensland.

It is important to note that the data collected does not reflect the full extent of ADR activities carried out as part of the Court's general case management. It is now common for parties to have engaged in private ADR processes either prior to filing in the Court or during the course of preparing a matter for hearing. Also, 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. None of these activities are comprehensively captured by the statistics presented in this report.

**Table 3.5 – ADR referrals in 2011-12 by type and Registry**

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Mediation	163	247	86	50	–	18	11	8	583
Arbitration	–	–	–	–	–	–	–	–	–
ENE	–	–	–	–	–	–	–	–	–
Conference of experts	–	–	3	5	1	1	–	–	10
Court appointed experts	–	–	–	–	–	–	–	–	–
Referee	–	–	–	–	–	–	–	–	–
<b>TOTAL</b>	<b>163</b>	<b>247</b>	<b>89</b>	<b>55</b>	<b>1</b>	<b>19</b>	<b>11</b>	<b>8</b>	<b>593</b>

Table 3.6 shows the referrals to mediation by matter type and registry. The information suggests that on a national basis consumer protection, corporations, intellectual property and industrial matters are the most frequently referred matters. This trend, however, is not reflected in every registry, eg In Western Australia, administrative law matters were the most frequently referred type of matter and industrial matters in Victoria.

**Table 3.6 – Mediation referrals in 2011-12 by Cause of Action (CoA) and Registry**

CoA	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Administrative law	2	–	18	2	–	–	–	1	23
Admiralty	6	2	–	–	–	–	–	–	8
Appeals	–	5	1	–	–	–	–	–	6
Bankruptcy	4	2	2	1	–	–	–	–	9
Corporations	16	38	14	4	–	3	4	3	82
Costs	29	–	–	–	–	–	–	–	29
Human rights	6	24	5	3	–	1	–	1	40
Industrial	20	77	10	15	–	3	–	2	127
Intellectual property	32	41	8	6	–	2	–	–	89
Migration	2	–	1	–	–	–	–	–	3
Native title	1	1	13	10	–	1	–	–	26
Tax	2	6	1	6	–	–	–	–	15
Consumer law	43	49	12	3	–	8	7	1	123
Competition law	–	2	1	–	–	–	–	–	3
<b>TOTAL</b>	<b>163</b>	<b>247</b>	<b>86</b>	<b>50</b>	<b>–</b>	<b>18</b>	<b>11</b>	<b>8</b>	<b>583</b>

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 twelve 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. The term ‘applicable filings’ is used to refer to matters commonly considered for referral to mediation.

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

	2007-08	2008-09	2009-10	2010-11	2011-12
Referrals	379	522	476	610	583
Total filings	4428	3862	3646	4941	5277
Proportion (%)	9%	14%	13%	12%	11%

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 forty-six per cent of total filings nationally.

**Table 3.8 – Total filings and suitable filings (excluding non-mediation CoAs, eg migration appeals) by Registry in 2011-12**

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Applicable filings	1022	680	177	238	60	143	24	84	2428
Total filings	2217	1241	407	833	64	349	61	105	5277
Proportion (%)	46%	55%	43%	29%	94%	41%	39%	80%	46%

When considered as a proportion of applicable filings, 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 consistent with that recorded in 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 in 2011-12**

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total referrals	163	247	86	50	–	18	11	8	583
Applicable filings	1022	680	177	238	60	143	24	84	2428
Proportion (%)	16%	35%	45%	17%	0%	13%	46%	9%	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 3.11.

Table 3.10 – Internal and external mediation referrals by CoA in 2011-12

CoA	INTERNAL	EXTERNAL
Administrative law	22	1
Admiralty	5	3
Appeals	6	–
Bankruptcy	8	1
Corporations	75	7
Costs	29	–
Human rights	40	–
Industrial	127	–
Intellectual property	77	12
Migration	2	1
Native title	17	9
Tax	13	2
Consumer law	103	20
Competition law	2	1
<b>TOTAL</b>	<b>526</b>	<b>57</b>

Table 3.11 – Internal and external mediation referrals as a proportion of applicable filings in 2011-12

	INTERNAL	EXTERNAL
Total referrals	526	57
Applicable filings	2428	2428
Percentage	22%	2%

# THE WORK OF THE COURT IN 2011-12

## Mediations held in the reporting period

Table 3.12 shows the outcomes of mediations conducted by Federal Court registrars by matter type during the reporting period. 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 sixty-one per cent and is consistent with that reported for the 2010-11 period of fifty-nine per cent.

The figures in Table 3.12 do not necessarily reflect the outcomes of matters referred in the reporting period at Table 3.10. While a number of matters will have been referred to mediation and mediated during the same reporting period others referred late in the reporting period may be the subject of ongoing mediation. In addition, some matters mediated in this reporting period may have been referred in the previous reporting period.

**Table 3.12 – Mediation outcomes by CoA in 2011-12**

CoA	RESOLVED	RESOLVED IN PART	NOT RESOLVED	TOTAL	PROPORTION RESOLVED/ IN PART (%)
Administrative law	5	–	2	7	71%
Admiralty	2	–	1	3	67%
Appeals	5	–	–	5	100%
Bankruptcy	2	–	4	6	33%
Corporations	29	3	21	53	60%
Costs	17	1	9	27	67%
Human rights	20	1	11	32	66%
Industrial	45	3	43	91	53%
Intellectual property	31	1	20	52	62%
Migration	5	–	1	6	83%
Native title	1	–	–	1	100%
Tax	13	–	4	17	76%
Consumer law	42	1	30	73	59%
Competition law	1	–	–	1	100%
<b>TOTAL</b>	<b>218</b>	<b>10</b>	<b>146</b>	<b>374</b>	<b>61%</b>

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

**Table 3.13 – Mediation outcomes by Registry in 2011-12**

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Resolved	72	102	15	12	1	7	4	5	218
Resolved in part	1	5	–	2	–	–	1	1	10
Not resolved	36	79	8	12	–	3	5	3	146
TOTAL	109	186	23	26	1	10	10	9	374
Proportion resolved/ in part (%)	67%	58%	65%	54%	100%	70%	50%	67%	61%

For the purposes of reporting, the Court records the number and outcome of mediations regardless of whether a matter is mediated over one or more days. Particularly complex matters may be mediated over more than one day.

Table 3.14 shows the number of mediations conducted by a registrar of the Court during the reporting year as a percentage of the applicable filings. The total percentage of mediations held as a proportion of applicable filings (fifteen per cent) is consistent with that of the previous reporting period. Again, the proportion of applicable filings mediated is less than the proportion of applicable filings referred to mediation (see Table 3.11). This may reflect the time difference between a referral and the mediation or the use by the parties of private mediators in respect of some referrals.

**Table 3.14 – Mediations held as a proportion of applicable filings, by Registry in 2011-12**

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total held	109	186	23	26	1	10	10	9	374
Applicable filings	1022	680	177	238	60	143	24	84	2428
Proportion (%)	11%	27%	13%	11%	2%	7%	42%	11%	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 145.

# THE WORK OF THE COURT IN 2011–12

## 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 utilise technology to maximise the efficient management of cases, by increasing on-line accessibility for the legal community and members of the public, as well as assisting judges in their task of deciding cases according to law quickly, inexpensively and as efficiently as possible.

The Court has been progressively implementing a series of electronic initiatives to make use of technological opportunities to improve our services to Court users. The primary objective of the Court's eServices strategy is to create an environment where actions are commenced, case managed and heard by filing documents electronically. The result will be that the Court's official record will be an electronic court file.

Paper documents may be relied upon during case management, trials or appeals. But these documents will emanate from an electronic file and they will not form part of the Court Record. Over time it is likely that the extent of paper documents will reduce, with people becoming accustomed to relying on the information in electronic form.

During the reporting period the Court commenced development of a document management system which will form the basis of the electronic court file enabling the various electronic 'documents' to be stored and retrieved quickly. Extensive consultation about the electronic court file will be undertaken in the next reporting year.

Once the electronic court file is in place and the Court is satisfied that it is working as expected for the Court and the legal profession, the Court will move towards mandating the use of eLodgment (compulsory electronic filing). Measures will be put in place to ensure court users who may not have access to computers or the Internet are not disadvantaged by electronic filing. The Court will announce the date for the implementation of mandatory electronic filing with a reasonable lead time to enable everybody to be ready to participate.

While developing the electronic court file, the Court has continued to promote the use of its electronic filing application, eLodgment. There are currently over 3000 active users of eLodgment and over 38 000 documents were eLodged during the reporting period, equating to approximately thirty-five per cent of all documents filed in both the Federal Magistrates Court and the Federal Court.

In line with the take up of eLodgment, the year also saw increased activity on eCourtroom, resulting in 700 matters being commenced in eCourtroom during 2011–12. The Court has continued to enhance both eLodgment and eCourtroom. During the year eCourtroom version 2 was developed and



implemented. It involved integration of eCourtroom with eLodgment to enable users to access both systems through a single sign on facility and navigate seamlessly between the different applications as required. Parties in eCourtroom now have a link to eLodgment to file documents. Additionally, eCourtroom includes a facility where parties can exchange correspondence and draft documents through a supplementary eCase Administration application.

The Court issued a Practice Note (CM 20) indicating that some matters dealt with by the Court's registrars such as new applications for orders for substituted service of bankruptcy notices or creditor's petitions or for issue of examination summonses under s 81 of the Bankruptcy Act or ss 596A and 596B of the Corporations Act will ordinarily be dealt with on-line by hearings in eCourtroom. It is expected that the use of eCourtroom for these matters will save time and money for all concerned as there will no longer be a requirement for attendance in a physical courtroom.

From 30 June 2012 parties to a matter who are registered users of the Commonwealth Courts Portal (CCP) have been able to use the CCP to view documents that have been eLodged in that matter. Confidential documents are not viewable and access is restricted to parties (or their legal representatives).

eCourtroom has also been integrated with the Court's case management system which has reduced data entry requirements and improved data integrity.

### 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:

- ongoing monitoring of 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
- refinement of procedures for dealing with ex parte applications for substituted service in bankruptcy proceedings and applications for summonses under s 81 Bankruptcy Act and ss 596A and 596B Corporations Act
- representative proceedings
- enhancement of Australia's role in international arbitration
- monitoring of the impact of changes to costs for work done and services provided by lawyers after 1 August 2011 implemented by the Federal Court Rules 2011
- procedures for the appointment of a judge as examiner to take evidence overseas
- monitoring of the impact of the *Civil Dispute Resolution Act 2011*
- titles of proceedings for relief under s 39B Judiciary Act (or s 5 Administrative Decisions (Judicial Review) Act where relevant) against Fair Work Australia and Commonwealth Tribunals
- taking of evidence abroad by video link
- mediation and confidentiality
- a Commonwealth statutory cause of action for serious invasion of privacy
- consolidation of Commonwealth anti-discrimination laws
- use of live text-based forms of communication from courtrooms
- review of the Court's video link hearing arrangement guidelines.

The Committee also considered proposed legislative changes in the areas of national legal profession reform; implementation in the federal courts of the Standing Committee on Law and Justice (formerly

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Standing Committee of Attorneys-General) model laws for suppression and non-publication orders and for vexatious proceedings; and enhancing the Court's powers concerning discovery following the Australian Law Reform Commission's March 2011 report, 'Managing Discovery: Discovery of Documents in Federal Courts'.

## **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:

- impact of the *Civil Dispute Resolution Act 2011*
- 2011 Case Management workshop and Handbook
- Australian Law Reform Commission report, 'Managing Discovery: Discovery of Documents in Federal Courts'
- impact of the 2010 fee increases/changes in the Federal Court
- Federal Court Rules 2011, new forms and costs provisions
- Joint Costs Advisory Committee 4th Inquiry report
- changes to the structure of the federal courts and the creation of a new Military Court
- representative proceedings
- implementation of an electronic court file for Federal Court proceedings
- developments with arrangements for providing assistance to self represented litigants in the Court
- pilot in the Queensland District Registry of new case management arrangements for administrative law
- mediation.

## **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.

During the last reporting year 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. That 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, run by QPILCH, commenced in July 2011 for an initial six month period but was extended for a further six months with funding provided by the Attorney-General's Department. An independent evaluation of the pilot is being carried out.

Tables 3.15, 3.16 and 3.17 provide 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 statistics shown in the tables are indicative only.

In the reporting year, 314 people who commenced proceedings in the Court were identified as self represented. The majority were appellants in migration appeals.

## Erratum

From left to right, column headings in table 3.15 should read:

ACT NSW NT QLD SA TAS VIC WA

The following tables provide some further information.

**Table 3.15 – Actions commenced by Self Represented Litigants (SRLs) during 2011–12 by Registry**

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
SRLs	8	174	1	27	13	0	61	30	314
%Total	3%	55%	0%	9%	4%	0%	19%	10%	100%

The 314 SRLs were applicants in 273 proceedings, as a proceeding can have more than one applicant. The following table breaks down these proceedings by major CoA.

**Table 3.16 – Proceedings commenced by SRLs in 2011–12 by CoA**

CoA	TOTAL ACTIONS	% OF TOTAL
Administrative law	29	11%
Admiralty	0	0%
Appeals and related actions	165	60%
Bankruptcy	13	5%
Bills of costs	0	0%
Competition law	0	0%
Consumer protection	8	3%
Corporations	16	6%
Cross claim	0	0%
Fair Work	11	4%
Human rights	13	5%
Industrial	1	0%
Intellectual property	1	0%
Migration	8	3%
Miscellaneous	3	1%
Native title	2	1%
Taxation	3	1%
<b>Total</b>	<b>273</b>	<b>100%</b>

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**Table 3.17 – Appeals commenced by SRLs in 2011-12 by type of appeal**

CoA	TOTAL ACTIONS	% OF TOTAL
Administrative law	10	6%
Admiralty	1	1%
Bankruptcy	15	9%
Competition law	0	0%
Consumer protection	2	1%
Corporations	2	1%
Fair Work	5	3%
Human rights	1	1%
Industrial	0	0%
Intellectual property	1	1%
Migration	125	76%
Miscellaneous	2	1%
Taxation	1	1%
<b>Totals</b>	<b>165</b>	<b>100%</b>

## 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).

## Reduced court fees

Under the Federal Court of Australia Regulations, fees are charged for commencing a proceeding and for setting a matter down for hearing (including a daily hearing fee). A setting down fee is also payable on some matters and the amount of the daily hearing fee will vary depending on the length of the hearing.

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 \$64.20 [with effect from 1 July 2012])
- 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 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 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 reductions is available on the Court's website [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

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## 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.

A project to redesign the Court's website which commenced in 2010-11 has now progressed into the final phase, with delivery of a new site expected during the second half of 2012.

During the reporting year, the website was used extensively to communicate significant changes and events within the Court. This included:

- **Federal Court Rules revision:** A presentation to the legal profession by Justice Lander was recorded and published on the website in the form of a podcast for the benefit of those unable to attend presentations. Additional material such as FAQs, and 'old-to new-Rules' navigational aids were also published within a sub-section of the site devoted to Rules updates.
- **New forms:** As part of the Rules Revision project, 137 new forms were drafted. The forms were posted on the website prior to commencement, providing an opportunity for the legal profession to become familiar with the new forms, and also to update in-house precedents databases.
- **Court documents on-line:** In June 2012, following an unprecedented number of public requests, the Court created an on-line file in *Ashby v Commonwealth of Australia & Anor* which contained all publicly available documents filed by the parties. This was the first time the Court had made available a Court file through its website.

## 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](http://www.fedcourt.gov.au).

## Freedom of Information

### Information Publication Scheme

Agencies subject to the *Freedom of Information Act 1982* (FOI Act) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Court's 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>.

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. Documents filed in Court proceedings are not of an administrative nature; however, they may be accessible by way of the Federal Court Rules.

### 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 an hour of delivery 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

The Court's Director Public Information assists journalists throughout Australia covering cases and issues relating to its work. A priority is the timely provision of judgments and guidance on access to public material on court files.

During the reporting year mainstream television access was facilitated in *Singtel Optus v National Rugby League* and in the related appeal, *National Rugby League Investments Pty Ltd v Singtel Optus Pty Ltd*.

Justice Rares permitted a pool camera to record delivery of his judgment on 2 February 2012 while the Full Court – comprising Justices Finn, Emmett and Bennett – allowed a live feed of their judgment on 27 April 2012. Both cases prompted widespread coverage.

Just before the conclusion of the reporting period, the Court established an on-line file for access to publicly available documents in the matter of *Ashby v Commonwealth of Australia & Anor* in view of the widespread media and public interest.

### 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 2011–12 judges and registrars in the New South Wales Registry hosted local user group meetings covering general Federal Court practice and procedure and the admiralty jurisdiction. A national tax user group chaired by Justice Edmonds was hosted by the New South Wales Registry and transmitted by videolink to user group meetings in the Court's other Registries.

The Registry also held a number of seminars and lectures on constitutional law, practice and procedure, arbitration, and hosted law moots and bar reader courses. The District Registrar and Deputy District Registrars hosted an information session for lawyers new to practice and gave presentations to bankruptcy practitioners and the Maritime Law Association of Australia and New Zealand.

# THE WORK OF THE COURT IN 2011-12

The Court's facilities in Sydney were made available for a number of events during the reporting year including: the Society of Trust and Estate Practitioners Lecture; the University of New England Moot; the final of the Sydney University Public International Law Moot; the 2011 Tristan Jepson Memorial Foundation Annual Lecture; and the 2012 Whitmore Lecture.

The Victorian Registry hosted a Federal Court user group meeting and held an information session for the legal profession about the Federal Court Rules. The Court's facilities in Victoria were used for a Cartel Criminalisation lecture and a number of Moot Courts for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities and Moot Court Competitions for the Victorian Bar Readers.

During the reporting year the Victoria Registry participated in the Indigenous Clerkship Program run by the Victorian Bar and hosted a group of students undertaking architecture studies at the University of Melbourne. Activities with school students included a meeting between Justice Marshall and a group of secondary students and the placement of several work experience students in the Registry through the year.

The Queensland Registry hosted the following events for the legal profession during the reporting period: a native title forum chaired by Justice Dowsett; an administration law liaison meeting and the national tax user forum via video conference from New South Wales.

The District Registrar gave a number of presentations including the 'Civil Dispute Resolution Act 2011 – how it impacts you?'; a presentation on ADR to the Joint Law Council of Australia/ATO Dispute Resolution Workshop; and a presentation on practice and procedure in the Federal Court. The District Registrar also attended the Queensland Insolvency Law Practitioners meetings.

In addition, the Queensland Registry hosted visits from Bond University and various secondary schools.

The Western Australian Registry hosted four intellectual property seminars and provided two information sessions for junior solicitors, para-legals and clerks.

It hosted the grand final of the Murdoch Student Law Society Trial Advocacy Competition which was adjudicated by Justice Barker. 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 Gilmour.

The Registry hosted a native title forum to mark the 20th Anniversary of the handing down of the Mabo judgment, which was organised by the Law Society of Western Australia.

Judges and staff in South Australia hosted an information session for new legal practitioners, and Justice Besanko gave seminars on the corporations jurisdiction of the Court, and also participated in the South Australia Bar Readers course. Work experience was provided, there was an 'Open House' weekend of the Court building for the public to visit and the courtrooms were used for training of legal graduates for the Graduate Diploma of Legal Practice.

Judges and staff in the Australian Capital Territory held a general user group meeting for the profession. A Deputy District Registrar, presented at the Joint Law Council of Australia/ATO Dispute Resolution Workshop on ADR in the Court. The Tasmania Registry presented a seminar on the work of the Federal Court to the Young Lawyers committee and the District Registrar, on ADR in the Court at the Joint Law Council of Australia/ATO Dispute Resolution Workshop. The Registry held two general user group meetings and the Tasmanian Women's Lawyers committee attended a function at the Court hosted by Justice Marshall.



### Complaints about the Court's processes

During the reporting year, ten 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. The Court hosted in Sydney on 7 September 2011 the '17th Australasian Institute of Judicial Administration Oration in Judicial Administration' which was given by the Lord Chief Justice of England and Wales, the Rt Hon the Lord Igor Judge.

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 168.

### National Standard on Judicial Education

In late 2010 a report entitled 'Review of the National Standard for Professional Development for Australian Judicial Officers' was prepared for the National Judicial College of Australia. The Court was invited and agreed to adopt a recommendation from that Report to include in the Court's Annual Report some information as to:

- participation by members of the Court in judicial professional development activities
- whether the proposed Standard for Professional Development was met during the year by the Court
- if applicable, what prevented the Court meeting the Standard (such as judicial officers being unable to be released from court, lack of funding etc).

The Standard provides that judicial officers identify up to five days a year on which they could participate in professional development activities. During 2011–12 the Court offered the following activities:

- Criminal Procedure Workshop from 29 June to 1 July 2011
- a Judicial Education Day on Admiralty which included members of the Federal Magistrates Court and Federal Court Registrars on 25 August 2011
- a half day education day on judgment writing and the 'Differences in Trial Approaches' was held on 29 March 2012. A further judicial education day on 'Personal Property Securities Reform' was held on 30 March 2012. Both events were scheduled to coincide with the Court's biannual judges' meeting.
- judges were offered the opportunity to attend the Supreme Court and Federal Court Judges' Conference held in Melbourne on 21–25 January 2012.

In addition to the above, judges undertook other education activities through participation in seminars and conferences, details of which can be found in Appendix 9 on page 168. In the period 1 July 2011 to 30 June 2012 on average the Standard was met. There were a number of judges appointed during the course of the year such that it was not practical for the Standard to be met within the reporting period for those judges.

# THE WORK OF THE COURT IN 2011–12

## WORK WITH INTERNATIONAL JURISDICTIONS

### Introduction

Through its International Programs Office, the Court collaborates with many neighbouring judiciaries across the Asia-Pacific region. In 2011–12, the Court coordinated a number of programs and hosted official visits from judicial and senior administrative staff from other countries.

### Pacific Judicial Development Program

The Pacific Judicial Development Program 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. To achieve this, the 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. The participating judiciaries are: Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

Following a needs assessment process the Court designed an eighteen month program of assistance focussing on the four pillars of justice: access to justice, governance, systems and processes and professional development projects. With the assistance of senior judges, staff, the program team and a number of external technical advisers engaged by the Court, the activities were implemented across all participating countries.

Under each pillar, the following projects were completed.

- 1. Access to Justice – Customary Dispute Resolution Research Project:** Research was undertaken in Samoa, the Federated States of Micronesia, and the Marshall Islands to learn about in/formal systems of justice, and how the two types of systems might interrelate. With this representative research an evidence-based strategy was developed which articulates the benefits to governance and the rule of law through stronger linkages between in/formal justice systems in the region. The strategy will be transposed into a plan and a suite of tools participating countries can use to promote synergy and harmony between in/formal systems of justice.
- 2. Governance – Leadership Project:** The Court has worked closely with Chief Justices and other senior judicial stakeholders across the region, providing opportunities to meet to discuss experiences, common challenges and solutions. On behalf of Chief Justice Keane, Justice Mansfield attended the most recent meeting of Chief Justices in Apia, Samoa in March. The Codes of Judicial Conduct Project was also implemented under this pillar. Under this project, the Court worked with the judiciaries of Niue, Tuvalu and Kiribati to assist them to develop and promulgate Codes of Judicial Conduct based on internationally recognised principles. Also under this pillar, the Court undertook a Project to Institutionalise Regional Judicial Development. This comprised consulting stakeholders across Australia, New Zealand and the Pacific to develop appropriate options and strategies to sustainably program judicial reform and development in the future.
- 3. Systems and Processes – Judicial Administration Diagnostic Project:** Diagnoses of court administration needs were completed in the Solomon Islands, Vanuatu and Tonga to inform a regional strategy which identifies common areas for improvement. Based thereon, local development plans were devised and approved including strategies to address identified shortcomings. Also under this pillar the Court implemented a Judicial Monitoring and Evaluation Project. A framework and series of relevant indicators were developed and each participating country measured its performance. The regional report will be published in the coming months.

4. **Professional Development** – Significant resources have been dedicated to addressing the Pacific-perceived need for professional development opportunities. Given the majority of judicial officers across the region are lay, their need for substantive legal training is real, as is an ability to assess training needs and design and deliver training without waiting for external assistance. As a result, four ‘orientation train-the-trainer’ and two refresher ‘train-the-trainer’ programs have been conducted for sixty-five people, many using a Pacific-specific train-the-trainer program which the Court commissioned. To date, twenty-two participants have been certified competent to train anywhere in the Pacific and nineteen have been certified competent to deliver training locally. In addition thirty-one judicial and court officers have received orientation training which was co-facilitated by Justice Gray; and thirty-three have undertaken decision-making training. Finally, twelve of the fourteen participating countries applied for the small grant scheme managed by the Court to implement twenty-two local priority activities.

Based on its performance and the achievement of positive outcomes for its counterparts, the donor, the New Zealand Ministry of Foreign Affairs and Trade, has extended the Program and the Court’s management of it to 30 June 2013. The Court looks forward to continuing to work closely with its regional colleagues.

#### **Pacific Judicial Capacity Building Program**

In May 2012, representatives from eight Pacific Island Courts attended a three-day Commercial Case Management Workshop at the Court’s Queensland Registry. The workshop was conducted by Justice Logan with contributions from Justice Barker. The workshop focussed on a range of difficulties identified by participating courts including; pre-trial management, case management techniques, and issues in evidence. Several legal and judicial experts from outside the Court also generously lent their time and expertise to the workshop.

In June 2012, the New South Wales Registry hosted judicial and court officers from nine Pacific courts at a three day Court Annexed Mediation Workshop. The workshop provided skills training, discussion and simulated scenarios and was led by Justice Jacobson, District Registrar Michael Wall and Deputy District Registrars, Jenny Hedge, Paddy Hannigan and Chuan Ng.

Importantly, both workshops provided the opportunity to network, discuss issues relevant to the Pacific region, share the lessons learnt and develop plans to strengthen the management of commercial cases and alternatives to litigation at home.

#### **Supreme People’s Court of Vietnam**

The Supreme People’s Court hosted Justices Lander and Gilmour in Hanoi during April 2012 to discuss the development of a system of precedent appropriate for a civil law tradition. A delegation from Vietnam will reciprocate with a visit to the Federal Court later this year to further those discussions. In addition, in collaboration with the Supreme People’s Court, Justice Cowdroy conducted environmental law workshops in May 2012. The workshops were attended by 120 judges in Hanoi, Da Nang and Vung Tau where issues including treaty obligations, class actions and the enforcement of environmental regulations were discussed.

#### **Supreme Court of Indonesia**

As part of the ongoing relationship with the Supreme Court of Indonesia under the Memorandum of Understanding between the Courts, significant planning and other activities took place this year. In September 2011 a new tripartite Annex to the Memorandum was signed by the Supreme Court of Indonesia, the Federal Court and the Family Court of Australia. The Annex sets out five key areas of cooperation between the three Courts during 2011 and 2012 which are; access to justice, enhancing judicial capacity, business process re-engineering, public trust and confidence, court to court engagement, and court proceedings.

# THE WORK OF THE COURT IN 2011-12

In May 2012, the Victorian Registry hosted three judges from the Supreme Court of Indonesia as part of an Internship Program. The judges who are involved in the judicial reform program of the Supreme Court, met with various members of the Victorian Registry to discuss docket and case management, appeals, registry structure and workload, courtroom technology, library and eServices. The judges also spent time in judges' chambers to understand case management processes at both trial and appellate levels. Both the visiting judges and those involved from the Court reported that the program was a valuable experience and provided them with the opportunity to learn more about each other's Courts. The Victorian Registry will host the judges again in October 2012 when they participate in the second part of the program.

## 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 are the Supreme Court of Tonga including the Vava'u Court House, the Supreme Court of Vanuatu and the High Court of Kiribati. The Court periodically sends law librarians to these countries to assist with library maintenance, training and advice. A librarian visited Kiribati for this purpose for one week in May 2012.

## Visitors to the Court

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. During the year, the Court welcomed visitors from:

1. Hong Kong: thirty-six students from the Chinese University of Hong Kong visited the Court to gain knowledge and insight into Australia's legal system and its approach to international law.
2. Nigeria: Justice Adejumo, President of the Industrial Court of Nigeria, visited the Victorian Registry to meet other judges and accompany Justice North to a native title determination in western Victoria. In addition, a delegation of seventeen judges and four staff members of the National Judicial Council of Nigeria visited the Court as part of its research into performance management models.
3. New Caledonia: The Noumean Bar Association visited the New South Wales Registry to learn about the individual docket system, use of technology and to attend a hearing.
4. Papua New Guinea: The Solicitor-General and staff visited the Court to discuss methods of dealing with case backlog and the integration of alternative dispute resolution.
5. China: The New South Wales and Victorian Registries hosted a delegation of six judges from various courts across China who preside over maritime law disputes. The purpose of the visit was to build on exchanges between the courts to date in relation to the interpretation of domestic and international maritime law and the management of maritime disputes.
6. Japan: Two judges from the Supreme Court of Japan and the Tokyo District Court visited the New South Wales Registry under a partnership with the University of Sydney. The purpose of the visit was to provide an opportunity for the judges to observe proceedings. They met with Justices Emmett and Yates and with Registrars of the Court. In addition, two judges from the Tokyo High Court and an assistant judge from the Tokyo District Court visited the New South Wales Registry and met with Justice Jagot.
7. United States of America: Law students from the Santa Clara University School of Law visited the New South Wales Registry to learn more about Australia's legal system.

8. United Kingdom: On 7 September 2011, Chief Justice Keane welcomed the Lord Chief Justice of England and Wales, Lord Igor Judge who was giving the 2011 AIJA Oration 'Vulnerable Witnesses in the Administration of Criminal Justice' in the Court's facilities in Sydney.
9. New Zealand: Chief Justice Keane met with Dame Sian Elias, Chief Justice of New Zealand.
10. Timor-Leste: A delegation of five academics from the National University of Timor Lorosa'e (UNTL) visited the Victorian Registry. The delegation was hosted by Justice Marshall and was provided with an overview of the Court's role and jurisdiction.
11. Vietnam: A delegation, led by Chief Justice Binh, of seven judges and registrars from the Supreme People's Court of Vietnam visited the Court in Melbourne and Sydney. The delegation met with Chief Justice Keane and Justices Marshall, Jessup, Bromberg and Murphy and Registrar Soden and District Registrar Lagos. The discussion focused on how courts (including specialist courts) are structured and organised, how judges are selected, appointed and trained and how common law is developed.



## PART 4

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# Management of the court

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# 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 118.

### **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, appellate work, native title and judicial education.

## 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 2011–12 the Committee met on three occasions.

## Financial accounts

During 2011–12 revenues from ordinary activities totalled \$111.102 million. Total revenue, in the main, comprised:

- an appropriation from Government of \$86.116 million
- \$9.308 million of resources received free of charge, including for accommodation occupied by the Court in Sydney
- \$11.112 million of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges
- \$4.566 million from the sale of goods and services.

Total expenses of \$115.362 million in 2011–12 comprised: \$62.226 million in judges' and employees' salaries and related expenses; \$34.679 million in property related expenses; \$15.298 million in other administrative expenses; \$3.148 million in depreciation expenses and \$0.011 million write-down of non-current assets.

Consequently, the net operating result from ordinary activities for 2011–12 was a deficit of \$4.260 million. This was primarily a result of a once off adjustment to the value of the Court's liability for long service leave which increased by \$0.764m. Leaving this adjustment aside, the Court achieved an operating loss of \$0.347 million before taking into account depreciation. Equity decreased from \$33.545 million in 2010–11 to \$32.687 million in 2011–12.

**Table 4.1 – Outcome and Program Statement**

		BUDGET EXPENSES 11-12 (\$'000)	ACTUAL EXPENSES 11-12 (\$'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 wellbeing of all Australians		–	–	–
Program 1.1 – Federal Court Business	Departmental outputs	86.116	86.116	–
	Revenues from other sources (s. 31) for Federal Court	3.933	4.566	0.633
	Subtotal for Program 1.1	90.049	90.682	0.633
	Total for Outcome 1	90.049	90.682	0.633
	Average staffing level (number)	–	305	–

The Court's agency resource statement can be found at Appendix 2 on page 117.

# MANAGEMENT OF THE COURT

## Audit and risk management

The Audit Committee met four times during 2011–12. The committee comprises an independent chairperson, four judges and the NSW District Registrar. The Registrar, the Executive Director, Corporate Services and Chief Financial Officer and representatives from the internal audit service provider and the Australian National Audit Office (ANAO) attend committee meetings as observers. During 2011–12 the Audit Committee adopted a new charter.

The Court's internal auditors, O'Connor Marsden and Associates, conducted a resource management audit; Information and Communications Technology (ICT) Controls Review; and a fees and litigants fund audit during 2011–12.

Staff of the ANAO inspected the Court's 2011–12 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 2011–12 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 compliance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes.

## Consultants

During 2011–12, nine new consultancy contracts were entered into involving total actual expenditure of \$439 015. In addition, one ongoing consultancy contract was active during the 2011–12 year, involving total actual expenditure of \$88 000. Table 4.2 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
2011–12	\$439 015	\$88 000
2010–11	\$297 278	\$193 359
2009–10	\$231 659	\$95 656

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au).

### Competitive tendering and contracting

During 2011–12, 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 2011–12, there were no contracts or standing offers exempted by the Chief Executive Officer from publication in the contract reporting section on AusTender.

### Information on Consultancy Services

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.

Selection of consultant services was made in accordance with the Guidelines, and was obtained by way of either Open, Select or Direct Source Tendering, which are defined as follows:

**Open tender** – a procurement procedure in which a request for tender is published inviting all suppliers that satisfy the conditions for participation to submit tenders.

**Select tender** – a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders.

**Direct source tender** – refers to a procurement process in which an agency invites a potential supplier or suppliers of its choice to make submissions. Direct sourcing may include a competitive process, for example obtaining quotes. For covered procurements, direct sourcing is permitted only under certain conditions.

Consultancy services are sought where:

- (a) skills are not available in the agency
- (b) specialised or professional skills are needed
- (c) independent research or assessment is needed.

# MANAGEMENT OF THE COURT

## Advertising and marketing services

A total of \$37 837 was paid for recruitment advertising services in 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 2011–12.

## Human resources

During the reporting year, the Court's Human Resources Section continued to provide strategic, policy and operational support to the 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 workplace health and safety. Among other initiatives, the Court implemented a new performance management system, based on a capability framework that was developed in close consultation with District Registries.

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 Work 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.

The year also saw the bedding-down of the Court's 2011–14 Enterprise Agreement, which commenced early in July 2011.

Staff in the Court's Human Resources section were closely involved in the management and implementation of Machinery of Government (MOG) changes announced in the 2012 federal budget. These involved the transfer of twenty-four staff involved in either Corporate Services or mediation functions from the National Native Title Tribunal (NNTT) to the Court, under the MOG provisions of the *Public Service Act 1999*. Other NNTT staff were also transferred to the Court's payroll system.

## Staffing Profile

At 30 June 2012, the Court employed 359 employees under the Public Service Act, comprising 209 ongoing full time employees, 19 ongoing part-time employees and 131 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 305.11 during the reporting period.

Table 4.3 provides an overview of the Court's staffing by location at 30 June 2012. More detailed staffing statistics can be found in Appendix 10 on page 179.

**Table 4.3 – Staffing overview by location**  
(actual occupancy at 30 June 2012 – 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	1	1	1	1	1	1				1	7
FCL2	3	7	5	3	1	3	0	0	0	3	25
FCL1							1				1
FCM2	8	1	2	1	1	1	0	0	0	1	15
FCM1	12	1	3	1	1	1	0	0	0	1	20
FCS6	14	22	14	8	5	6	0	1	1	4	75
FCS5	7	28	19	7	6	8	0	0	0	4	79
FCS4	2	7	13	10	7	4	3	1	3	0	50
FCS3	2	12	2	2	1	3	1	0	1	0	24
FCS2			1	1	0						2
FCS2		27	11	5	6	6	0	2	0	0	57
CCO											
FCS1			1								1
<b>Total</b>	<b>50</b>	<b>107</b>	<b>73</b>	<b>39</b>	<b>29</b>	<b>33</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>14</b>	<b>359</b>

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
- FCM Federal Court Manager
- FCL Federal Court Legal
- NAT National

Includes the following staff:

- National Native Title
- Chambers of Chief Justice
- Appeals

# MANAGEMENT OF THE COURT

**Table 4.4 – Salary ranges by classification level under Enterprise Agreement, AWA or Determination (as at 30 June 2012)**

COURT DESIGNATION	AUSTRALIAN PUBLIC SERVICE (APS) CLASSIFICATION	SALARY
<b>CLERICAL ADMINISTRATIVE POSITIONS</b>		
Federal Court Staff Level 1	APS Level 1	\$40 633
		\$44 906
Federal Court Staff Level 2	APS Level 2	\$45 985
		\$50 994
Federal Court Staff Level 3	APS Level 3	\$52 379
		\$56 532
Federal Court Staff Level 4	APS Level 4	\$58 381
		\$63 386
Federal Court Staff Level 5	APS Level 5	\$65 115
		\$69 044
Federal Court Staff Level 6	APS Level 6	\$70 327
		\$80 785
Federal Court Manager Level 1	Executive Level 1	\$90 012
		\$97 211
Federal Court Manager Level 2	Executive Level 2	\$103 768
		\$117 672
		\$121 612
<b>LEGAL POSITIONS</b>		
Federal Court Legal 1	From APS Level 3	\$58 808
	To Executive Level 1	\$114 322
Federal Court Legal 2	Executive Level 2	\$132 438
		\$137 629
<b>SENIOR EXECUTIVE POSITIONS</b>		
Senior Executive Service Band 1	SES Band 1	\$171 966
Senior Executive Service Band 2	SES Band 2	\$244 903

Note: The above salary rates will increase by three per cent from 1 July 2012.

**Table 4.5 – Senior Executive Service (SES) as at 30 June 2012**

PRINCIPAL REGISTRY		SES LEVEL
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**

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

The Court has thirteen employees who remain on AWAs (nine SES and four non-SES) and four employees on individual s 24 determinations (one SES and three non-SES).

The Court is aiming to move the above non-SES staff to flexibility agreements under the Enterprise Agreement in 2012–13. Similarly, given existing SES AWAs expired on 30 June 2012, the Court will be looking to move SES staff on AWAs to common law contracts and s 24 determinations in the coming year.

**Performance Pay**

There were no performance pay arrangements in 2011–12.

# MANAGEMENT OF THE COURT

## **Work 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 2011–12 was 5.76, compared with 7.41 in 2010–11. There were three claims for workers compensation in 2011–12 compared with four in 2010–11.

More generally, Court management actively worked with the Court's Work Health and Safety (WHS) Committee to maintain and where possible improve health and safety in the workplace. A particular area of focus continues to be ensuring that the Court complies with its responsibilities under the *Work Health and Safety Act 2011* (WHS Act). Other specific measures included:

- arranging regular meetings of the National WHS Committee and other consultative forums such as the National Consultative Committee and Regional Consultative Committees, all of which have a significant WHS focus
- continuing to conduct regular workplace inspections during 2011–12 in accordance with a check-list developed in consultation with the WHS Committee
- making available annual health checks and flu shots for all staff, provided for in the Enterprise Agreement (currently used by forty per cent of 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 90 of the WHS Act nor were any enforcement notices issued under Part 10. There were no incidents under ss 83–86 of the WHS Act whereby any employee ceased to work due to a reasonable concern that to carry out the work would expose the employee to serious risk. There were no notifiable incidents that required the giving of a notice under s 38 of the WHS 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. Training sessions on workplace harassment and bullying were conducted in all Court Registries during 2011–12.

The Court continued to build upon strategies in its Workplace Diversity plan. This included developing and finalising an Indigenous Employment Strategy, with the aim of increasing the number of Indigenous employees in the Court.

The Court also continued to actively participate in the Employers Disability Network's 'Stepping Into Law' program via the engagement of legal interns who have a disability. 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 is hoping to continue with the program in 2012–13, subject to funding constraints.



### **Workforce planning**

During 2011–12, 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 a capability framework, based on five core capability streams. These capability streams now underpin the Court's learning and development activities and were the focus of new performance management and recruitment and selection policies, and processes, which were 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 2011–12 and modify them as required to meet specific issues and cases. Some issues addressed included the attraction and retention of legal staff and measures to meet the needs of skilled staff approaching retirement.

### **Work life balance**

As noted already, the Court's Enterprise Agreement 2011–14, 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. The award is used to recognise the work of both individual staff and teams and is presented by the Chief Justice each February around the anniversary of the Court's Foundation Day of 7 February 1977. This year's award ceremony took place in the Victorian Registry on 16 February 2012.

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 2011–12 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.

A national training program for all client service staff titled 'Managing Difficult Interactions with Self Represented Litigants' was one of the significant training programs rolled out to all registries from late 2011 finishing in June 2012. The presenter was Dr Rosemary Purcell, a Consultant Forensic Psychologist who has also implemented similar training in a number of other jurisdictions (Supreme, District, Family and Magistrates Courts, and various State Tribunals).

# MANAGEMENT OF THE COURT

The Court also facilitated a number of professional development activities for registrars from March to June this year and these will continue into the future. The activities were primarily information sessions aimed at maintaining the mediation accreditation of the Court's Deputy District Registrars. The sessions were presented by subject matter experts and linked nationally via video conference. Registrars from the Administrative Appeals Tribunal and the Western Australian Supreme Court also attended some of these sessions. Topics included 'The Role of the Barrister in Mediation', 'Mediating in a Regulatory Environment' and 'What Makes a Good Negotiator?'

More generally, training was carefully targeted towards the development of essential core capabilities, as identified in the Court's capability framework. The Court spent \$59 336 on external training during the reporting period. Other internal presentations included sessions covering the Work Health and Safety Act and related issues such as workplace bullying and harassment.

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 \$45 964 was reimbursed to staff undertaking studies under the policy.

## **Disability Reporting Mechanisms**

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at [www.apsc.gov.au](http://www.apsc.gov.au). From 2010–11, departments and agencies are no longer required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a ten year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with disability at a national level will be produced by the Standing Council on Community, Housing and Disability Services to the Council of Australian Governments and will be available at [www.fahcsia.gov.au](http://www.fahcsia.gov.au). The Social Inclusion Measurement and Reporting Strategy agreed by the Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency Annual Reports. More detail on social inclusion matters can be found at [www.socialinclusion.gov.au](http://www.socialinclusion.gov.au).

## **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.

### **Law Court Building Reviews**

The Court, in collaboration with the Family Court and the Federal Magistrates Court, has decided to conduct a review of each Commonwealth Law Court (CLC) building. The purpose is to analyse utilisation of building facilities; identify opportunities for improvement/rationalisation and identify opportunities for increased sharing of spaces and or development of flexible spaces. To date reviews have been completed in Brisbane and Melbourne.

### **Darwin Accommodation**

Negotiations were completed for a new Memorandum of Understanding with the Northern Territory Supreme Court. The new MOU will extend the Court's occupancy of space within the NTSC building in Darwin.

### **National Native Title Tribunal Integration**

During the year the Government decided that the financial administration of the National Native Title Tribunal (NNTT) would be undertaken by the Court. This included administration of the NNTT's property and leases. Savings have been achieved by accommodating the NNTT's Sydney staff within the Law Courts Building in Queens Square and by allowing a lease to lapse in Adelaide.

### **New arrangements for CLCs**

The Court has been negotiating with the Department of Finance and Deregulation regarding new arrangements for managing Commonwealth Law Court buildings. The buildings are to be divided into two areas – 'Non-Office Areas' – courts, chambers, public areas etc and 'Usable Office Areas', mainly registry and other office space. Heads of Agreement were signed by the Court and other jurisdictions in January 2012; and agreement was reached to transfer funding from the Court to Department of Finance and Deregulation from 1 July 2012.

The 'Non-Office Areas' are to be managed directly by the Department of Finance and Deregulation, while each jurisdiction will be responsible for its 'Usable Office Areas'. Separate Memorandums of Understanding are to be negotiated with each jurisdiction to cover 'Usable Office Areas' and licences will be issued to allow access to 'Non-Office Areas'. At the time of writing negotiations were progressing.

### **Security**

In the course of the year the Court participated in a security risk assessment of the Commonwealth Law Court buildings. The Court is a currently a tenant in six of those buildings.

The risk assessment has been completed and recommendations made by the assessment form the basis for ongoing work by the National Law Courts Buildings Management Committee.

The Court has also completed an internal audit of security arrangements. The major recommendation was that the Court develop a consolidated security plan. The Court is considering all recommendations.

These projects form part of the ongoing work by the Court to develop security policies and other documents that comply with its obligations under the Government's Protective Security Policy Framework.

# MANAGEMENT OF THE COURT

## **Environmental management**

The Court provides the following information as required under s 516A of the *Environmental Protection 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.
- During the year audio visual systems were reviewed particularly those with separate airconditioning. Where possible these systems were reprogrammed so they turned off automatically when not in use and this enabled the air conditioning to be also shut down when not required.

## **Technology services**

The judges' Information Technology (IT) Committee oversees the Court's technology services. During 2011–12 the key projects in this area included the following.

### **Migration of WAN services to AAPT (under Whole of Government arrangements)**

Following a tender evaluation run under the auspices of the Department of Finance and Deregulation the Court selected AAPT to supply WAN services across Australia. This new service will provide substantially larger bandwidth for approximately the same cost as the existing service and is expected to be completed in early August 2012.

### **IT Security**

Following the appointment of a new IT Security Manager the Court has implemented an IT Security Awareness Program for all staff and is addressing the Defence Signals Directorate's top four Mitigation Strategies. In addition encryption is being piloted on the Court's laptop computers and mobile device management and secure containers are being implemented on the Court's tablet devices.

### **Replacement of Private Automatic Branch Exchanges (PABXs)**

Under a joint contract with the Family Court of Australia and VOIP Pty Ltd the Court has continued to replace ageing PABXs in each capital city with only Sydney and Darwin yet to be migrated across to the new Alcatel hardware.

### **Implementation of Citrix**

The Court has completed the pilot implementation of Citrix and is awaiting the migration to the AAPT WAN to deploy Citrix to the desktop. Once completed Citrix will also provide Secure Remote Logon via the Citrix Gateway and data encryption via Citrix is being considered to meet new government security standards.

### **Server virtualisation**

The Court is progressively migrating its physical servers into a virtual environment using VMware with all new servers that are required also being virtualised. Once completed this will substantially reduce leasing and software charges in addition to requiring a smaller footprint in the commercial data centre.

### **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.

#### **National Native Title Tribunal Library**

Planning commenced on the transfer of library services from the NNTT to the Federal Court to commence from 1 July 2012.

#### **Library Databases**

The integrated library management system, including the catalogue, was upgraded and migrated to an external hosting environment.



## PART 5

# Appendices

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# INDEPENDENT AUDITOR'S REPORT



## INDEPENDENT AUDITOR'S REPORT

### To the Attorney-General

I have audited the accompanying financial statements of the Federal Court of Australia for the year ended 30 June 2012, 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 Contingencies; Administered Schedule of Comprehensive Income; Administered Schedule of Assets and Liabilities; Administered Reconciliation Schedule; Administered Cash Flow Statement; Schedule of Administered Commitments; Schedule of Administered Contingencies 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 Registrar of the Federal Court of Australia is responsible for the preparation of the 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 is necessary to enable the preparation of the financial statements that give a true and fair view and 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 have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance 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 Federal Court of Australia'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 Federal Court of Australia'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 of the Federal Court of Australia, 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 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 2012 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



Kristian Gage  
Audit Principal

Delegate of the Auditor-General

Canberra  
4 September 2012

# STATEMENT BY THE REGISTRAR AND CHIEF FINANCIAL OFFICER

FEDERAL COURT OF AUSTRALIA

STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2012 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

3 September 2012



Signed .....

Peter Bowen  
Chief Finance Officer

3 September 2012

# STATEMENT OF COMPREHENSIVE INCOME

FOR THE PERIOD ENDED 30 JUNE 2012

	NOTES	2012 \$'000	2011 \$'000
<b>EXPENSES</b>			
Judge benefits	2A	<b>30,126</b>	27,420
Employee benefits	2A	<b>32,100</b>	31,410
Suppliers	2B	<b>49,892</b>	45,221
Depreciation and amortisation	2C	<b>3,148</b>	2,845
Finance costs	2D	<b>85</b>	18
Write-down and impairment of assets	2E	<b>11</b>	5,113
Loss on sale of assets	2F	–	3
Other payments to FMC	2G	–	387
Contribution to FMC	2H	–	2,561
<b>Total Expenses</b>		<b>115,362</b>	114,978
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	3A	<b>4,566</b>	2,532
<b>Total own-source revenue</b>		<b>4,566</b>	2,532
<b>Gains</b>			
Sale of assets	2F	–	–
Other gains	3B	<b>20,420</b>	15,754
<b>Total gains</b>		<b>20,420</b>	15,754
<b>Total own-source income</b>		<b>24,986</b>	18,286
<b>Net cost of services</b>		<b>90,376</b>	96,692
Revenue from Government	3C	<b>86,116</b>	88,325
<b>(Deficit) attributable to the Australian Government</b>		<b>(4,260)</b>	(8,367)
<b>OTHER COMPREHENSIVE INCOME</b>			
Changes in asset revaluation surplus		–	295
<b>Total comprehensive income</b>		–	295
<b>Total comprehensive income (Loss) attributable to the Australian Government</b>		<b>(4,260)</b>	(8,072)

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

# BALANCE SHEET

AS AT 30 JUNE 2012

	NOTES	2012 \$'000	2011 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash and cash equivalents	4A	<b>1,353</b>	810
Trade and other receivables	4B	<b>30,846</b>	29,591
<b>Total financial assets</b>		<b>32,199</b>	30,401
<b>NON-FINANCIAL ASSETS</b>			
Land and buildings	5A	<b>11,590</b>	12,273
Infrastructure, plant and equipment	5B	<b>6,530</b>	5,845
Intangibles	5C	<b>2,611</b>	1,596
Other non-financial assets	5E	<b>543</b>	1,825
<b>Total non-financial assets</b>		<b>21,274</b>	21,539
<b>Total Assets</b>		<b>53,473</b>	51,940
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	6A	<b>(1,185)</b>	(940)
Other Payables	6B	<b>(1,349)</b>	(915)
<b>Total payables</b>		<b>(2,534)</b>	(1,855)
<b>INTEREST BEARING LIABILITIES</b>			
Leases	7	<b>(1,183)</b>	(735)
<b>Total interest bearing liabilities</b>		<b>(1,183)</b>	(735)
<b>Provisions</b>			
Judge and employee provisions	8	<b>(17,069)</b>	(15,805)
<b>Total provisions</b>		<b>(17,069)</b>	(15,805)
<b>Total Liabilities</b>		<b>(20,786)</b>	(18,395)
<b>Net Assets</b>		<b>32,687</b>	33,545
<b>EQUITY</b>			
Contributed equity		<b>19,727</b>	16,325
Reserves		<b>1,584</b>	1,584
Retained surplus		<b>11,376</b>	15,636
<b>Total Equity</b>		<b>32,687</b>	33,545

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

# STATEMENT OF CHANGES IN EQUITY

FOR THE PERIOD ENDED 30 JUNE 2012

	RETAINED EARNINGS		ASSET REVALUATION SURPLUS		CONTRIBUTED EQUITY/CAPITAL		TOTAL EQUITY	
	2012 \$'000	2011 \$'000	2012 \$'000	2011 \$'000	2012 \$'000	2011 \$'000	2012 \$'000	2011 \$'000
<b>Opening balance</b>	<b>15,636</b>	24,003	<b>1,584</b>	1,289	<b>16,325</b>	9,719	<b>33,545</b>	35,011
<b>Comprehensive Income</b>								
Other Comprehensive Income	-	-	-	295	-	-	-	295
(Deficit) for period	<b>(4,260)</b>	(8,367)	-	-	-	-	<b>(4,260)</b>	(8,367)
<b>Total comprehensive income</b>	<b>(4,260)</b>	(8,367)	-	295	-	-	<b>(4,260)</b>	(8,072)
<b>Transactions with owners</b>								
<b>Contributions by owners</b>								
Equity Injection – Appropriations	-	-	-	-	-	360	-	360
Departmental Capital Budget	-	-	-	-	<b>3,402</b>	6,246	<b>3,402</b>	6,246
<b>Sub-total transactions with owners</b>	-	-	-	-	<b>3,402</b>	6,606	<b>3,402</b>	6,606
<b>Closing balance as at 30 June</b>	<b>11,376</b>	15,636	<b>1,584</b>	1,584	<b>19,727</b>	16,325	<b>32,687</b>	33,545
<b>Closing balance attributable to the Australian Government</b>	<b>11,376</b>	15,636	<b>1,584</b>	1,584	<b>19,727</b>	16,325	<b>32,687</b>	33,545

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

# CASH FLOW STATEMENT

FOR THE PERIOD ENDED 30 JUNE 2012

	NOTES	2012 \$'000	2011 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Goods and services		4,344	1,812
Appropriations		89,160	96,035
Refunds credited		43	26
Net GST received		189	190
<b>Total cash received</b>		<b>93,736</b>	98,063
<b>Cash used</b>			
Judges and employees		(49,796)	(49,556)
Suppliers		(39,021)	(46,577)
Borrowing costs		(85)	(18)
Section 31 receipts transferred to OPA		(4,170)	(1,613)
<b>Total cash used</b>		<b>(93,072)</b>	(97,764)
<b>Net cash from operating activities</b>	9	<b>664</b>	299
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		2	19
<b>Total cash received</b>		<b>2</b>	19
<b>Cash used</b>			
Purchase of property, plant and equipment		(2,047)	(3,854)
Purchase of intangibles		(1,354)	(313)
<b>Total cash used</b>		<b>(3,401)</b>	(4,167)
<b>Net cash (used by) investing activities</b>		<b>(3,399)</b>	(4,148)
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations – contributed equity		3,602	4,195
<b>Total cash received</b>		<b>3,602</b>	4,195
<b>Cash used</b>			
Payment of finance lease liabilities		(324)	(123)
<b>Total cash used</b>		<b>(324)</b>	(123)
<b>Net cash from financing activities</b>		<b>3,278</b>	4,072
<b>Net increase in cash held</b>		<b>543</b>	223
Cash at the beginning of the reporting period		810	587
<b>Cash at the end of the reporting period</b>	4A	<b>1,353</b>	810

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

# SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2012

	NOTES	2012 \$'000	2011 \$'000
<b>BY TYPE</b>			
<b>Commitments receivable</b>			
Net GST recoverable on commitments		2,473	17,116
<b>Total commitments receivable</b>		<b>2,473</b>	<b>17,116</b>
<b>Commitments payable</b>			
<b>Capital commitments</b>			
Property, plant and equipment <sup>1</sup>		(1,045)	(139)
<b>Total capital commitments</b>		<b>(1,045)</b>	<b>(139)</b>
<b>Other commitments</b>			
Operating leases <sup>2</sup>		(24,110)	(187,323)
Other <sup>3</sup>		(2,042)	(817)
<b>Total other commitments</b>		<b>(26,152)</b>	<b>(188,140)</b>
<b>Net commitments by type</b>		<b>(24,724)</b>	<b>(171,163)</b>
<b>BY MATURITY</b>			
<b>Commitments receivable</b>			
One year or less		567	1,686
From one to five years		1,906	6,536
Over five years		-	8,894
<b>Total commitments receivable</b>		<b>2,473</b>	<b>17,116</b>
<b>Capital commitments</b>			
One year or less		(1,045)	(139)
<b>Total capital commitments</b>		<b>(1,045)</b>	<b>(139)</b>
<b>Operating lease commitments</b>			
One year or less		(4,851)	(17,591)
From one to five years		(19,259)	(71,896)
Over five years		-	(97,836)
<b>Total operating lease commitments</b>		<b>(24,110)</b>	<b>(187,323)</b>
<b>Other commitments</b>			
One year or less		(340)	(817)
From one to five years		(1,702)	-
<b>Total other commitments</b>		<b>(2,042)</b>	<b>(817)</b>
<b>Net Commitments by Maturity</b>		<b>(24,724)</b>	<b>(171,163)</b>

# SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2012

NB: Commitments are GST inclusive where relevant.

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

## **Nature of leases/General description**

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

### **Leases for judicial and other accommodation.**

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

The arrangements for the Court's leases in the Commonwealth Law Courts building have changed from 1 July 2012. The Court will no longer be responsible for lease payments in the special purpose portion of these buildings. This portion includes courtrooms and judicial accommodation. This has led to a significant reduction in the commitment of the Court for operating lease payments.

### **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 2013. 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.

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



# SCHEDULE OF CONTINGENCIES

AS AT 30 JUNE 2012

There were no contingent losses or gains as at 30 June 2012 (2011: nil).

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

# SCHEDULE OF ADMINISTERED ITEMS

FOR THE PERIOD ENDED 30 JUNE 2012

	NOTES	2012 \$'000	2011 \$'000
<b>ADMINISTERED SCHEDULE OF COMPREHENSIVE INCOME</b>			
FOR THE PERIOD ENDED 30 JUNE 2012			
<b>EXPENSES</b>			
Fees and fines – provision for doubtful debts	13	<b>(310)</b>	(98)
<b>Total expenses administered on behalf of Government</b>		<b>(310)</b>	(98)
<b>LESS:</b>			
<b>OWN SOURCE INCOME</b>			
<b>Own-Source Revenue</b>			
<b>Non Taxation Revenue</b>			
Fees (filing and hearing fees)	14	<b>10,446</b>	10,514
Fines	14	<b>536</b>	2,032
Other revenue	14	<b>79</b>	43
<b>Total non-taxation revenue</b>		<b>11,061</b>	12,589
<b>Total own-source revenue administered on behalf of Government</b>		<b>11,061</b>	12,589
<b>Net cost of (contribution by) services</b>		<b>(10,751)</b>	(12,491)
<b>OTHER COMPREHENSIVE INCOME</b>			
<b>Total comprehensive income</b>		<b>10,751</b>	12,491

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

	NOTES	2012 \$'000	2011 \$'000
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#### ADMINISTERED SCHEDULE OF ASSETS AND LIABILITIES AS AT 30 JUNE 2012

##### ASSETS

###### Financial assets

Cash and cash equivalents	15A	30	23
Receivables	15B	539	803
<b>Total assets administered on behalf of Government</b>		<b>569</b>	<b>826</b>

##### LIABILITIES

###### Payables

Refunds of fees	16A	-	1
<b>Total payables</b>		<b>-</b>	<b>1</b>
<b>Total liabilities administered on behalf of Government</b>		<b>-</b>	<b>1</b>

<b>Net assets</b>		<b>569</b>	<b>825</b>
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#### ADMINISTERED RECONCILIATION SCHEDULE

AS AT 30 JUNE 2012

<b>Opening net administered assets</b>		<b>825</b>	409
Plus: Administered income		<b>11,061</b>	12,589
Less: Administered expenses		<b>(310)</b>	(98)
<b>Administered transfers to/from Australian Government:</b>			
Administered assets and liabilities appropriations		<b>315</b>	350
Transfers to OPA		<b>(11,322)</b>	(12,424)
<b>Closing net administered assets</b>		<b>569</b>	<b>825</b>

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

# SCHEDULE OF ADMINISTERED ITEMS

FOR THE PERIOD ENDED 30 JUNE 2012

	NOTES	2012 \$'000	2011 \$'000
<b>ADMINISTERED CASHFLOW STATEMENT FOR THE PERIOD ENDED 30 JUNE 2012</b>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fees		<b>10,694</b>	10,304
Fines		<b>536</b>	2,059
Other		<b>79</b>	44
<b>Total cash received</b>		<b>11,309</b>	12,407
<b>Cash used</b>			
Refund of court fees and fines		<b>(295)</b>	(350)
<b>Total cash used</b>		<b>(295)</b>	(350)
<b>Net cash flows from operating activities</b>		<b>11,014</b>	12,057
<b>Net Increase in cash held</b>	17	<b>11,014</b>	12,057
Cash at the beginning of the reporting period		<b>23</b>	40
Cash from Official Public Account for:			
– Appropriations		<b>315</b>	350
		<b>315</b>	350
Cash to Official Public Account		<b>(11,322)</b>	(12,424)
		<b>(11,322)</b>	(12,424)
<b>Cash at the end of the reporting period</b>	17	<b>30</b>	23

**SCHEDULE OF ADMINISTERED COMMITMENTS**

AS AT 30 JUNE 2012

There were no Administered commitments as at 30 June 2012.  
(2011: nil)

**SCHEDULE OF ADMINISTERED CONTINGENCIES**

AS AT 30 JUNE 2012

There were no Administered contingent losses or gains as at  
30 June 2012. (2011: nil)

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

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

- Note 1: Summary of Significant Accounting Policies
- Note 2: Operating Expenses
- Note 3: Income
- Note 4: Financial Assets
- Note 5: Non-Financial Assets
- Note 6: Payables
- Note 7: Interest Bearing Liabilities
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Executive Remuneration
- Note 11: Remuneration of Auditors
- Note 12: Financial Instruments
- Note 13: Income Administered on Behalf of Government
- Note 14: Expenses Administered on Behalf of Government
- Note 15: Assets Administered on Behalf of Government
- Note 16: Liabilities Administered on Behalf of Government
- Note 17: Administered Reconciliation Table
- Note 18: Administered Financial Instruments
- Note 19: Appropriations
- Note 20: Special Accounts
- Note 21: Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund
- Note 22: Compensation and Debt Relief
- Note 23: Reporting of Outcomes
- Note 24: Comprehensive Income (Loss) attributable to the Court

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## 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 Court is a not for profit 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 2011; 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 affect on the Court.

#### **Future Australian Accounting Standard requirements**

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

### 1.5 Revenue

Revenue from 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 associated with the transaction will flow 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.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## **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.

## **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 it is in the nature of a dividend.

## **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.

### **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 \$11,112,406 (2010-11: \$9,754,417). The contribution rate has been provided by the Australian Government Actuary.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## 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 carried at cost – If there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

## 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.

### 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 selling price
Leasehold improvements	Depreciated replacement cost
Plant & Equipment	Market selling price

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.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## 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:

	2012	2011
Leasehold improvements	10 years or Lease term	10 years or Lease term
Plant and equipment – excluding library materials	3 to 250 years	3 to 250 years
Plant and equipment – library materials	5 to 10 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 (2010-11: 5 years).

All software assets were assessed for indications of impairment at 30 June 2012.

### 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.

### 1.18 Resources Provided Free of Charge

For the period 1 July 2011 to 30 June 2012, the Court provided \$8.855m worth of resources free of charge to the Federal Magistrates Court. (2011: \$8.760m).

### 1.19 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules 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 such in the schedule of administered cash flows and in the administered reconciliation schedule.

#### 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. Collectability of debts is reviewed at the end of the reporting period. Impairment allowances are made when collectability 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.

### 1.20 Events After the Reporting Period

The Court has assumed responsibility for administering the National Native Title Tribunal from 1 July 2012. The Court has transferred in assets and liabilities of the NNTT to its balance sheet as at that date.

The event occurred after the end of the reporting period and has no effect on the financial statements for the year ended 30 June 2012.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

**Note 2: Expenses**

	2012 \$'000	2011 \$'000
<b>NOTE 2A: JUDGE AND EMPLOYEE BENEFITS</b>		
Judge remuneration	<b>19,014</b>	<b>17,665</b>
Judge notional superannuation	<b>11,112</b>	9,755
	<b>30,126</b>	27,420
Employee wage & salaries	<b>27,704</b>	27,256
Employee superannuation	<b>4,146</b>	3,721
Employee separation and redundancies	<b>250</b>	433
	<b>32,100</b>	<b>31,410</b>
<b>Total judge and employee benefits</b>	<b>62,226</b>	58,830
<b>NOTE 2B: SUPPLIERS</b>		
Goods and Services		
Property operating costs	<b>7,219</b>	7,050
Library purchases	<b>2,898</b>	2,729
Information technology expenditure	<b>3,502</b>	2,951
Travel expenditure	<b>3,768</b>	3,076
Contractors and consultants	<b>1,777</b>	1,554
Other goods and services	<b>3,073</b>	3,003
<b>Total goods and services</b>	<b>22,237</b>	20,363
<b>Goods and services are made up of:</b>		
Provision of goods – external parties	<b>2,001</b>	1,965
Rendering of services – related entities	<b>1,130</b>	1,374
Rendering of services – external parties	<b>19,106</b>	17,024
<b>Total goods and services</b>	<b>22,237</b>	20,363
<b>Other supplier expenses</b>		
Operating lease rentals:		
Minimum Lease Payments	<b>27,460</b>	24,646
Workers compensation premiums	<b>195</b>	212
<b>Total other supplier expenses</b>	<b>27,655</b>	24,858
<b>Total supplier expenses</b>	<b>49,892</b>	45,221

	2012 \$'000	2011 \$'000
<b>NOTE 2C: DEPRECIATION AND AMORTISATION</b>		
Depreciation:		
Buildings	<b>1,641</b>	1,497
Property, plant and equipment <sup>1</sup>	<b>804</b>	900
<b>Total depreciation</b>	<b>2,445</b>	2,397
Amortisation:		
Intangibles:		
Computer Software	<b>340</b>	321
Leased plant and equipment	<b>363</b>	127
<b>Total amortisation</b>	<b>703</b>	448
<b>Total depreciation and amortisation</b>	<b>3,148</b>	2,845
1. Depreciation expenses for finance leases were included in the line 'Leased plant and equipment' above.		
<b>NOTE 2D: FINANCE COSTS</b>		
Finance leases	<b>85</b>	18
<b>Total finance costs</b>	<b>85</b>	18
<b>NOTE 2E WRITE-DOWN AND IMPAIRMENT OF ASSETS</b>		
Financial assets		
Doubtful Debts Expense	<b>5</b>	-
Non-financial assets		
Impairment of plant & equipment	<b>6</b>	5,113
<b>Total write-down and impairment of assets</b>	<b>11</b>	5,113
<b>NOTE 2F: SALE OF ASSETS</b>		
Infrastructure, plant and equipment:		
Proceeds from sale	<b>2</b>	18
Carrying value of assets sold	<b>2</b>	21
<b>Net gain(loss) from sale of assets</b>	<b>-</b>	(3)
<b>NOTE 2G OTHER PAYMENTS TO FMC</b>		
Other	<b>-</b>	387
<b>Total other payments to FMC</b>	<b>-</b>	387
<b>NOTE 2H CONTRIBUTION TO FMC</b>		
Contribution to FMC	<b>-</b>	2,561
<b>Total contribution to FMC</b>	<b>-</b>	2,561

This contribution relates to appropriations that were 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.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

**Note 3: Income****Own-Source Revenue**

	2012 \$'000	2011 \$'000
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**NOTE 3A: SALE OF GOODS AND RENDERING OF SERVICES**

Rendering of services – related entities	<b>1,250</b>	1,216
Rendering of services – external entities	<b>3,316</b>	1,316
<b>Total sale of goods and rendering of services</b>	<b>4,566</b>	2,532

**Gains**

	2012 \$'000	2011 \$'000
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**NOTE 3B: OTHER GAINS**

Liabilities assumed by other agencies	<b>11,112</b>	9,755
Resources received free of charge	<b>9,308</b>	5,999
	<b>20,420</b>	15,754

Resources received free of charge includes an amount of \$9,197,990 (2010-11: \$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.

**Revenue From Government**

	2012 \$'000	2011 \$'000
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**NOTE 3C: REVENUE FROM GOVERNMENT**

Appropriations:

Departmental appropriations	<b>86,116</b>	88,325
<b>Total revenue from Government</b>	<b>86,116</b>	88,325



**Note 4: Financial Assets**

	2012 \$'000	2011 \$'000
<b>NOTE 4A: CASH AND CASH EQUIVALENTS</b>		
Cash on hand or on deposit	<b>1,353</b>	810
<b>Total cash and cash equivalents</b>	<b>1,353</b>	810
<b>NOTE 4B: TRADE AND OTHER RECEIVABLES</b>		
Goods and services – external parties	<b>913</b>	385
Appropriations receivable:		
for existing programs – operating	<b>27,507</b>	26,160
for existing programs – capital	<b>2,211</b>	2,411
accrued appropriations	–	221
GST receivable from the Australian Taxation Office	<b>220</b>	414
<b>Total trade and other receivables (gross)</b>	<b>30,851</b>	29,591
Less impairment allowance account		
Goods and Services	<b>5</b>	–
<b>Total trade and other receivables (net)</b>	<b>30,846</b>	29,591
Receivables are aged as follows:		
Not overdue	<b>30,647</b>	29,463
Overdue by:		
Less than 30 days	<b>190</b>	73
30 to 60 days	<b>2</b>	39
61 to 90 days	<b>1</b>	4
More than 90 days	<b>11</b>	12
	<b>204</b>	128
<b>Total receivables (gross)</b>	<b>30,851</b>	29,591
All receivables are current. Credit terms are net 30 days (2011: 30 days).		
Reconciliation of the impairment allowance account:		
Opening balance	–	–
Amounts written off	–	–
Increase recognised in net surplus	<b>5</b>	–
<b>Closing balance</b>	<b>5</b>	–

The impairment allowance is all aged over 90 days.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

**Note 5: Non-Financial Assets**

	2012 \$'000	2011 \$'000
<b>NOTE 5A: LAND AND BUILDINGS</b>		
Leasehold improvements		
Fair value	<b>13,552</b>	12,594
Accumulated depreciation	<b>(1,962)</b>	(321)
<b>Total leasehold improvements</b>	<b>11,590</b>	12,273
<b>Total land and buildings</b>	<b>11,590</b>	12,273

No indications of impairment were found for land and buildings

**NOTE 5B: PROPERTY, PLANT AND EQUIPMENT**

Property, plant and equipment		
Fair value	<b>8,290</b>	6,801
Accumulated depreciation	<b>(1,760)</b>	(956)
<b>Total property, plant and equipment</b>	<b>6,530</b>	5,845

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	<b>866</b>	442
Internally developed – in use	<b>2,026</b>	1,301
Purchased – in use	<b>1,013</b>	2,085
<b>Total Computer Software</b>	<b>3,905</b>	3,828
Accumulated amortisation	<b>(1,294)</b>	(2,232)
<b>Total Intangibles (non-current)</b>	<b>2,611</b>	1,596

No indication of impairment was found for intangibles.

## NOTE 5D: ANALYSIS OF INFRASTRUCTURE, PROPERTY, PLANT, AND EQUIPMENT

TABLE A – Reconciliation of the opening and closing balances of property, plant, and equipment (2011-12)

ITEM	LEASEHOLD, IMPROVEMENT – TOTAL LAND AND BUILDINGS \$'000	PROPERTY, PLANT AND EQUIPMENT \$'000	COMPUTER SOFTWARE – INTANGIBLES \$'000	TOTAL \$'000
<b>AS AT 1 JULY 2011</b>				
Gross book value	12,594	6,801	3,828	23,223
Accumulated depreciation/amortisation	(321)	(956)	(2,232)	(3,509)
<b>Net book value 1 July 2011</b>	<b>12,273</b>	<b>5,845</b>	<b>1,596</b>	<b>19,714</b>
Additions:				
By purchase	958	1,088	1,355	3,401
By purchase – finance lease	–	772	–	772
Depreciation/amortisation expense	(1,641)	(1,167)	(340)	(3,148)
Disposals:				
Other disposals	–	(8)	–	(8)
<b>Net Book value 30 June 2012</b>	<b>11,590</b>	<b>6,530</b>	<b>2,611</b>	<b>20,731</b>
Net book value as of 30 June 2012 represented by:				
Gross book value	13,552	8,290	3,905	25,747
Accumulated depreciation/amortisation	(1,962)	(1,760)	(1,294)	(5,016)
	<b>11,590</b>	<b>6,530</b>	<b>2,611</b>	<b>20,731</b>

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
<b>AS AT 1 JULY 2010</b>				
Gross book value	14,937	13,956	3,582	32,475
Accumulated depreciation/amortisation	(3,427)	(4,630)	(1,961)	(10,018)
<b>Net book value 1 July 2010</b>	<b>11,510</b>	<b>9,326</b>	<b>1,621</b>	<b>22,457</b>
Additions:				
By purchase	3,135	719	313	4,167
By purchase – finance lease	–	775	–	775
Revaluations and impairment recognised in other comprehensive income	312	(17)	–	295
Impairment recognised in the operating statement	–	(3,904)	–	(3,904)
Depreciation/amortisation expense	(1,497)	(1,027)	(321)	(2,845)
Disposals:				
Other disposals	(1,187)	(27)	(16)	(1,230)
<b>Net book value 30 June 2011</b>	<b>12,273</b>	<b>5,845</b>	<b>1,596</b>	<b>19,714</b>
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)
	<b>12,273</b>	<b>5,845</b>	<b>1,596</b>	<b>19,714</b>

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

	2012 \$'000	2011 \$'000
<b>NOTE 5E: OTHER NON-FINANCIAL ASSETS</b>		
Prepayments	<b>543</b>	1,825
<b>Total other non-financial assets</b>	<b>543</b>	1,825
<b>TOTAL OTHER NON-FINANCIAL ASSETS ARE EXPECTED TO BE RECOVERED IN:</b>		
No more than 12 months	<b>534</b>	1,793
<b>Total other non-financial assets</b>	<b>534</b>	1,793
More than 12 months	<b>9</b>	32
<b>Total other non-financial assets</b>	<b>9</b>	32

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

## Note 6: Payables

	2012 \$'000	2011 \$'000
<b>NOTE 6A: SUPPLIERS</b>		
Trade creditors and accruals	<b>(808)</b>	(886)
Deferred Revenue	<b>(377)</b>	(54)
<b>Total supplier payables</b>	<b>(1,185)</b>	(940)

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	<b>(724)</b>	(606)
Superannuation	<b>(625)</b>	(309)
<b>Total other payables</b>	<b>(1,349)</b>	(915)

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

## Note 7: Interest Bearing Liabilities

	2012 \$'000	2011 \$'000
<b>NOTE 7: LEASES</b>		
Finance leases	<b>(1,183)</b>	(735)
<b>Total finance leases</b>	<b>(1,183)</b>	(735)
Payable:		
Within one year:		
Minimum lease payments	<b>(447)</b>	(231)
Deduct: future finance charges	<b>72</b>	45
In one to five years:		
Minimum lease payments	<b>(871)</b>	(606)
Deduct: future finance charges	<b>63</b>	57
<b>Finance leases recognised on the balance sheet</b>	<b>(1,183)</b>	(735)

Finance leases are for certain major IT equipment assets and some office equipment. The leases are non-cancellable and for fixed terms averaging four years, with a maximum of five years. The interest rate implicit in the leases averaged 4.39% (2011: 5.14%). 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

	2012 \$'000	2011 \$'000
<b>NOTE 8A: JUDGE &amp; EMPLOYEE PROVISIONS</b>		
Long Leave (Judges)	<b>(9,764)</b>	(9,425)
Leave	<b>(7,305)</b>	(6,380)
<b>Total judge and employee provisions</b>	<b>(17,069)</b>	(15,805)
Employee provisions are expected to be settled in:		
No more than 12 months	<b>(3,531)</b>	(4,055)
More than 12 months	<b>(13,538)</b>	(11,750)
<b>Total judge and employee provisions</b>	<b>(17,069)</b>	(15,805)

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## Note 9: Cash flow reconciliation

RECONCILIATION OF CASH AND CASH EQUIVALENTS AS PER BALANCE SHEET TO CASH FLOW STATEMENT	2012 \$'000	2011 \$'000
<b>REPORT CASH AND CASH EQUIVALENTS AS PER:</b>		
Cash Flow Statement	<b>1,353</b>	810
Balance Sheet	<b>1,353</b>	810
Difference	-	-
<b>RECONCILIATION OF NET COST OF SERVICES TO NET CASH FROM OPERATING ACTIVITIES:</b>		
Net cost of services	<b>(90,376)</b>	(96,692)
Add revenue from Government	<b>86,116</b>	88,325
<b>ADJUSTMENTS FOR NON-CASH ITEMS</b>		
Depreciation/amortisation	<b>3,148</b>	2,845
Net write down of non-financial assets	<b>6</b>	5,113
(Gain)/Loss on disposal of assets	-	3
<b>CHANGES IN ASSETS/LIABILITIES</b>		
(Increase)/decrease in net operating receivables	<b>(1,455)</b>	6,511
(Increase)/decrease in prepayments	<b>1,282</b>	(146)
Increase/(decrease) in suppliers payables	<b>245</b>	(5,054)
Increase/(decrease) in judge and employee provisions	<b>1,264</b>	(491)
Increase/(decrease) in other liabilities	<b>434</b>	(115)
<b>Net cash from/(used by) operating activities</b>	<b>664</b>	299

## Note 10: Senior Executive Remuneration

### NOTE 10A: SENIOR EXECUTIVE REMUNERATION EXPENSE FOR THE REPORTING PERIOD

	2012 \$'000	2011 \$'000
<b>SHORT TERM EMPLOYEE BENEFITS:</b>		
Salary (including annual leave taken)	<b>2,501,796</b>	2,408,600
Annual Leave accrued	<b>181,019</b>	174,061
Motor Vehicle and other allowances	<b>110,283</b>	104,702
<b>Total Short-term employee benefits</b>	<b>2,793,098</b>	2,687,363
<b>POST-EMPLOYMENT BENEFITS:</b>		
Superannuation	<b>334,842</b>	318,259
<b>Total Post-employment benefits</b>	<b>334,842</b>	318,259
<b>OTHER LONG TERM BENEFITS</b>		
Long service leave	<b>58,248</b>	56,010
<b>Total other long term benefits</b>	<b>58,248</b>	56,010
<b>Total employment benefits</b>	<b>3,186,188</b>	3,061,632

Note 10A excludes acting arrangements and part-year service where total remuneration expensed for a senior executive was less than \$150,000.

**Note 10B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives During the Reporting Period**

	2012						2011					
	NO. OF SENIOR EXECUTIVES	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$		NO. OF SENIOR EXECUTIVES	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$	
Total remuneration (including part-time arrangements):						Total remuneration (including part-time arrangements):						
\$210,000 to \$239,999	3	197,940	25,726	-	223,666	\$210,000 to \$239,999	4	198,280	26,726	-	225,006	
\$240,000 to \$269,999	2	220,902	29,094	-	249,996	\$240,000 to \$269,999	3	228,814	30,630	-	259,444	
\$270,000 to \$299,999	5	248,448	32,385	-	280,833	\$270,000 to \$299,999	3	239,305	31,863	-	271,168	
\$360,000 to \$389,999	1	274,883	37,555	59,334	371,772	\$330,000 to \$359,999	1	274,430	31,293	41,395	347,118	
<b>Total</b>	<b>11</b>					<b>Total</b>	<b>11</b>					

**Notes:**

- This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.
- 'Reportable salary' includes the following:
  - gross payments; and
  - reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits)
- The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any sacrificed amounts, as per the individuals' payslips.
- 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
- No bonuses were paid to senior executives of the Court in 2011-12 or 2010-11.
- Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

### Note 10c Other Highly paid Staff

	2011											
2012	AVERAGE ANNUAL REPORTABLE REMUNERATION	NO.OF STAFF	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$	AVERAGE ANNUAL REPORTABLE REMUNERATION	NO.OF STAFF	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$
	Total remuneration (including part-time arrangements):						Total remuneration (including part-time arrangements):					
	\$150,000 to \$179,999	20	139,664	21,651	10,309	171,624	\$150,000 to \$189,999	20	132,003	19,682	520	152,205
	\$180,000 to \$209,999	1	158,295	21,717	-	180,012						
	<b>Total</b>	<b>21</b>						<b>20</b>				

#### Notes:

- This table reports staff:
  - who were employed by the Court during the reporting period;
  - whose reportable remuneration was \$150,000 or more for the financial period; and
  - were not required to be disclosed in Tables A or B
 Each row is an averaged figure based on headcount for individuals in the band.
- 'Reportable salary' includes the following:
  - gross payments; and
  - reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits)
- The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any sacrificed amounts, as per the individuals' payslips.
- 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
- No bonuses were paid to these staff members of the Court in 2011-12 or 2010-11.
- Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.



**Note 11: Remuneration of Auditors**

	2012 \$'000	2011 \$'000
<b>FINANCIAL STATEMENT AUDIT SERVICES ARE PROVIDED FREE OF CHARGE TO THE COURT BY THE AUSTRALIAN NATIONAL AUDIT OFFICE (ANAO).</b>		
The fair value of the services provided was:	<b>104,000</b>	108,000

**Note 12: Financial Instruments**

	2012 \$'000	2011 \$'000
<b>NOTE 12A CATEGORIES OF FINANCIAL INSTRUMENTS</b>		
<b>Loans and receivables</b>		
Loans and receivables		
Cash on hand or on deposit	1,353	810
Trade receivables	913	385
<b>Carrying amount of financial assets</b>	<b>2,266</b>	<b>1,195</b>
<b>Financial Liabilities</b>		
At amortised cost:		
Finance leases	(1,183)	(735)
Trade creditors	(1,185)	(940)
<b>Carrying amount of financial liabilities</b>	<b>(2,368)</b>	<b>(1,675)</b>

**NOTE 12B FAIR VALUE OF FINANCIAL INSTRUMENTS**

	CARRYING AMOUNT 2012 \$'000	FAIR VALUE 2012 \$'000	CARRYING AMOUNT 2011 \$'000	FAIR VALUE 2011 \$'000
<b>FINANCIAL LIABILITIES</b>				
<b>Other Liabilities</b>				
Finance leases	<b>(1,183)</b>	<b>(1,183)</b>	(735)	(735)
<b>Total</b>	<b>(1,183)</b>	<b>(1,183)</b>	(735)	(735)

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 4.39% at the reporting date. (2011 5.14%)

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

**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 (2012: \$913,000 and 2011: \$385,000). The Court has assessed the risk of default on payment and has allocated \$5,000 in 2012 (2011: nil) to an impairment allowance 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 2012 \$'000	NOT PAST DUE NOR IMPAIRED 2011 \$'000	PAST DUE OR IMPAIRED 2012 \$'000	PAST DUE OR IMPAIRED 2011 \$'000
<b>LOANS AND RECEIVABLES</b>				
Cash	1,353	810	–	–
Trade receivables	709	257	204	128
<b>Total</b>	<b>2,062</b>	<b>1,067</b>	<b>204</b>	<b>128</b>

**Ageing of financial assets that are past due but not impaired for 2012**

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
<b>LOANS AND RECEIVABLES</b>					
Trade receivables	190	2	1	11	204
<b>Total</b>	<b>190</b>	<b>2</b>	<b>1</b>	<b>11</b>	<b>204</b>

**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
<b>LOANS AND RECEIVABLES</b>					
Trade receivables	73	39	4	12	128
<b>Total</b>	<b>73</b>	<b>39</b>	<b>4</b>	<b>12</b>	<b>128</b>

**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 as the Court is appropriated funding from the Australian Government and the Court manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Court has policies in place to ensure timely payments were made when due and has no past experience of default.

**Maturities for non-derivative financial liabilities 2012**

	WITHIN 1 YEAR 2012 \$'000	1 TO 5 YEARS 2012 \$'000	TOTAL 2012 \$'000
<b>OTHER LIABILITIES</b>			
Payables – Suppliers	1,185	–	1,185
Finance leases	375	808	1,183
<b>Total</b>	<b>1,560</b>	<b>808</b>	<b>2,368</b>

**Maturities for non-derivative financial liabilities 2011**

	WITHIN 1 YEAR 2011 \$'000	1 TO 5 YEARS 2011 \$'000	TOTAL 2011 \$'000
<b>OTHER LIABILITIES</b>			
Payables – Suppliers	940	–	940
Finance leases	186	549	735
<b>Total</b>	<b>1,126</b>	<b>549</b>	<b>1,675</b>

This note also applies to the Court's administered financial instruments and is therefore not reproduced at Note 18.

**NOTE 12E MARKET RISK**

The Court holds basic financial instruments that do not expose the Court 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.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## Note 13: Administered – Expenses

	2012 \$'000	2011 \$'000
<b>EXPENSES</b>		
Fees and fines – provision for doubtful debts	<b>310</b>	98
<b>Total expenses administered on behalf of government</b>	<b>310</b>	98

## Note 14: Administered – Income

### Non-Taxation Revenue

Fees (filing and hearing fees)	<b>10,446</b>	10,514
Fines	<b>536</b>	2,032
Other	<b>79</b>	43
<b>Total revenue administered on behalf of government</b>	<b>11,061</b>	12,589

## Note 15: Administered – Financial Assets

	2012 \$'000	2011 \$'000
<b>NOTE 15A: CASH AND CASH EQUIVALENTS</b>		
Cash on hand or on deposit	<b>30</b>	23
<b>Total cash and cash equivalents</b>	<b>30</b>	23

### NOTE 15B: RECEIVABLES

Fees (filing and hearing fees)	<b>868</b>	901
Less: Impairment allowance account	<b>(329)</b>	(98)
<b>Total receivables (net)</b>	<b>539</b>	803

All receivables are expected to be recovered within 12 months.

Receivables are aged as follows:

Not overdue	<b>183</b>	247
Overdue by:		
– Less than 30 days	<b>198</b>	211
– 30 to 60 days	<b>95</b>	88
– 60 to 90 days	<b>63</b>	38
– More than 90 days	<b>329</b>	317
<b>Total receivables (gross)</b>	<b>868</b>	901

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 (2011: 30 days).

	2012 \$'000	2011 \$'000
<b>RECONCILIATION OF THE IMPAIRMENT ALLOWANCE ACCOUNT:</b>		
Opening balance	98	22
Increase/decrease recognised in net surplus	310	98
Amounts written off	(79)	(22)
<b>Closing balance</b>	<b>329</b>	<b>98</b>

### Note 16: Administered – Payables

	2012 \$'000	2011 \$'000
<b>NOTE 16A: SUPPLIERS</b>		
Refund of fees payable	-	1
<b>Total suppliers</b>	<b>-</b>	<b>1</b>

### Note 17: Administered – Cash Flow Reconciliation

	2012 \$'000	2011 \$'000
<b>RECONCILIATION OF CASH AND CASH EQUIVALENTS AS PER ADMINISTERED SCHEDULE OF ASSETS AND LIABILITIES TO ADMINISTERED CASH FLOW STATEMENT</b>		
<b>Cash and cash equivalents as per:</b>		
Schedule of administered cash flows	30	23
Schedule of administered assets and liabilities	30	23
Difference	-	-
<b>RECONCILIATION OF NET COST OF SERVICES TO NET CASH FROM OPERATING ACTIVITIES:</b>		
Net cost of services	10,751	12,491
<b>CHANGES IN ASSETS/LIABILITIES</b>		
(Increase)/decrease in net receivables	264	(434)
Increase/(decrease) in suppliers payables	(1)	-
<b>Net cash from operating activities</b>	<b>11,014</b>	<b>12,057</b>

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

## Note 18: Administered Financial Instruments

	2012 \$'000	2011 \$'000
<b>NOTE 18A CATEGORIES OF FINANCIAL INSTRUMENTS</b>		
<b>Financial Assets</b>		
Loans and receivables		
Cash	<b>30</b>	23
Trade receivables	<b>539</b>	803
<b>Carrying amount of financial assets</b>	<b>569</b>	826

### 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.**

Financial Assets		
Loans and Receivables		
Receivables	<b>868</b>	901
<b>Total</b>	<b>868</b>	901

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

Receivables **\$328,614 in 2012** (2011: \$98,310)

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

	NOT PAST DUE NOR IMPAIRED 2012 \$'000	NOT PAST DUE NOR IMPAIRED 2011 \$'000	PAST DUE OR IMPAIRED 2012 \$'000	PAST DUE OR IMPAIRED 2011 \$'000
<b>LOANS AND RECEIVABLES</b>				
Cash	<b>30</b>	23	–	–
Trade receivables	<b>183</b>	247	<b>685</b>	654
<b>Total</b>	<b>213</b>	270	<b>685</b>	654

**Ageing of financial assets that are past due but not impaired for 2012**

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
<b>LOANS AND RECEIVABLES</b>					
Trade receivables	<b>198</b>	<b>95</b>	<b>63</b>	<b>329</b>	<b>685</b>
<b>Total</b>	<b>198</b>	<b>95</b>	<b>63</b>	<b>329</b>	<b>685</b>

**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
<b>LOANS AND RECEIVABLES</b>					
Trade receivables	<b>211</b>	<b>88</b>	<b>38</b>	<b>317</b>	<b>654</b>
<b>Total</b>	<b>211</b>	<b>88</b>	<b>38</b>	<b>317</b>	<b>654</b>

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

**Note 19: Appropriations****Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2012 Appropriations					Appropriation applied in 2012 (current and prior years)	Variance \$'000
	Appropriation Act		FMA Act		Total appropriation \$'000		
	Annual Appropriation \$'000	Appropriations reduced <sup>(a)</sup>	Section 30 \$'000	Section 31 \$'000			

**DEPARTMENTAL**

<b>Ordinary Annual Services</b>	<b>89,739</b>	<b>-</b>	<b>43</b>	<b>4,344</b>	<b>94,126</b>	<b>(92,539)</b>	<b>1,587</b>
<b>OTHER SERVICES</b>							
<b>Equity</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(88)</b>	<b>(88)</b>
<b>Total departmental</b>	<b>89,739</b>	<b>-</b>	<b>43</b>	<b>4,344</b>	<b>94,126</b>	<b>(92,627)</b>	<b>1,499</b>

Notes:

(a): Appropriations reduced under Appropriation Act (No 1) 2011-12: 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.

	2011 Appropriations					Appropriation applied in 2012 (current and prior years)	Variance \$'000
	Appropriation Act		FMA Act		Total appropriation \$'000		
	Annual Appropriation \$'000	Appropriations reduced <sup>(a)</sup>	Section 30 \$'000	Section 31 \$'000			

**DEPARTMENTAL**

Ordinary Annual Services	99,800	(1,707)	26	1,812	99,931	(101,782)	(1,851)
<b>OTHER SERVICES</b>							
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.



**Table B: Departmental Capital Budgets ('Recoverable GST exclusive')**

	2012 Capital Budget Appropriations			Capital Budget Appropriations applied in 2012 (current and prior years) \$'000	Variance \$'000
	Appropriation Act		Total Capital Budget Appropriations \$'000		
	Annual Capital Budget \$'000	Appropriations reduced			Payments for non-financial assets <sup>2</sup> \$000
<b>DEPARTMENTAL</b>					
Ordinary Annual Services					
Departmental Capital Budget <sup>1</sup>	3,402	–	3,402	(3,637)	(235)

## Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Payments made on non-financial assets include purchase of assets, expenditure on assets which have been capitalised, and the capital repayment component of finance leases.

	2011 Capital Budget Appropriations			Capital Budget Appropriations applied in 2012 (current and prior years) \$'000	Variance \$'000
	Appropriation Act		Total Capital Budget Appropriations \$'000		
	Annual Capital Budget \$'000	Appropriations reduced			Payments for non-financial assets <sup>2</sup> \$000
<b>DEPARTMENTAL</b>					
Ordinary Annual Services					
Departmental Capital Budget <sup>1</sup>	6,246		6,246	(4,018)	2,228

## Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Payments made on non-financial assets include purchase of assets, expenditure on assets which have been capitalised, and the capital repayment component of finance leases.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

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

	2012 \$'000	2011 \$'000
<b>AUTHORITY</b>		
Appropriation Act (No 4) 2005-06	-	1
Appropriation Act (No 1) 2010-11	<b>1,844</b>	28,482
Appropriation Act (No 2) 2010-11	-	88
Appropriation Act (No 1) 2011-12	<b>27,041</b>	-
Appropriation Act (No 3) 2011-12	<b>832</b>	-
<b>Total</b>	<b>29,717</b>	28,571

**Note 20: Special Accounts and FMA Act Section 39**

NOTE 20A: SPECIAL ACCOUNTS (RECOVERABLE GST EXCLUSIVE)

	OTHER TRUST MONEYS ACCOUNT <sup>1</sup>		FEDERAL COURT OF AUSTRALIA LITIGANTS FUND <sup>2</sup>	
	2012 \$'000	2011 \$'000	2012 \$'000	2011 \$'000
Balance brought forward	<b>19</b>	19	<b>4,325</b>	29,132
<b>Increases:</b>				
Other receipts	<b>623</b>	646	<b>38,210</b>	8,217
<b>Total increases</b>	<b>623</b>	646	<b>38,210</b>	8,217
<b>Available for payments</b>	<b>642</b>	665	<b>42,535</b>	37,349
<b>Decreases:</b>				
Special Public Money				
Payments made to others	<b>630</b>	646	<b>40,277</b>	33,024
<b>Total special public money decreases</b>	<b>630</b>	646	<b>40,277</b>	33,024
<b>Total decreases</b>	<b>630</b>	646	<b>40,277</b>	33,024
<b>Total balance carried to the next period</b>	<b>12</b>	19	<b>2,258</b>	4,325

- Establishing Instrument: *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.
- Establishing Instrument: *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.

**Note 20B: Investments made under Section 39 of the FMA Act (Recoverable GST exclusive)**

	Balance brought forward from previous period \$'000	Investments made \$'000	Investment income \$'000	Transactional charges \$'000	Investments realised \$'000	Total balance carried to the next period \$'000
<b>2012</b>						
Federal Court of Australia Litigants Fund	25,607	2,027	1,460	2	22,981	6,111
<b>Total</b>	<b>25,607</b>	<b>2,027</b>	<b>1,460</b>	<b>2</b>	<b>22,981</b>	<b>6,111</b>

Moneys held in the special account are invested in interest-bearing bank accounts by order of a judge of the Federal Court of Australia.

	Balance brought forward from previous period \$'000	Investments made \$'000	Investment income \$'000	Transactional charges \$'000	Investments realised \$'000	Total balance carried to the next period \$'000
<b>2011</b>						
Federal Court of Australia Litigants Fund	31,262	33,258	2,310	1	41,222	25,607
<b>Total</b>	<b>31,262</b>	<b>33,258</b>	<b>2,310</b>	<b>1</b>	<b>41,222</b>	<b>25,607</b>

Moneys held in the special account are invested in interest-bearing bank accounts by order of a judge of the Federal Court of Australia.

**Note 21: Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund**

Section 83 of the Constitution provides that no amount may be paid out of the Consolidated Revenue Fund except under an appropriation made by law. The Department of Finance and Deregulation provided information to all agencies in 2011 regarding the need for risk assessments in relation to compliance with statutory conditions on payments from special appropriations, including special accounts.

During 2011-12, the Court developed a plan to review exposure of risks of not complying with statutory conditions on payments from appropriations. The plan involved:

- identifying each special appropriation and special account; and
- determining the risk of non-compliance by assessing the difficulty of administering the statutory conditions and assessing the extent to which existing payment systems and processes satisfy those conditions. This risk was determined to be low.

The Court identified 2 accounts involving statutory conditions for payment, comprising 2 special accounts.

The work conducted has identified no issues of non-compliance with Section 83.

# NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

FOR THE PERIOD ENDED 30 JUNE 2012

**Note 22: Compensation and Debt Relief**

	2012	2011
No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the Financial Management and Accountability Act 1997. (2011: nil)	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997 (2011: nil)	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period (2011: nil)	-	-
No ex-gratia payments were provided for during the reporting period (2011: nil)	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period (2011: nil)	-	-
	<b>2012</b>	<b>2011</b>
	<b>\$</b>	<b>\$</b>
<b>ADMINISTERED</b>		
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> . (2011: nil)	-	-
No payments were waived during the reporting period under subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> . (2011: nil).	-	-
1,121 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. (2011: 1,306)	<b>1,623,802</b>	<b>1,819,777</b>

## Note 23: Reporting of Outcomes

### NOTE 23A: 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	2012 \$'000	2011 \$'000
<b>EXPENSES</b>		
Administered	<b>310</b>	98
Departmental	<b>115,362</b>	114,978
<b>Total</b>	<b>115,672</b>	115,076
<b>INCOME FROM NON-GOVERNMENT SECTOR</b>		
Administered	<b>11,061</b>	12,589
Departmental	<b>3,316</b>	1,316
<b>Total</b>	<b>14,377</b>	13,905
<b>OTHER OWN-SOURCE INCOME</b>		
Administered	-	-
Departmental	<b>1,250</b>	1,216
Total	<b>1,250</b>	1,216
Net cost/(contribution) of outcome delivery	<b>100,045</b>	99,955

### NOTE 23B: MAJOR CLASSES OF DEPARTMENTAL EXPENSES, INCOME, ASSETS AND LIABILITIES BY OUTCOME

OUTCOME 1	2012 \$'000	2011 \$'000
<b>DEPARTMENTAL EXPENSES</b>		
Judges and Employees	<b>62,226</b>	58,830
Suppliers	<b>49,892</b>	45,221
Depreciation and Amortisation	<b>3,148</b>	2,845
Finance costs	<b>85</b>	18
Other Expenses	<b>11</b>	5,116
FMC Transfer	-	2,948
<b>Total</b>	<b>115,362</b>	114,978
<b>DEPARTMENTAL INCOME</b>		
Income from government	<b>106,536</b>	104,079
Sale of goods and services	<b>4,566</b>	2,532
<b>Total</b>	<b>111,102</b>	106,611

**DEPARTMENTAL ASSETS**

Cash and cash equivalents	<b>1,353</b>	810
Trade and other receivables	<b>30,846</b>	29,591
Property, plant and equipment	<b>18,120</b>	18,118
Intangibles	<b>2,611</b>	1,596
Other non-financial assets	<b>543</b>	1,825
<b>Total</b>	<b>53,473</b>	51,940

**DEPARTMENTAL LIABILITIES**

Suppliers	<b>1,185</b>	940
Leases	<b>1,183</b>	735
Judge and employee provisions	<b>17,069</b>	15,805
Other payables	<b>1,349</b>	915
<b>Total</b>	<b>20,786</b>	18,395

**NOTE 23C: MAJOR CLASSES OF DEPARTMENTAL EXPENSES, INCOME, ASSETS AND LIABILITIES BY OUTCOME**

	2012 \$'000	2011 \$'000
<b>OUTCOME 1</b>		
<b>ADMINISTERED EXPENSES</b>		
Doubtful debts expense	<b>310</b>	98
<b>Total</b>	<b>310</b>	98
<b>ADMINISTERED INCOME</b>		
Non-taxation revenue	<b>11,061</b>	12,589
<b>Total</b>	<b>11,061</b>	12,589
<b>ADMINISTERED ASSETS</b>		
Cash and cash equivalents	<b>30</b>	23
Trade and other receivables	<b>539</b>	803
<b>Total</b>	<b>569</b>	826
<b>ADMINISTERED LIABILITIES</b>		
<i>Refund of fees payable</i>	-	1
<b>Total</b>	-	1

**Note 24: Comprehensive Income (Loss) attributable to the Court**

	2012 \$'000	2011 \$'000
<b>TOTAL COMPREHENSIVE INCOME ATTRIBUTABLE TO THE COURT</b>		
Total comprehensive income (loss)	<b>(4,260)</b>	(8,072)
Plus non-appropriated expenses		
Depreciation and amortisation expenses	<b>3,148</b>	2,845
<b>Total comprehensive income (loss) attributable to the Court</b>	<b>(1,112)</b>	(5,227)

# APPENDIX 2

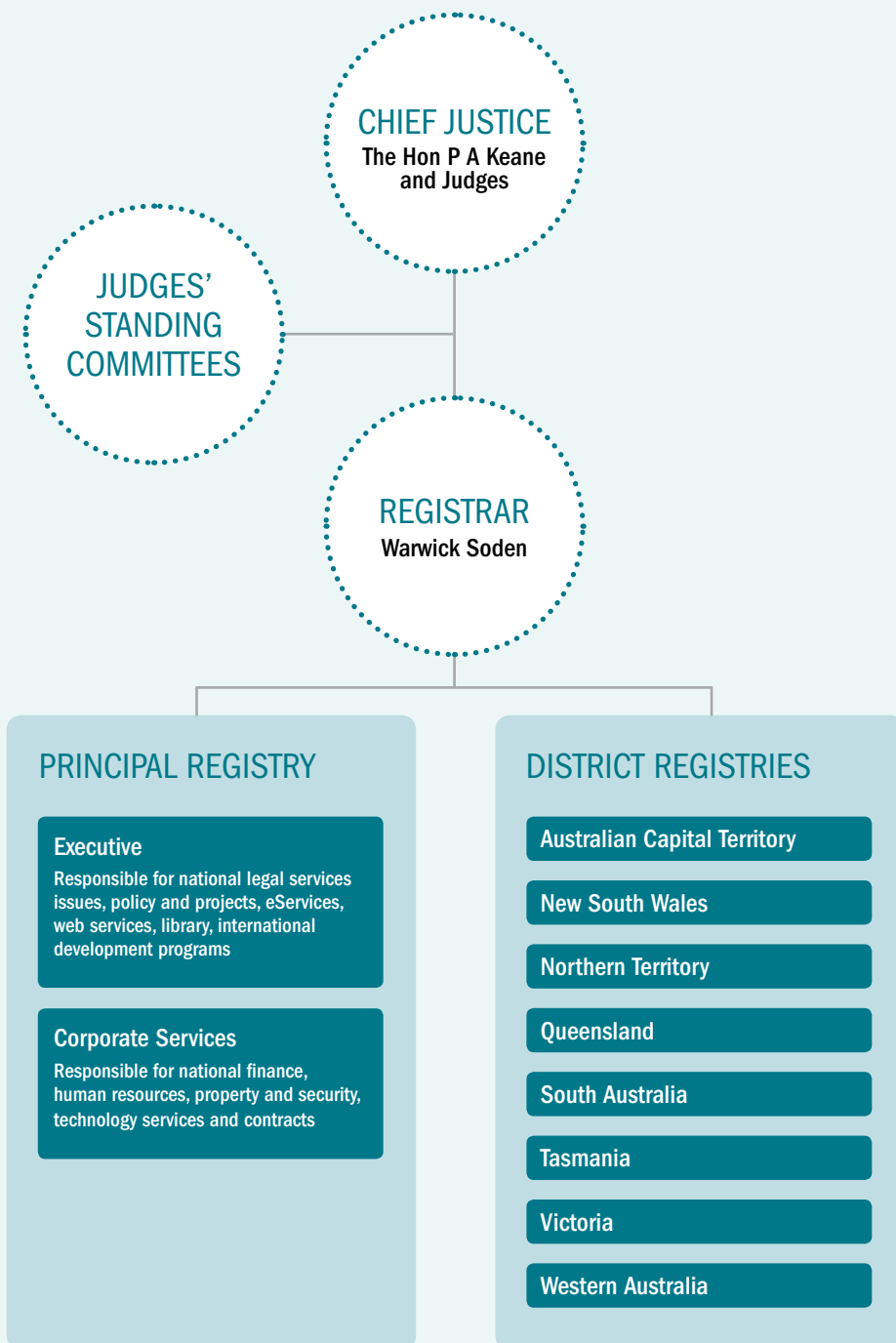
## AGENCY RESOURCE STATEMENT

	ACTUAL AVAILABLE APPROPRIATIONS FOR 2011-12 \$'000	PAYMENTS MADE 2011-12 \$'000	BALANCE REMAINING \$'000
<b>ORDINARY ANNUAL SERVICES<sup>1</sup></b>			
<b>Departmental appropriation</b>			
Prior year departmental appropriation	28 483	28 483	–
Departmental appropriation <sup>2</sup>	89 739	60 021	29 718
s 31 relevant agency receipts	4 566	4 566	–
<b>Total</b>	<b>122 788</b>	<b>93 070</b>	<b>29 718</b>
<b>Total ordinary annual services</b>	<b>122 788</b>	<b>93 070</b>	<b>29 718</b>
<b>OTHER SERVICES</b>			
<b>Departmental non-operating</b>			
Previous year's outputs	88	88	–
<b>Total</b>	<b>88</b>	<b>88</b>	<b>–</b>
<b>Total other services</b>	<b>88</b>	<b>88</b>	<b>–</b>
<b>Total available annual appropriations</b>	<b>122 876</b>	<b>93 158</b>	<b>29 718</b>
<b>Total appropriations excluding special accounts</b>	<b>122 876</b>	<b>93 158</b>	<b>29 718</b>
<b>Total net resourcing for the Court</b>	<b>122 876</b>	<b>93 158</b>	<b>29 718</b>

1 Appropriation Bill (No.1) 2011-12 and Appropriation Bill (No. 2) 2011-12

2 Includes a Departmental Capital Budget of \$3.402m

# APPENDIX 3 FEDERAL COURT MANAGEMENT STRUCTURE





# APPENDIX 4

## REGISTRARS OF THE COURT

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
<b>Principal Registry</b>		
Registrar	Warwick Soden OAM	
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
Sheriff of the Federal Court of Australia	Geoff Gray	Deputy Registrar
<b>New South Wales</b>		
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 (Based in Canberra)	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

# APPENDIX 4

## REGISTRARS OF THE COURT

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
<b>Victoria</b>		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal 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 Hetey	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Rupert Burns	A Registrar, Federal Magistrates Court
	Phillip Allaway	A Registrar, Federal Magistrates Court
	David Pringle	A Registrar, Federal Magistrates Court
	David Priddle	A Registrar, Federal Magistrates Court
<b>Queensland</b>		
District Registrar	Heather Baldwin	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
Deputy District Registrars	Christine Fewings	
	Murray Belcher	A Registrar, Federal Magistrates Court
	Katie Lynch	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
<b>Western Australia</b>		
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
	Rainer Gilich	A Registrar, Federal Magistrates Court
	Russell Trott	A Registrar, Federal Magistrates Court

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
<b>South Australia</b>		
District Registrar	Patricia Christie	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
<b>Tasmania</b>		
District Registrar	Catherine Scott	District Registrar, Administrative Appeals Tribunal A Registrar, Federal Magistrates Court
<b>Australian Capital Territory</b>		
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	A Registrar, Federal Magistrates Court
	Paddy Hannigan (Based in Sydney)	A Registrar, Federal Magistrates Court
	Chuan Ng (Based in Sydney)	A Registrar, Federal Magistrates Court Deputy Registrar, Supreme Court of Norfolk Island
<b>Northern Territory</b>		
District Registrar	Patricia Christie (Based in Adelaide)	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 2012 [ONLY PRINCIPAL ACTS ARE INCLUDED]

*Aboriginal and Torres Strait Islander Act 2005*  
*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*  
*Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*  
*Aboriginal Land Rights (Northern Territory) Act 1976*  
*ACIS Administration Act 1999*  
*Administrative Appeals Tribunal Act 1975*  
*Administrative Decisions (Judicial Review) Act 1977*  
*Admiralty Act 1988*  
*Advance Australia Logo Protection Act 1984*  
*Age Discrimination Act 2004*  
*Aged Care Act 1997*  
*Agricultural and Veterinary Chemicals Act 1994*  
*Air Navigation Act 1920*  
*Airports Act 1996*  
*Anti-Money Laundering and Counter-Terrorism Financing Act 2006*  
*Anti-Personnel Mines Convention Act 1998*  
*Australian Crime Commission Act 2002*  
*Australian Energy Market Act 2004*  
*Australian Human Rights Commission Act 1986*  
*Australian National Railways Commission Sale Act 1997*  
*Australian Postal Corporation Act 1989*  
*Australian Radiation Protection and Nuclear Safety Act 1998*  
*Australian Securities and Investments Commission Act 2001*  
*Australian Sports Anti-Doping Authority Act 2006*  
*Aviation Transport Security Act 2004*  
*Banking Act 1959*  
*Bankruptcy Act 1966*  
*Broadcasting Services Act 1992*  
*Building Industry Act 1985*  
*Business Names Registration Act 2011*  
*Charter of the United Nations Act 1945*  
*Child Support (Registration and Collection) Act 1988*  
*Circuit Layouts Act 1989*  
*Civil Aviation (Carriers' Liability) Act 1959*  
*Clean Energy Act 2011*  
*Coal Industry Repeal Act 2001*  
*Coastal Trading (Revitalising Australian Shipping) Act 2012*  
*Commonwealth Authorities and Companies Act 1997*  
*Commonwealth Electoral Act 1918*  
*Commonwealth Places (Mirror Taxes) Act 1998*  
*Commonwealth Serum Laboratories Act 1961*  
*Competition and Consumer Act 2010*  
*Copyright Act 1968*  
*Corporations (Aboriginal and Torres Strait Islander) Act 2006*  
*Corporations Act 2001*  
*Crimes Act 1914*  
*Criminal Code Act 1995*  
*Cross-Border Insolvency Act 2008*  
*Customs Act 1901*  
*Dairy Industry Service Reform Act 2003*  
*Dairy Produce Act 1986*  
*Defence Act 1903*  
*Defence Force Discipline Appeals Act 1955*  
*Defence Reserve Service (Protection) Act 2001*  
*Designs Act 2003*  
*Diplomatic and Consular Missions Act 1978*  
*Disability Discrimination Act 1992*  
*Education Services for Overseas Students Act 2000*  
*Egg Industry Service Provision Act 2002*  
*Environment Protection and Biodiversity Conservation Act 1999*  
*Evidence and Procedure (New Zealand) Act 1994*  
*Excise Act 1901*  
*Export Market Development Grants Act 1997*

*Extradition Act 1988*  
*Fair Work (Building Industry) Act 2012*  
*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 Accounts Act 2008*  
*Fisheries Management Act 1991*  
*Foreign Acquisitions and Takeovers Act 1975*  
*Foreign Evidence Act 1994*  
*Foreign Judgments Act 1991*  
*Foreign Proceedings (Excess of Jurisdiction) Act 1984*  
*Foreign States Immunities Act 1985*  
*Freedom of Information Act 1982*  
*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*  
*Insurance Acquisitions 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 and Civil Proceedings) Act 2004*  
*National Transmission Network Sale Act 1998*  
*National Vocational Education and Training Regulator Act 2011*

# APPENDIX 5

## STATUTES OF THE COURT

*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*

*Product Stewardship Act 2011*

*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 Right for Visual Artists Act 2009*

*Retirement Savings Accounts Act 1997*

*Royal Commissions Act 1902*

*Safety, Rehabilitation and Compensation Act 1988*

*Shipping Registration Act 1981*

*Snowy Hydro Corporatisation Act 1997*

*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*

*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*

*Tertiary Education Quality and Standards Agency Act 2011*

*Therapeutic Goods Act 1989*

*Tobacco Plain Packaging Act 2011*

*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*

*Work Health and Safety Act 2011*

# 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 CoAs (cross appeals and cross claims), interlocutory applications or Native Title joinder of party applications. In 2007–08 the Court started to count and report on interlocutory applications 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 129 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of interlocutory applications (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	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Total CoAs (inc. Appeals &amp; Related Actions)</b>					
Filed	4428	3862	3646	4942	5277
Finalised	4730	4122	3525	4625	5798
Current	2946	2686	2807	3124	2603
<b>Corporations (inc. Appeals &amp; Related Actions)</b>					
Filed	1695	1674	1678	2839	3327
Finalised	1679	1739	1399	2526	3780
Current	537	472	751	1064	611
<b>Bankruptcy (inc. Appeals &amp; Related Actions)</b>					
Filed	247	208	188	217	185
Finalised	263	235	169	203	189
Current	105	78	97	111	107
<b>Native Title (inc. Appeals &amp; Related Actions)</b>					
Filed	33	42	36	83	98
Finalised	72	92	67	83	107
Current	554	504	473	473	464
<b>Total CoAs (inc. Appeals &amp; Related Actions &amp; excluding Corporations, Bankruptcy &amp; Native Title)</b>					
Filed	2453	1938	1744	1803	1667
Finalised	2716	2056	1890	1813	1722
Current	1750	1632	1486	1476	1421



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

CAUSE OF ACTION	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Total CoAs (excl. Appeals &amp; Related Actions)</b>					
Filed	3074	2988	2951	4304	4663
Finalised	3250	3198	2776	4019	5113
Current	2537	2327	2502	2787	2337
<b>Corporations (excl. Appeals &amp; Related Actions)</b>					
Filed	1678	1636	1642	2798	3283
Finalised	1659	1711	1370	2484	3724
Current	528	453	725	1039	598
<b>Bankruptcy (excl. Appeals &amp; Related Actions)</b>					
Filed	201	148	127	144	131
Finalised	205	171	128	129	126
Current	84	61	60	75	80
<b>Native Title (excl. Appeals &amp; Related Actions)</b>					
Filed	27	37	33	73	87
Finalised	62	87	62	74	93
Current	548	498	469	468	462
<b>Total CoAs (excl. Appeals &amp; Related Actions &amp; excluding Corporations, Bankruptcy &amp; Native Title)</b>					
Filed	1168	1167	1149	1289	1162
Finalised	1324	1229	1216	1332	1170
Current	1377	1315	1248	1205	1197

# 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	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Total Appeals &amp; Related Actions</b>					
Filed	1354	874	695	638	614
Finalised	1480	924	749	606	685
Current	409	359	305	337	266
<b>Corporations Appeals &amp; Related Actions</b>					
Filed	17	38	36	41	44
Finalised	20	28	29	42	56
Current	9	19	26	25	13
<b>Migration Appeals &amp; Related Actions</b>					
Filed	997	515	376	253	245
Finalised	1099	615	420	266	240
Current	240	140	96	83	88
<b>Native Title Appeals &amp; Related Actions</b>					
Filed	6	5	3	10	11
Finalised	10	5	5	9	14
Current	6	6	4	5	2
<b>Total Appeals &amp; Related Actions (ex. Corporations, Migration &amp; Native Title Appeals &amp; Related Actions)</b>					
Filed	334	316	280	334	314
Finalised	351	276	295	289	375
Current	154	194	179	224	163

**Table 6.4 – Summary of supplementary workload statistics**  
**Filings of supplementary causes of action**

	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Total Actions (excluding Appeals &amp; Related Actions)</b>					
Cross Appeals (original jurisdiction)	2	5	6	3	0
Cross Claims	177	190	205	242	186
Interlocutory Applications	1545	1553	1570	1825	1643
Native Title (NT) Joinder of party applications	135	482	364	628	405
<b>Appeals &amp; Related Actions</b>					
Cross Appeals	18	21	15	38	11
Interlocutory Applications	212	230	216	230	172
<b>Total Actions (including Appeals &amp; Related Actions)</b>					
Cross Appeals	20	26	21	41	11
Cross Claims	177	190	205	242	186
Interlocutory Applications	1757	1783	1786	2055	1815
NT Joinder of party applications	135	482	364	628	405
<b>Totals</b>	<b>2089</b>	<b>2481</b>	<b>2376</b>	<b>2966</b>	<b>2417</b>

# APPENDIX 6

## WORKLOAD STATISTICS

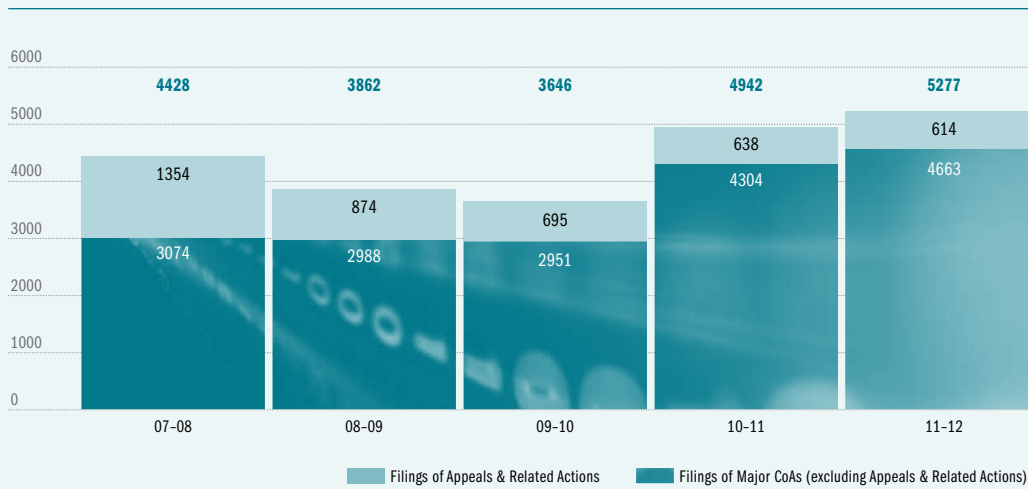
### Finalisations of supplementary causes of action

	2007-08	2008-09	2009-10	2010-11	2011-12
<b>Total Actions (excluding Appeals &amp; Related Actions)</b>					
Cross Appeals (original jurisdiction)	8	1	5	7	1
Cross Claims	217	173	173	166	162
NT Joinder of party applications	135	482	364	628	405
<b>Appeals &amp; Related Actions</b>					
Cross Appeals	20	23	9	26	34
<b>Total Actions (including Appeals &amp; Related Actions)</b>					
Cross Appeals	28	24	14	33	35
Cross Claims	217	173	173	166	162
NT Joinder of party applications	135	482	364	628	405
<b>Totals</b>	<b>380</b>	<b>679</b>	<b>551</b>	<b>827</b>	<b>602</b>

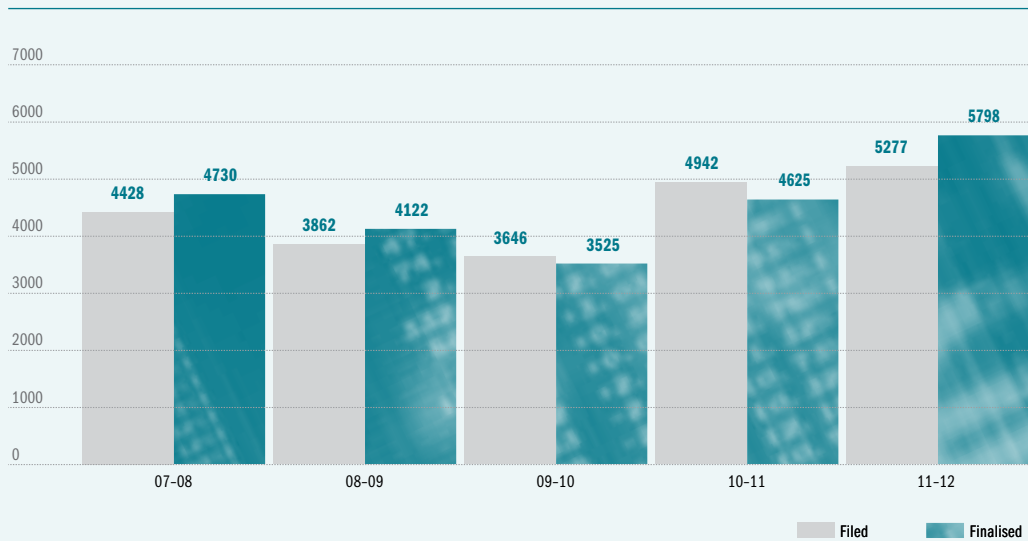
### Current Cross Appeals & Cross Claims as at 30 June 2012

<b>Appeals &amp; Related Actions</b>	
Cross Appeals	9
<b>Total Supplementary CoAs (excluding Appeals &amp; Related Actions)</b>	
Cross Appeals (original jurisdiction)	3
Cross Claims	359
<b>Total Supplementary CoAs (including Appeals &amp; Related Actions)</b>	
Cross Appeals	12
Cross Claims	359
<b>Totals</b>	<b>371</b>

**Figure 6.1 – Matters filed over the last five years**



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

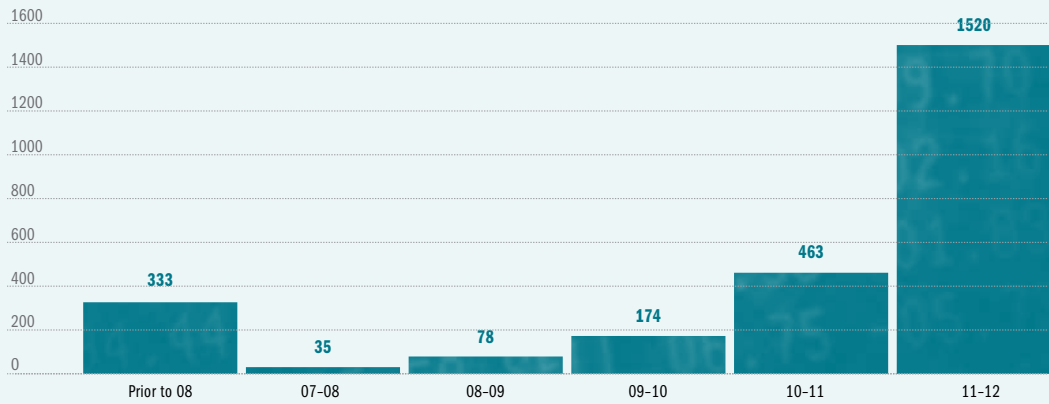


The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

# APPENDIX 6

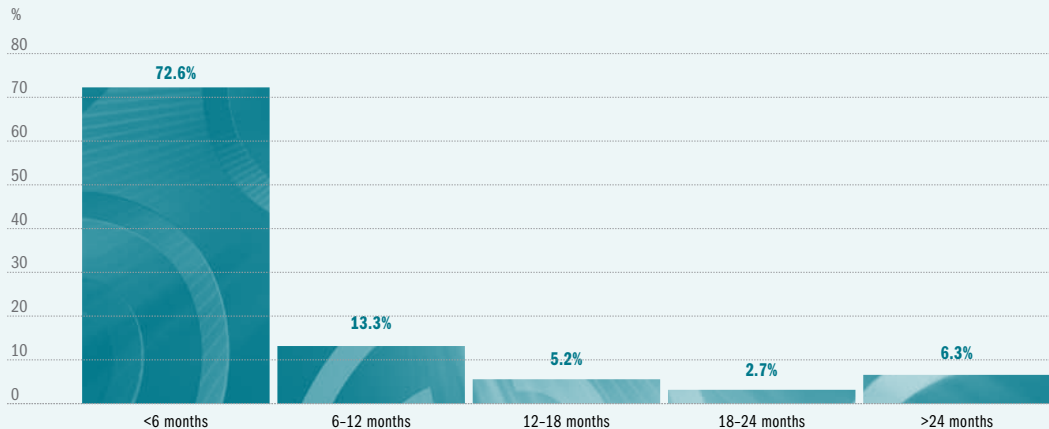
## WORKLOAD STATISTICS

Figure 6.3 – Age and number of current matters at 30 June 2012



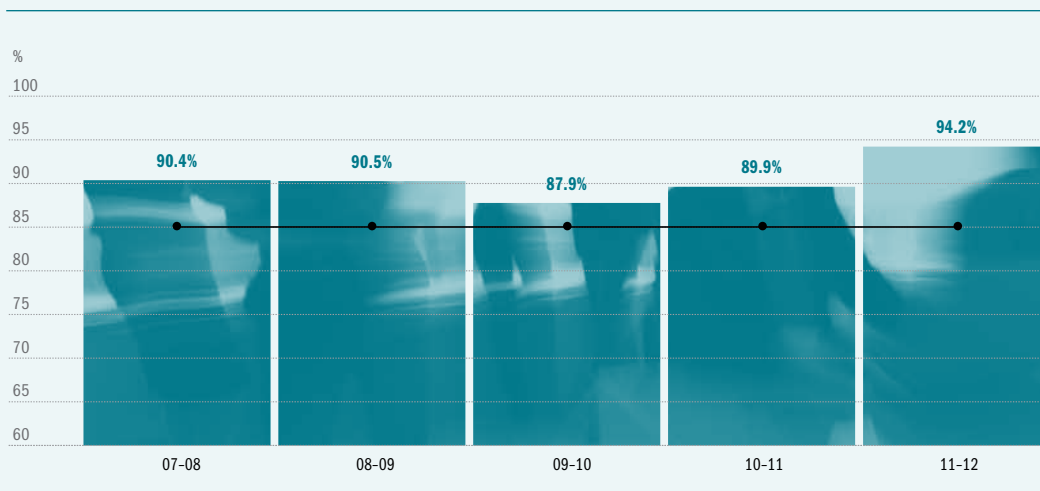
A total of 2603 matters remain current at 30 June 2012. There were 333 applications still current relating to periods before those shown in the graph. Over ninety-two per cent of cases prior to 2008 are native title matters.

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



A total of 27 568 matters were completed during the five year period ending 30 June 2012, excluding native title matters. The time span, from filing to disposition of these matters, is shown in Figure 6.4.

Figure 6.5 – Time span to complete against the 85% 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 in Table 6.5.

Table 6.5 – Finalisation of major CoAs in accordance with 85% benchmark (including appeals and related actions and excluding native title matters) over the last five years

PERCENTAGE COMPLETED	2007-08	2008-09	2009-10	2010-11	2011-12
Under 18 months	4222	3650	3044	4093	5376
% of Total	90.4%	90.5%	87.9%	89.9%	94.2%
Over 18 months	446	385	419	458	329
% of Total	9.6%	9.5%	12.1%	10.1%	5.8%
<b>Total CoAs</b>	<b>4668</b>	<b>4035</b>	<b>3463</b>	<b>4551</b>	<b>5705</b>

# APPENDIX 6

## WORKLOAD STATISTICS

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

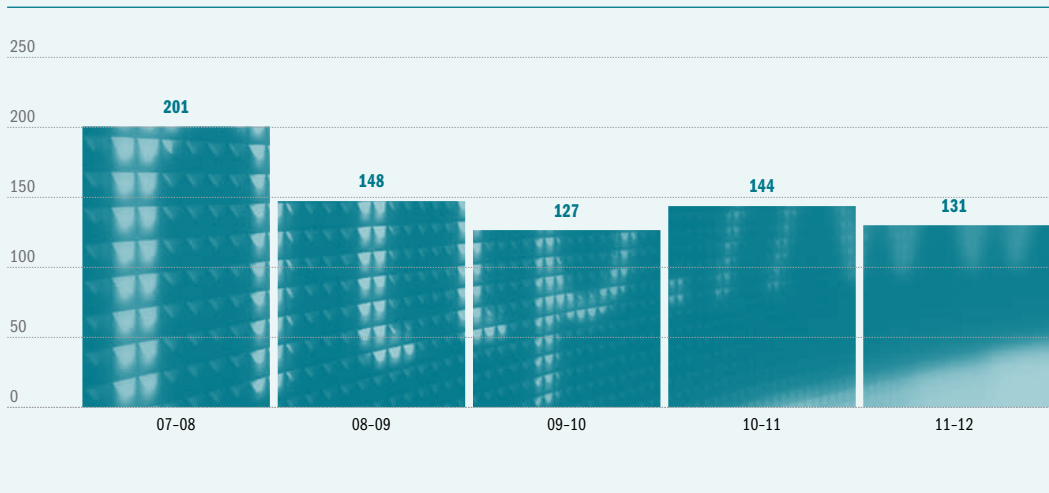
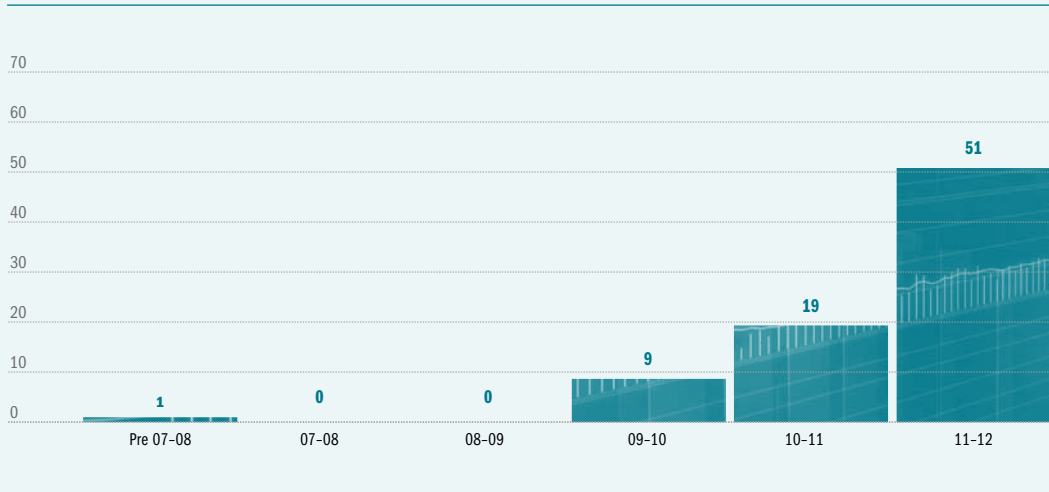


Figure 6.6.1 – Current Bankruptcy matters (excl. appeals) by year of filing



A total of 80 Bankruptcy Act matters remain current as at 30 June 2012.



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

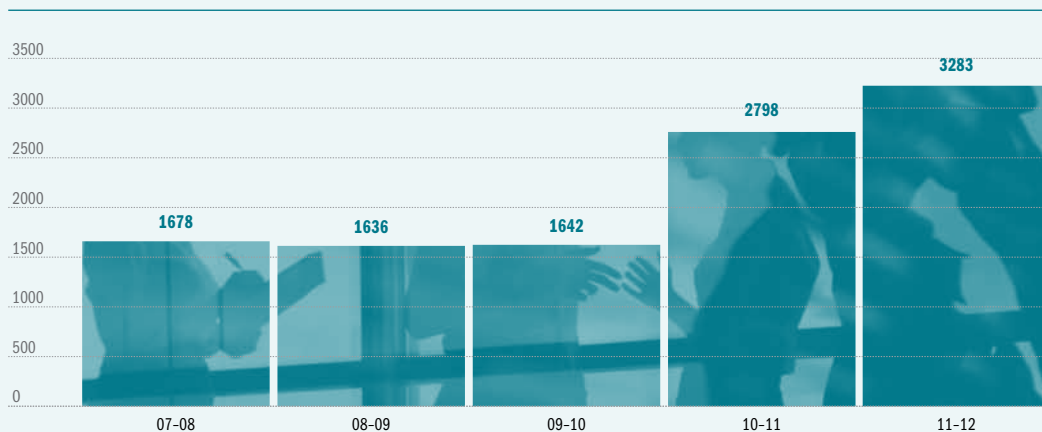
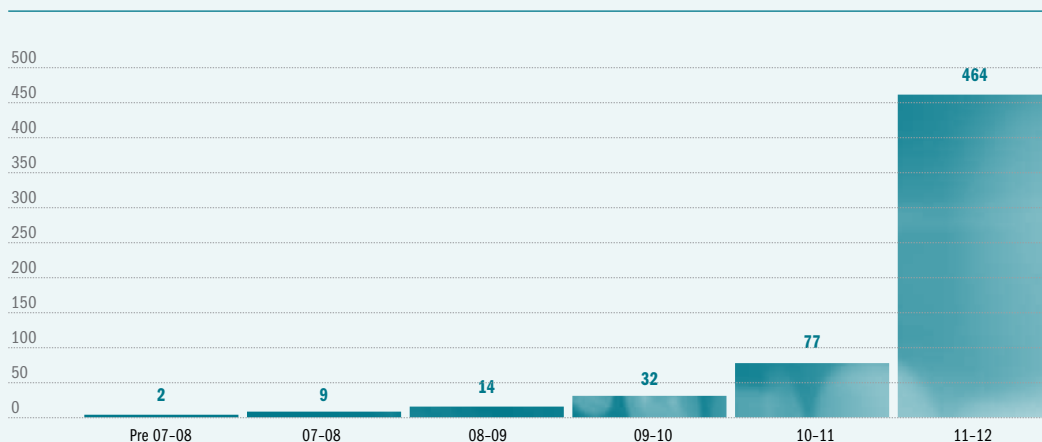


Figure 6.7.1 – Current Corporations Act matters (excl. appeals) by year of filing



A total of 598 Corporations Act matters remain current as at 30 June 2012.

# APPENDIX 6

## WORKLOAD STATISTICS

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

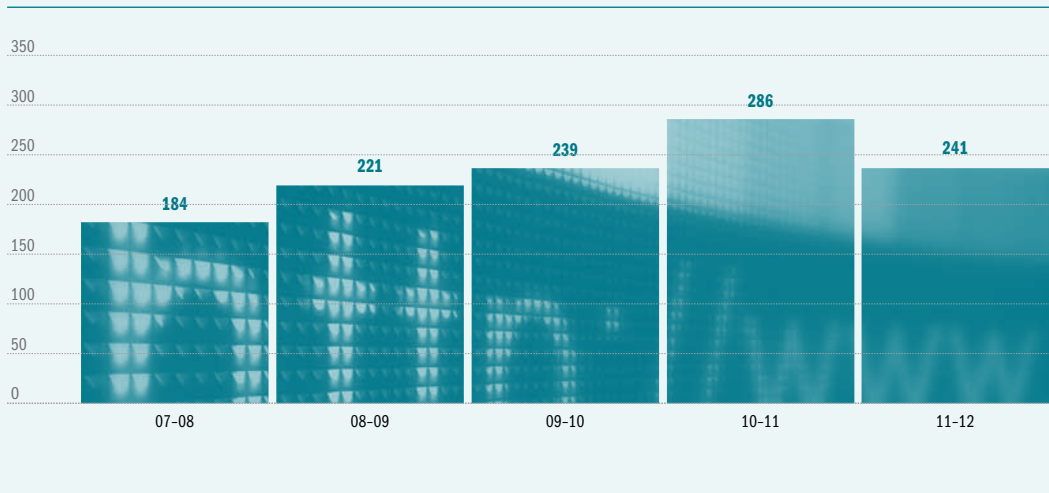
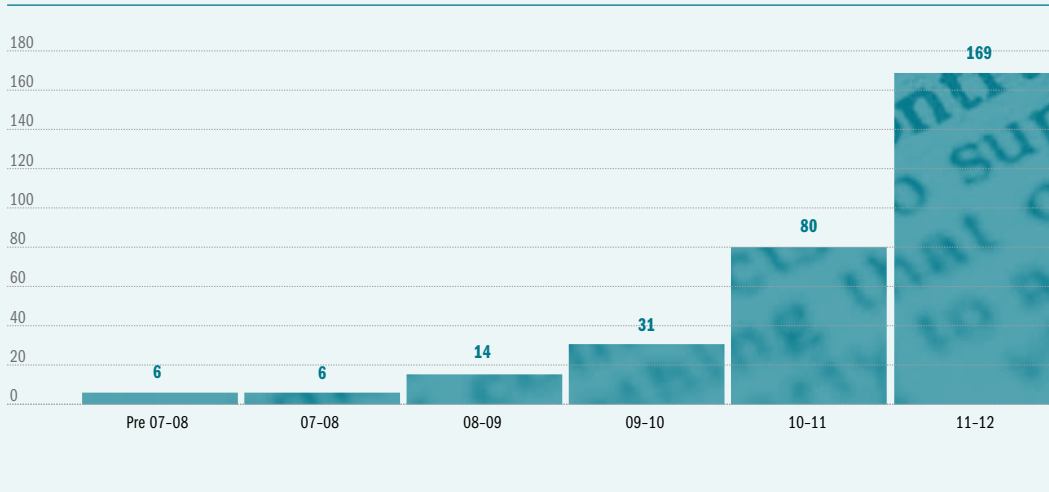
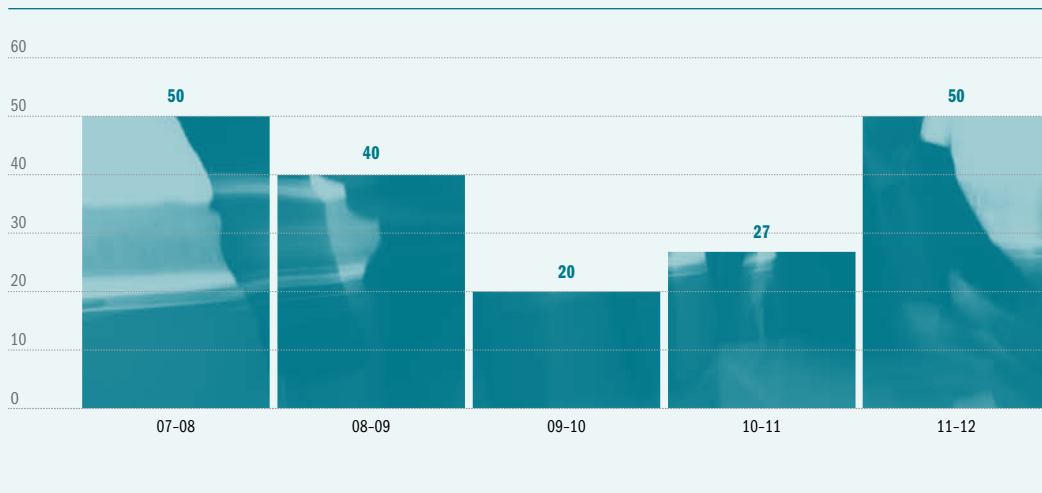


Figure 6.8.1 – Current Consumer Law matters (excl. competition law and appeals) by year of filing



A total of 306 Consumer Law matters remain current as at 30 June 2012.

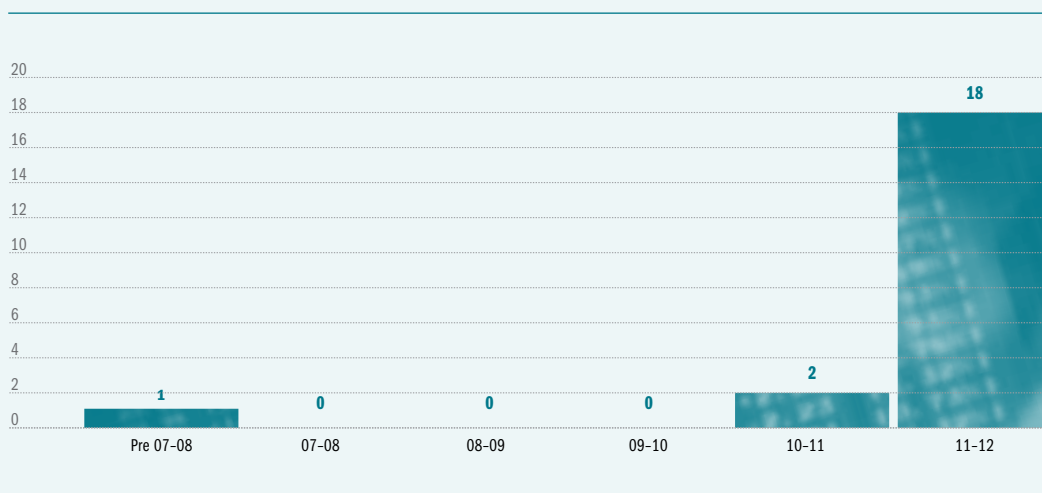
**Figure 6.9 – Migration Act matters (excl. appeals) filed over the last five years**



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 21 Migration Act matters remain current as at 30 June 2012.

# APPENDIX 6

## WORKLOAD STATISTICS

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

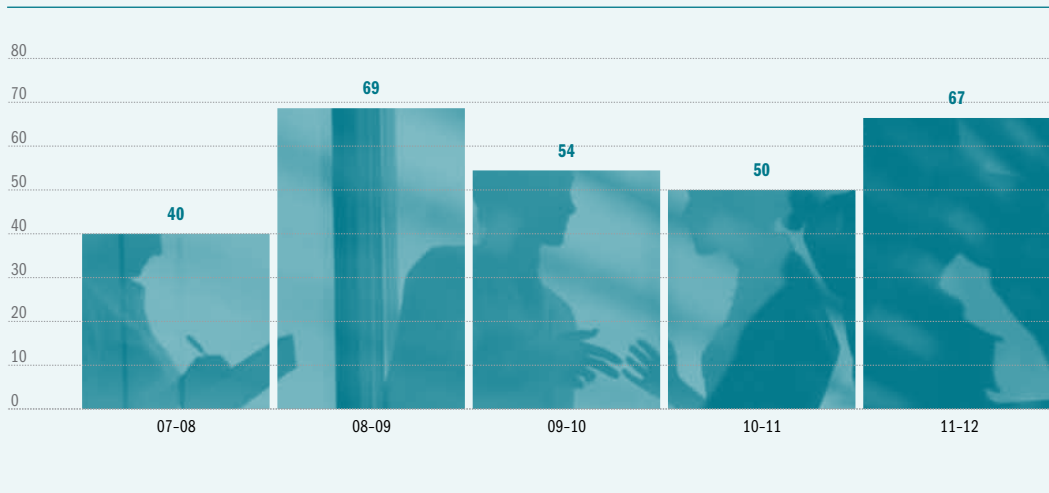
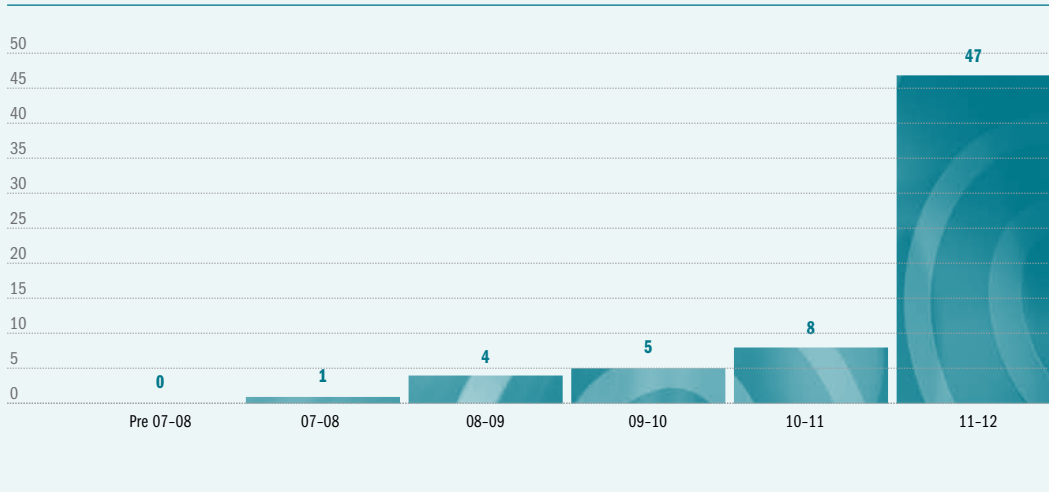


Figure 6.10.1 – Current Admiralty matters (excl. appeals) by year of filing



A total of 65 Admiralty Act matters remain current as at 30 June 2012.

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

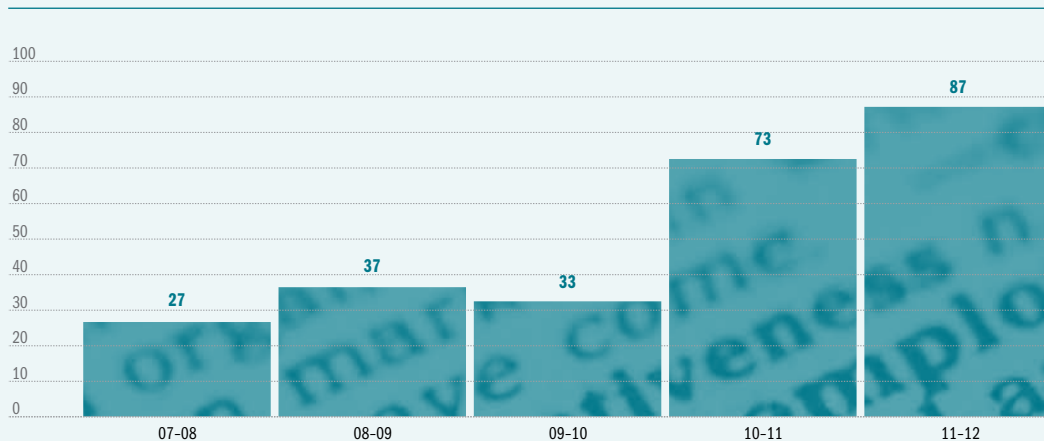
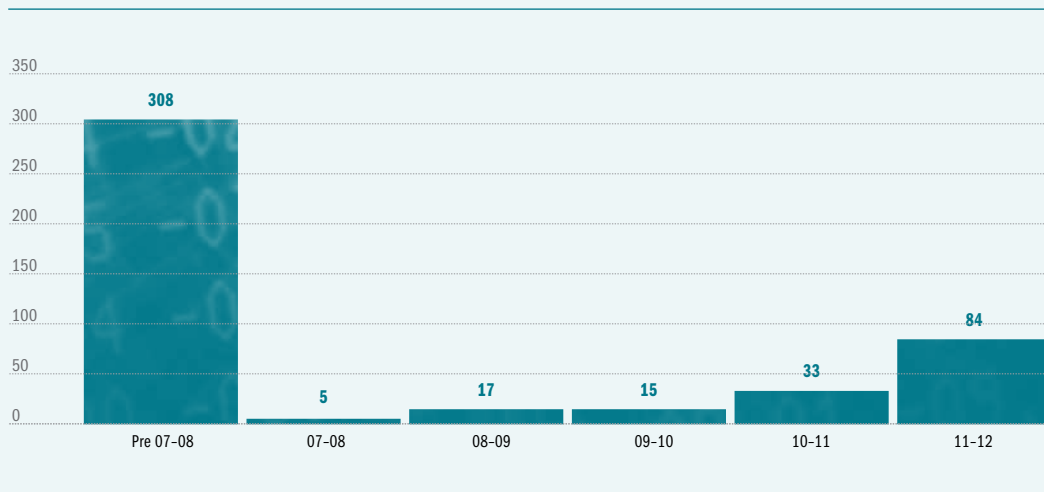


Figure 6.11.1 – Current Native Title matters (excl. appeals) by year of filing



A total of 462 Native Title matters remain current as at 30 June 2012.

# APPENDIX 6

## WORKLOAD STATISTICS

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

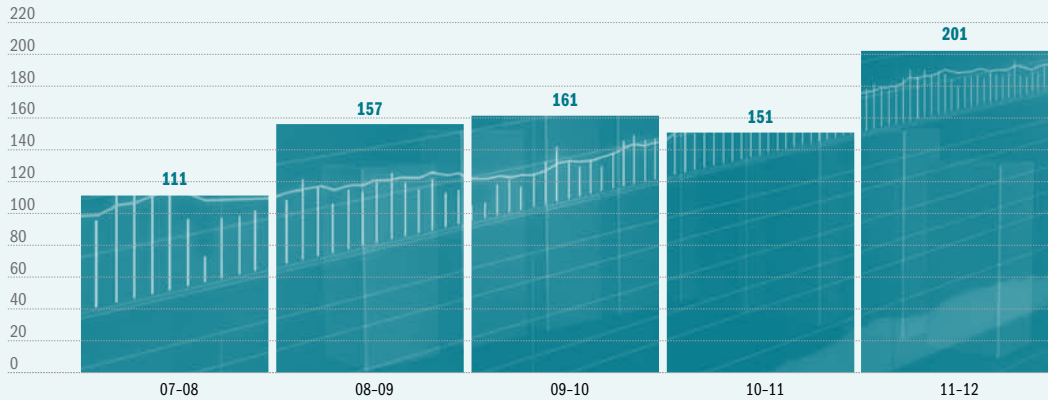
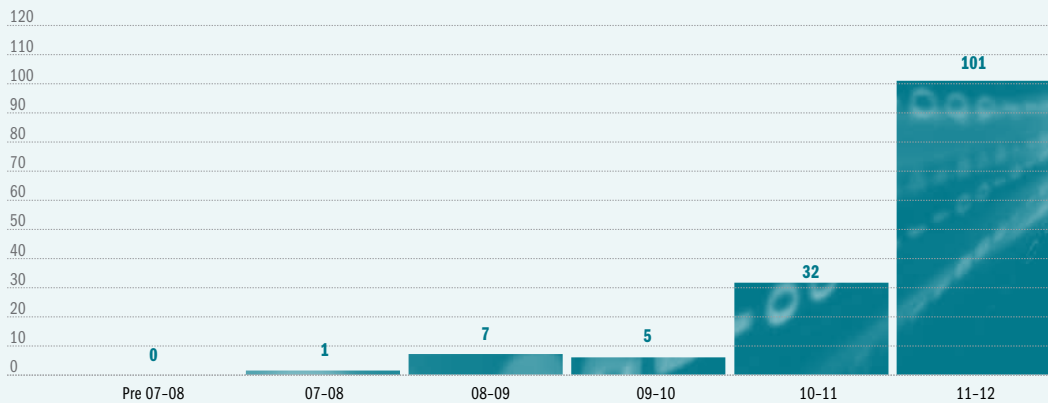


Figure 6.12.1 – Current Workplace Relations/Fair Work matters (excl. appeals) by year of filing



A total of 146 Workplace Relations/Fair Work cases remain current as at 30 June 2012.

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

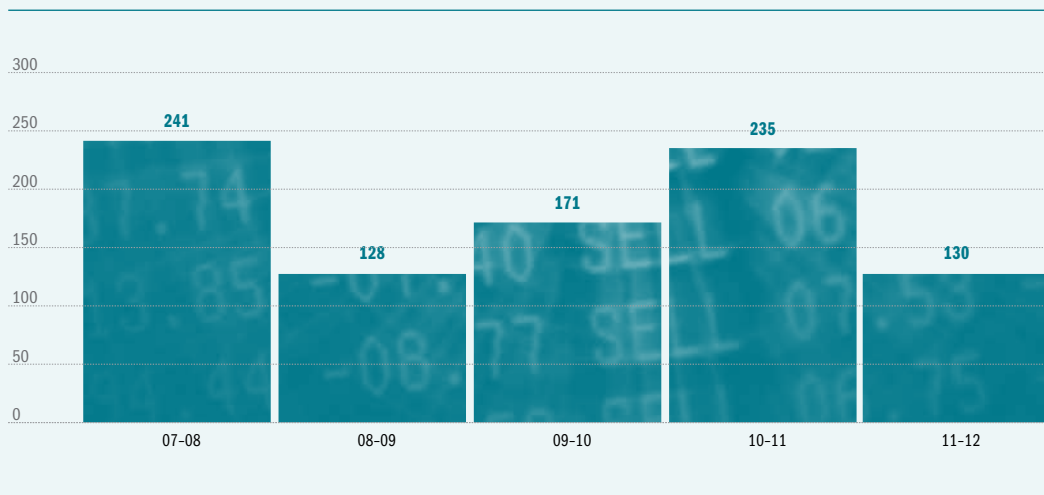
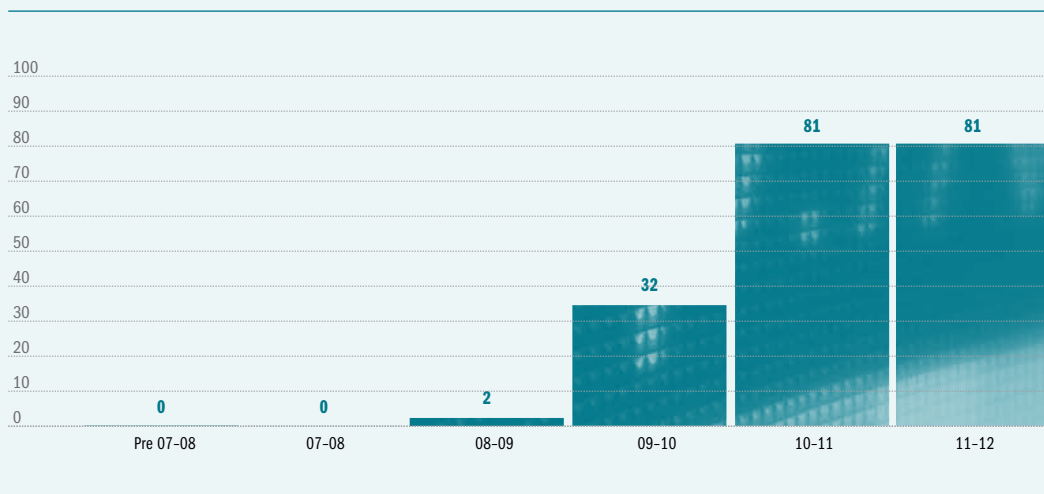


Figure 6.13.1 – Current Taxation matters (excl. appeals) by year of filing



A total of 196 taxation cases remain current as at 30 June 2012.

# APPENDIX 6

## WORKLOAD STATISTICS

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

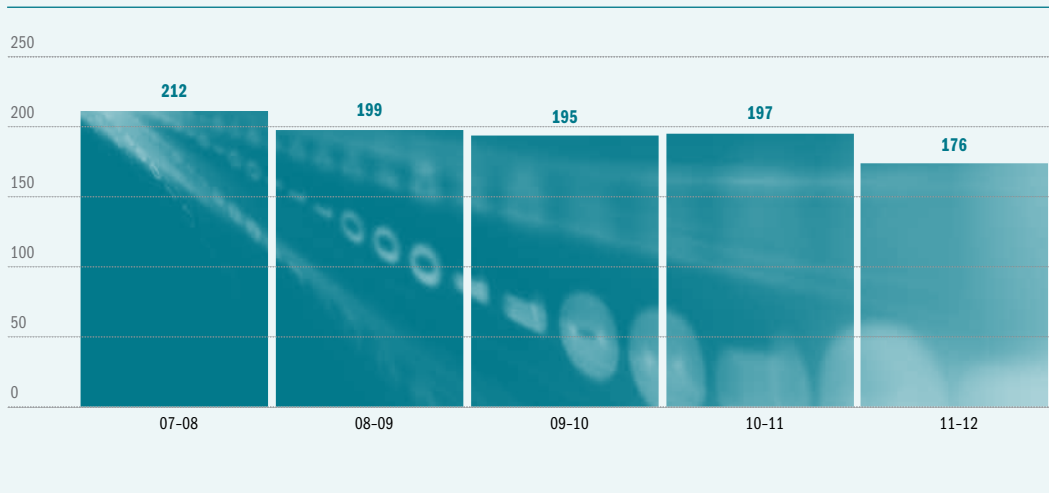
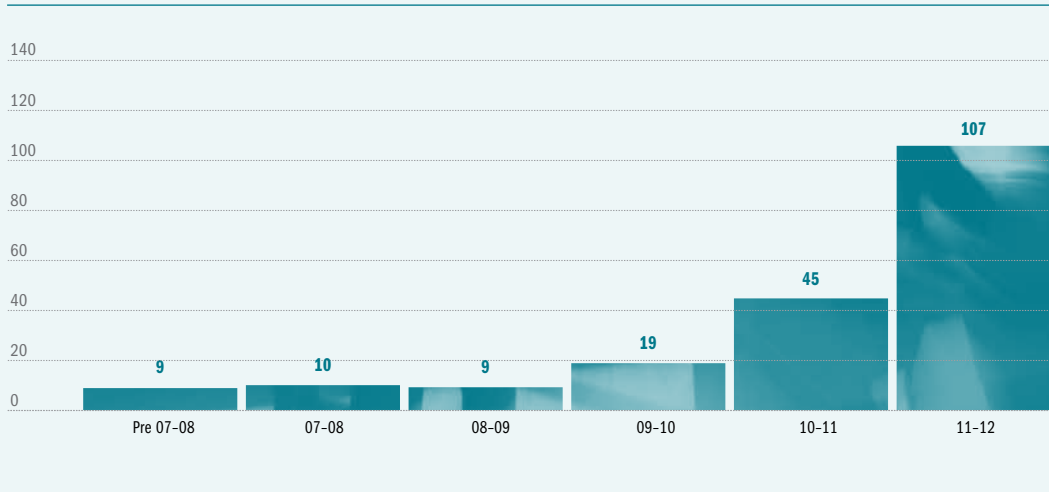


Figure 6.14.1 – Current Intellectual Property matters (excl. appeals) by year of filing



A total of 199 intellectual property cases remain current as at 30 June 2012.



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

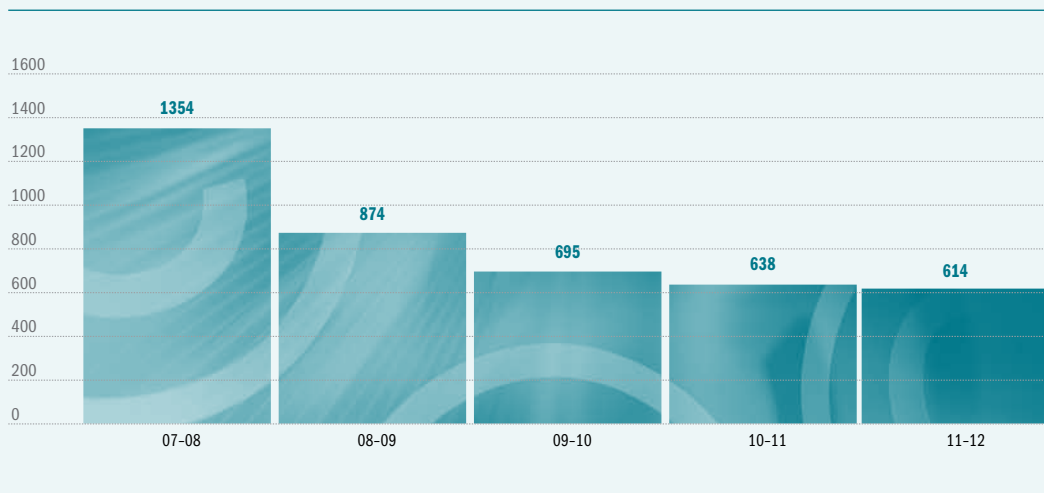
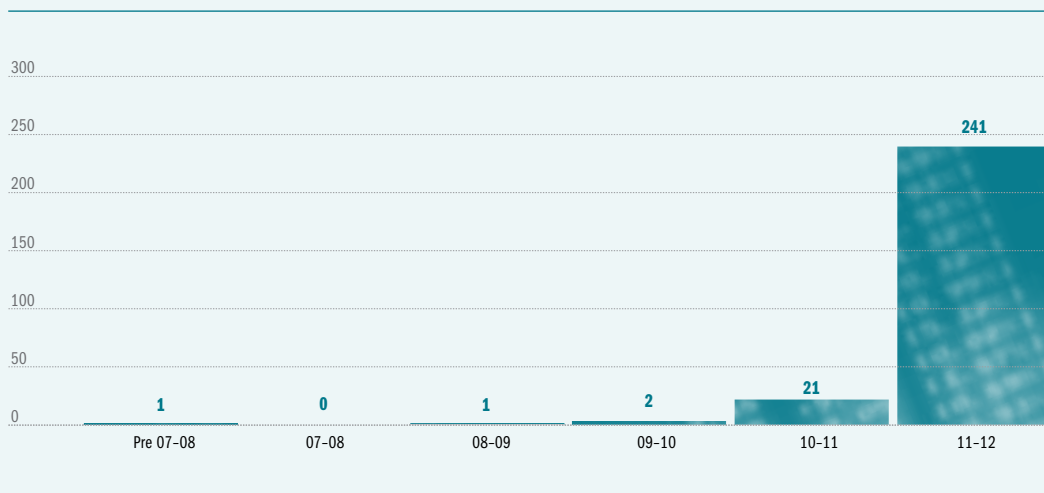


Figure 6.15.1 – Current Appeals and Related Actions by date filed



A total of 266 Appeals and Related Actions remain current as at 30 June 2012.

# APPENDIX 6

## WORKLOAD STATISTICS

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

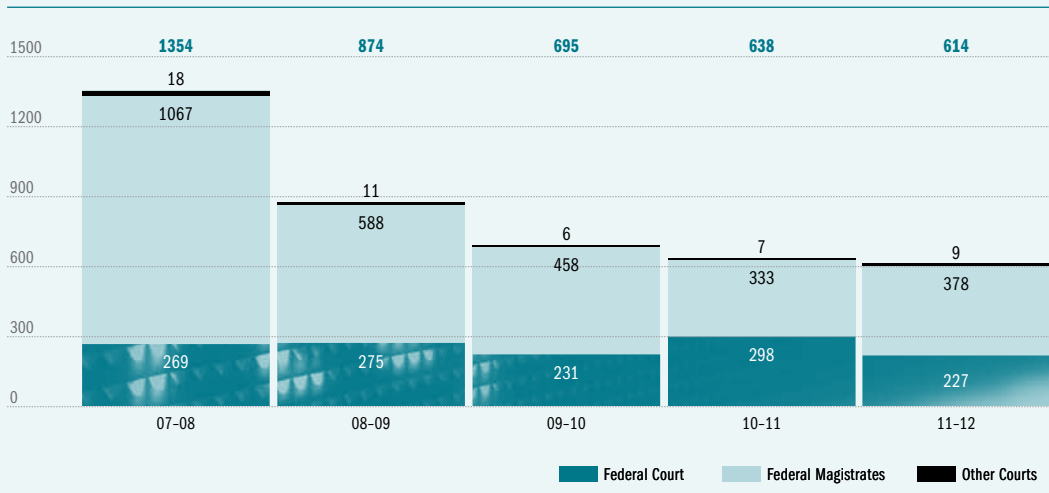


Table 6.6 – Appeals and Related Actions

SOURCE	2007-08		2008-09		2009-10		2010-11		2011-12	
Federal Court	269	19.9%	275	31.5%	231	33.2%	298	46.7%	227	37.0%
Federal Magistrates Court	1067	78.8%	588	67.3%	458	65.9%	333	52.2%	378	61.6%
Other Courts	18	1.3%	11	1.3%	6	0.9%	7	1.1%	9	1.5%
<b>Total by Period</b>	<b>1354</b>		<b>874</b>		<b>695</b>		<b>638</b>		<b>614</b>	

# APPENDIX 7

## WORK OF TRIBUNALS

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

### AUSTRALIAN COMPETITION TRIBUNAL

#### Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 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 set 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 s 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 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 2011–12 the following changes were made to the membership of the Tribunal:

- Justice John Mansfield was appointed acting part-time President for a three month term with effect from 5 July 2011 which was transmuted to a five year term with effect from 11 October 2011
- Justice Lindsay Foster was appointed a part-time Deputy President for a three month term from 8 October 2011 and 8 March 2012 which was then transmuted to a five year term with effect from 8 June 2012
- Dr Darryn Abraham and Professor Kevin Davis were each appointed for a five year term with effect from 17 August 2011 as part-time members.

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 119.

### Activities

Nine matters were current at the start of the reporting year. During the year, seven matters were commenced and fourteen matters were finalised, two 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 APT Allgas Energy Pty Ltd [2011] ACompT 11 (12 October 2011)

Application by Envestra Limited [2011] ACompT 12 (12 October 2011)

Application by Envestra Ltd (ABN 19 078 551 685) [2011] ACompT 13 (12 October 2011)

WA Gas Networks Pty Ltd (No 1) [2011] ACompT 14 (28 October 2011)

WA Gas Networks Pty Ltd (No 2) [2011] ACompT 15 (28 October 2011)

Alinta Sales Pty Ltd [2011] ACompT 16 (28 October 2011)

Application by United Energy Distribution Pty Limited [2012] ACompT 1 (6 January 2012)

Application by Envestra Ltd (No 2) [2012] ACompT 3 (11 January 2012)

Application by Envestra Limited (No 2) [2012] ACompT 4 (11 January 2012)

Application by APT Allgas Energy Limited (No 2) [2012] ACompT 5 (11 January 2012)

Application by DBNGP (WA) Transmission Pty Ltd [2012] ACompT 6 (15 March 2012)

Application by Co-Operative Bulk Handling Limited (No 2) [2012] ACompT 9 (20 March 2012)

Application by DBNGP (WA) Transmission Pty Ltd (No 2) [2012] ACompT 10 (5 April 2012)

Application by United Energy Distribution Pty Limited (No 2) [2012] ACompT 8 (5 April 2012)

Appeal by SPI Electricity Pty Ltd [2012] ACompT 11 (26 April 2012)

Application by Alinta Sales Pty Ltd (No 2) [2012] ACompT 13 (8 June 2012)

Application by WA Gas Networks (No 3) [2012] ACompT 12 (8 June 2012)

## 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 June 2012 the following change occurred to the membership:

- Justice Nye Perram was reappointed a Deputy President of the Tribunal for a three year term with effect from 8 June 2012.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 119.

### Activities

Four matters were current at the start of the reporting year. During the year no new matters were commenced. One matter was finalised in 2011–12, there are three matters pending.

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

### Decision of Interest

- *Audio-Visual Copyright Society Limited v Foxtel Management Pty Limited* [2012] ACopyT 1 (1 June 2012) CT 1 of 2010

# APPENDIX 7

## WORK OF 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: 30–31 August 2012, 27–28 September 2012, and 29–30 November 2012.

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 119.

#### Activities

One matter was current at the start of the reporting year. During the year, four matters were commenced and four matters were 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

### **CORPORATIONS – directors’ duties – financial reporting – directors required to approve accounts and reports, and to take all reasonable steps to ensure statutory compliance – Statutory duty of care and diligence**

*ASIC v Healey* [2011] FCA 717  
(27 June 2011, Justice Middleton)

This case concerned the liability of directors of a group of substantial, publicly-listed companies for approving company accounts which failed to disclose significant matters which were (or should have been) well-known to the directors. Specifically, those matters related to the existence of short-term liabilities (which were incorrectly classified as non-current liabilities) and guarantees given after the balance date in relation to these liabilities, both of which affected the assessment of the companies’ solvency and liquidity.

ASIC sought declarations (among other things) that the directors had contravened ss 180(1), 344(1) and 601FD(3) of the *Corporations Act 2001* (Cth) (the Act). The directors argued, however, that they were entitled to rely on the assurances and specialist advice provided by management and auditors regarding the accuracy of financial reports, and that this – coupled with the failure of those professionals to detect the errors in question – meant that they had not breached the Act.

Justice Middleton considered that directors have a non-delegable, primary responsibility for a company’s financial report and the directors’ report. As such, each director is required to take a diligent interest in and be able to understand financial statements, and to that extent, have a knowledge of conventional accounting practice and relevant accounting standards. Directors must inquire about any potential deficiencies they observe (or should reasonably have observed) in such documents. Under s 180, directors must also take reasonable steps to enable them to guide and monitor the management of a company (of which remaining informed about a company’s financial position forms part). Although directors are entitled to rely upon the advice of management and auditors when it comes to a company’s financial position, his Honour held that such reliance is not a substitute for directors’ own non-delegable responsibilities (such as the need to be diligent and careful in considering a resolution to approve financial statements).

His Honour was not persuaded that such requirements would cause the boardrooms of Australia to empty overnight. In the circumstances, his Honour found that the directors had failed to (a) properly read and understand the financial statements; (b) apply the knowledge they had (or should have acquired) to perform that task; (c) make appropriate inquiries; and (d) have apparent errors corrected. Accordingly, his Honour held that the directors had failed in their duties to exercise the degree of care and diligence required of them, and had therefore breached ss 180(1), 344(1) and 601FD(3) of the Act.

### **TAXATION – non-resident for income tax purposes – definition of ‘trustee’ – whether respondent entitled to assess non-resident individual as a trustee of the net income of a trust estate under s 98(3) of the *Income Tax Assessment Act 1936* (Cth)**

*Leighton v Commissioner of Taxation* [2011] FCAFC 96  
(10 August 2011, Justices Edmonds, Gilmour and Logan)

This case concerned assessments of income tax which the Commissioner of Taxation raised against a non-resident individual (the appellant) as trustee of a trust estate in respect of income which was alleged to be income of the trust estate and where the provisions of s 98(3) of the *Income Tax Assessment Act 1936* (Cth) were otherwise satisfied.

# APPENDIX 8

## SUMMARY OF DECISIONS OF INTEREST

The issue in the case was whether income arising from the purchase and sale of shares, being trading stock, by two non-resident companies, Salina Investments Limited (Salina) and Kolton Holdings Limited (Kolton), were income of a trust estate of which the appellant was a trustee because the proceeds of sale were received by the appellant on behalf of Salina and Kolton. At first instance the assessments had been upheld.

On appeal the Court held that it was Salina and Kolton that derived the income from the sale of the trading stock represented by the shares, without the intervention of anyone other than a broker as agent; the basis of their derivation being accruals, they derived that income irrespective of whether or not they or a third party, such as the appellant, received payment on their behalf.

In the course of their reasons, the Court referred to and applied a number of basal propositions in support of its conclusion that the assessments against the appellant could not be sustained. First, that once Salina and Kolton derived their income from share trading, the subsequent payment of the proceeds of sale was no more than the 'realisation of income already derived'. Second, if Salina and Kolton derived on an accruable basis and as ordinary income the gross proceeds of the sale of the shares in the course of conducting their respective share trading businesses, there could not be a further derivation by them of the same income as beneficiaries presently entitled to the income of a trust estate or a share of that income under Div 6 of Pt III of the Income Tax Assessment Act. Nor could the appellant derive that income as a 'trustee', for it would not be the net income of a trust estate.

For these reasons, the appeal was allowed.

### **EXTRADITION – legislation providing for staged process of determinations by different functionaries – ultimate decision by Minister whether person to be surrendered for extradition – whether Minister obliged to reconsider a circumstance previously determined – whether person was 'accused' of an offence in Requesting State or merely wanted for questioning or investigation – relevance to power to order surrender**

*O'Connor v Zentai* [2011] FCAFC 102  
(16 August 2011, Justices North, Besanko and Jessup)

This was an appeal from a judgment of a judge of the Court in which orders in the nature of certiorari and mandamus, and declarations, had been made with respect to a determination of the Minister for Home Affairs, as delegate of the Attorney-General, that Charles Zentai, whose extradition the Republic of Hungary had sought for what was said to be a war crime committed in 1944, be surrendered for extradition on that account. The effect of the primary judge's orders had been that the determination did not provide a legal basis for that extradition. In one respect, the Full Court, by majority, upheld his Honour's conclusion, but varied the orders made such that the question whether the facts allowed for Zentai to be surrendered to Hungary was required to be reconsidered by the Minister. Justices Besanko and Jessup took the view that, under the *Extradition Act 1988* (Cth) and the *Treaty on Extradition between Australia and the Republic of Hungary*, a person who was wanted for an offence in Hungary could be extradited only if that very offence was an offence in Hungary at the time when the facts which formed the basis of the allegation took place. Justice North took the view that it was sufficient if those facts would have given rise to the commission of an offence in Hungary at the time, even if not the very offence for which the person was wanted. As the Minister, in the determination which was challenged, had proceeded on a view of the law that was not that of the majority, the orders of the Full Court were such as required him to proceed again according to law.



The Full Court also held that the determination to be made by the Minister was the last in a sequence of decisions requiring to be made, and which in Zentai's case had previously been made, at various stages and under different provisions of the *Extradition Act 1988* (Cth). Thus it was no longer open to Zentai to challenge earlier decisions, specifically that he was 'accused' in Hungary and that he was an 'extraditable person' within the meaning of that Act. There were several other bases upon which the Minister's determination had been challenged, each of which was concerned with purely factual questions arising in connection with the detailed process by which the Minister came to make the decision which sustained his determination. None of those challenges was successful in the Full Court.

Special leave to the High Court was granted on 9 December 2011.

### **FREEDOM OF INFORMATION – legal professional privilege – whether impliedly waived – whether acts of disclosure are inconsistent with the maintenance of the privilege – legal advice referred to in Government Response – voluntary disclosure of summary in course of proceedings – advantage to person seeking to maintain the privilege or disadvantage to others which gives rise to possibility of inconsistency**

*British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing* [2011] FCAFC 107 (23 August 2011, Chief Justice Keane, Justices Downes and Besanko)

British American Tobacco Australia Ltd (BATA) made a request to the Secretary of the Department of Health and Ageing (the Secretary) for access to a copy of a memorandum of advice (the Advice) under s 15 of the *Freedom of Information Act 1982* (Cth) (the FOI Act). The Attorney-General's Department (AGD) had provided the Advice to the Tobacco Policy Section of the then Department of Human Services and Health (DHS). The Advice dealt with the legal and constitutional issues pertaining to the generic packaging of cigarettes.

The AGD refused the request on the basis that the document was exempt from production under s 42 of the FOI Act because it would be privileged in legal proceedings on the ground of legal professional privilege. The Administrative Appeals Tribunal (AAT) affirmed that decision.

BATA appealed the AAT's decision to the Court. It contended that the Secretary had waived the legal professional privilege that inhered in the Advice by five acts of disclosure. They were: a reference to aspects of the Advice in a Government Response paper that was tabled in the Senate; the subsequent publication of the Government Response paper on a government website; and the provision of a summary of the Advice to the Tobacco Working Group (TWG), to the Ministerial Tobacco Advisory Group (MTAG) and, in the course of the AAT proceedings, to BATA.

The Secretary contended on appeal that the tabling and publication of the Government Response paper were 'proceedings in Parliament' within s 16(3) of the *Parliamentary Privileges Act 1987* (Cth) (PPA). Accordingly, they attracted parliamentary privilege and could not be considered for the purpose of determining whether legal professional privilege in the advice had been waived. The Secretary relied on s 16(2)(c) of the PPA as indicating an extension in the reach of s 16(3) to encompass publication of the Government Response paper by the executive government.

The Secretary's contention formed the basis of the first issue to be considered by the Court. Chief Justice Keane and Justices Downes and Besanko held that, on its proper construction, s 16(3) protected the tabling of the Government Response in the Senate through parliamentary privilege. To escape the protection afforded by s 16(3), BATA would need to have shown that it sought to refer to the tabling of the Government Response in the Senate only to show that the words were published. The inescapable conclusion, however, was that BATA intended to use the tabling of the Government Response in the

# APPENDIX 8

## SUMMARY OF DECISIONS OF INTEREST

Senate to invite the inference that it revealed an inconsistency in the position of the Secretary in later seeking to maintain legal professional privilege. The Court reasoned that this inference is precisely the kind of reflection that s 16(3) of the PPA provides may not be made upon the conduct of those whose published statements are privileged.

The privilege did not extend, however, to the subsequent publication by the executive government of statements made in the Parliament or the publication of the Government Response paper on the website of the executive government. Contrary to the submissions of the Secretary, the Court held that s 16(2) (c) of the PPA was concerned with that which is incidental to the activities of the legislative arm of government. The publication of the statements and the Government Response paper by the executive government was, on the face of things, unrelated to the business of the legislative branch.

The second broad issue for consideration by the Court was whether the Secretary's acts of disclosure effected an implied waiver of the legal professional privilege attaching to the Advice. The Court held that it did not. Legal professional privilege will be impliedly waived if the conduct of the person seeking to rely upon the privilege is inconsistent with the maintenance of the privilege: *Mann v Carnell* (1999) 201 CLR 1. The Court held that the Secretary did not seek to deploy a partial disclosure of the AGD legal advice for forensic or any other advantage for itself, so as to make its conduct inconsistent with the maintenance of privilege.

The final issue that the Court considered was whether the Secretary had waived the legal professional privilege in the Advice through the provision of a summary of the Advice to the TWG, to the MTAG and, in the course of the AAT proceedings, to BATA. The Court held that the privilege had not been waived in respect of the provision of summaries to the TWG or the MTAG. The advisors comprised in these groups could not sensibly be seen as outsiders to the executive government.

With respect to the provision of summaries to BATA in the proceedings below, the Court held that privilege had not been waived for the same reasons given in relation to the publication of the Government Response paper on the website of the executive government.

### **NATIVE TITLE – determination by National Native Title Tribunal that mining leases may be granted subject to conditions – whether provisions allowing determination invalid as laws prohibiting free exercise of religion contrary to s 116 of Constitution – consideration of relevance of international treaty obligations to statutory interpretation**

*Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2011] FCAFC 100 (1 September 2011, Justices North, Mansfield and Gilmour)

This appeal concerned two future act determinations of the National Native Title Tribunal under s 38(1) of the *Native Title Act 1993* (Cth). The Tribunal determined that the State of Western Australia could grant certain mining leases over land in the Pilbara to FMG Pilbara Pty Ltd subject to the imposition of four conditions, which included protection for sites of sacred stones and ochre under the *Aboriginal Heritage Act 1972* (WA).

The appellants, being registered native title claimants in relation to the land in question, first claimed that the determinations were invalid because ss 38 and 39 prohibited the free exercise of their religion contrary to s 116 of *The Constitution*. Second, they claimed that those provisions should have been construed in accordance with Art 27 of the *International Covenant on Civil and Political Rights 1966* notwithstanding that there was no ambiguity.

Justice McKerracher rejected these contentions and upheld both determinations (*Cheedy on behalf of the Yindjibarndi People v State of Western Australia* [2010] FCA 690).

The first issue for consideration by the Full Court was whether s 116 of *The Constitution* operates to invalidate Commonwealth laws that have the indirect effect of prohibiting the free exercise of religion. The Full Court held that the primary judge was correct to answer this question in the negative. In reliance on *Kruger v Commonwealth* (1997) 190 CLR 1, the Full Court held the test for invalidity under s 116 of *The Constitution* is whether the Commonwealth law in question has the purpose, and not merely the effect, of prohibiting the free exercise of religion. There was nothing on the face of ss 38 and 39 that evidenced such a purpose. Their Honours noted that some of the mandatory considerations under s 39 (eg the freedom of the native title parties to carry out rites, ceremonies or other activities of cultural significance on the land) demonstrated that the legislature was concerned about protecting religious freedom. A further obstacle for the appellants was that the Tribunal had made a fact finding that the free exercise of the appellants' religion would not be prohibited by the grant of mining leases subject to conditions. Finally, the Full Court also agreed with Justice McKerracher that the appellants' complaint was essentially directed to determinations of the Tribunal and the resulting grant by the State of the mining leases under State legislation to which s 116 has no application.

The second issue for consideration was whether the primary judge erred by failing to hold that the Tribunal wrongly concluded that international instruments were not relevant to its inquiry because there was no ambiguity in ss 38 and 39. The Full Court considered *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 and held that in the absence of ambiguity, Australia's international treaty obligations were of no assistance to the construction of ss 38 and 39.

Other grounds of appeal were dismissed by the Full Court as disclosing no legal error.

## **HUMAN RIGHTS – Part IIA Racial Discrimination Act 1975 (Cth) – offensive conduct based on race – newspaper articles and on-line blog articles – principles for determining imputations conveyed by articles – conventional meaning of 'Aboriginal' – whether Part IIA of the Racial Discrimination Act restricted to conduct based on racial hatred – whether articles were reasonably likely to offend, insult, humiliate or intimidate – whose reaction is to be assessed – relevance of community standards – 'in all the circumstances' – 'reasonably likely' – 'offend, insult, humiliate or intimidate'**

*Eatock v Bolt* [2011] FCA 1103  
(28 September 2011, Justice Bromberg)

This proceeding raised for consideration Part IIA of the *Racial Discrimination Act 1975* (Cth) (the RDA), including questions as to the balance sought to be struck by Part IIA between justifiable freedom of expression and the right to freedom from racial prejudice and intolerance.

The applicant (Eatock) complained that two newspaper articles written by a well-known journalist Andrew Bolt (Bolt), and published in the Herald Sun by the Herald and Weekly Times (HWT), conveyed racially offensive messages about fair-skinned Aboriginal people. In a class action brought on her own behalf and on behalf of a class identified as people who have a fairer, rather than darker skin, and who by a combination of descent, self-identification and communal recognition are, and are recognised as, Aboriginal persons, Eatock claimed that Bolt's articles contravened s 18C(1) of the RDA, which relevantly provided:

- (1) *It is unlawful for a person to do an act, otherwise than in private, if:*
- (a) *the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of people; and*
  - (b) *the act is done because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.*

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## SUMMARY OF DECISIONS OF INTEREST

Bolt and the HWT denied that the elements of s 18C had been established and claimed that in any event, their conduct was exempted by s 18D of the RDA, which relevantly provided that:

Section 18C does not render unlawful anything said or done reasonably and in good faith:

...

(b) *in the course of any statement [or] publication...made...for any genuine... purpose in the public interest; or*

(c) *in making or publishing:*

...

(ii) *a fair comment on any event or matter of public interest...*

Justice Bromberg determined that each of the elements required by s 18C was established and that the conduct of Bolt and HWT was not exempted from unlawfulness by s 18D. His Honour was therefore satisfied that each of Bolt and HWT had contravened s 18C of the RDA by reason of the writing and publication of the articles. As well as making a declaration of contravention, Justice Bromberg made orders which prohibited the re-publication of the articles and required HWT to publish corrective notices in the newspaper in which the articles had appeared.

In the course of his judgment and in construing s 18C of the RDA, Justice Bromberg held that:

- (i) section 18C was not restricted to extreme racist behaviour based upon racial hatred or behaviour calculated to induce racial violence;
- (ii) whether conduct is reasonably likely to offend a group of people, is to be analysed from the point of view of the 'ordinary' or 'reasonable' representative of that group, to whom will be attributed characteristics consistent with what might be expected of a member of a free and tolerant society;
- (iii) the phrase 'reasonably likely' in s 18C(1)(a) refers to a chance of an event occurring or not occurring which is real, and not fanciful or remote; and
- (iv) the phrase 'offend, insult, humiliate or intimidate' in s 18C(1)(a) does not extend to personal hurt which is unaccompanied by a public mischief of a kind that the RDA seeks to avoid and refers to conduct that has profound and serious effects.

Justice Bromberg held that Australian Aboriginal people are a race and have a common ethnic origin within the meaning of s 18C(1)(b) and that a person of mixed heritage but with some Aboriginal descent, who identifies as an Aboriginal person and has communal recognition as such, satisfies what is conventionally understood to be an Australian Aboriginal.

His Honour held that from the perspective of fair-skinned Aboriginal people, the articles contained imputations that:

- there are fair-skinned people in Australia with essentially European ancestry but with some Aboriginal descent, of which the individuals identified in the articles are examples, who are not genuinely Aboriginal persons but who, motivated by career opportunities available to Aboriginal people or by political activism, have chosen to falsely identify as Aboriginal; and
- fair skin colour indicates a person who is not sufficiently Aboriginal to be genuinely identifying as an Aboriginal person.

Justice Bromberg was satisfied that fair-skinned Aboriginal people (or some of them) were reasonably likely, in all the circumstances, to have been offended, insulted, humiliated or intimidated by the imputations conveyed by the articles. Further, Justice Bromberg was satisfied that the causal nexus required by s 18C was satisfied because the articles were calculated to convey a message about the race, ethnicity or colour of fair-skinned Aboriginal people, including as to whether those people were sufficiently of Aboriginal race, colour or ethnicity to be identifying as Aboriginal people.

In relation to the construction of s 18D of the RDA, Justice Bromberg held:

- (i) the onus of proof under s 18D falls on a respondent; and
- (ii) that an assessment of whether conduct is done 'reasonably and in good faith' within the meaning of s 18D, involves a consideration of both objective and subjective good faith. Objective good faith will be assessed by reference to the values underlying Part IIA.

Justice Bromberg concluded that the articles were not written 'reasonably and in good faith', as required by s 18D of the RDA. The inclusion of untruthful facts, the use of inflammatory and provocative language and the failure to minimise the potential harm to those likely to be offended denied to Bolt and the HWT, both the 'fair comment' exemption provided by s 18D(c)(ii) and the genuine purpose exemption provided by s 18D(b) of the RDA.

## **TORTS – negligence – product liability – prescription medicine for relief of inflammation – side-effects – whether medicine caused or contributed to cardiovascular disease – content of duty of care – state of scientific uncertainty as to side-effects of medicine – state of scientific uncertainty as to plausibility of scientific hypothesis**

*Merck Sharp & Dohme (Australia) Pty Ltd v Peterson* [2011] FCAFC 128  
(12 October 2011, Chief Justice Keane, Justices Bennett and Gordon)

The respondent suffered a heart attack while being treated for arthritis with the prescription medicine Vioxx. The appellant subsequently withdrew Vioxx from the market in light of findings from a trial which suggested that there was an increased risk of cardiovascular disease among Vioxx users. The respondent brought proceedings against the appellant alleging that his consumption of Vioxx contributed to his heart attack and that the appellant knew or ought to have known that the consumption of Vioxx increased the risk of heart attack and had been negligent in failing to warn him of that risk. The respondent also alleged that Vioxx was not reasonably fit for purpose, not of merchantable quality and was a defective product within the meaning of ss 74B, 74D and 75AD of the *Trade Practices Act 1974* (Cth) (the Act) respectively.

The primary judge found that the consumption of Vioxx made a material contribution to the occurrence of, and therefore caused, the respondent's heart attack and also upheld the respondent's claims under ss 74B and 74D of the Act. The appellant appealed against the findings on the issues of causation and contravention of ss 74B and 74D of the Act.

The Full Court of the Federal Court allowed the appeal, holding that an increased risk of harm by a tortious act is, alone, insufficient to found a conclusion of causation by material contribution to that harm. For the respondent to establish that Vioxx materially contributed to his heart attack he would need to show that his consumption of Vioxx was a necessary condition for the occurrence of the heart attack. The respondent was at risk of suffering a heart attack quite independently of his consumption of Vioxx. In light of this, the conclusion that Mr Peterson would not have had his heart attack but for the consumption of Vioxx was 'a matter of conjecture rather than reasonable inference on the balance of probabilities'.

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Relief under ss 74B and 74D of the Act was not available in the absence of a finding that the respondent's heart attack would not have occurred but for the consumption of Vioxx. The proposition that Vioxx increased the risk of cardiovascular disease is relevant for the purposes of s 74B only if it is also established that the purpose for which the respondent acquired Vioxx and which he expressly or impliedly made known to the appellant included some quality of absolute safety or complete absence of adverse side-effects. This was not the case.

Special leave to appeal to the High Court was refused with costs on 11 May 2012.

### **ADMIRALTY – seafarer's wages – obligation of shipowner to pay seafarer's wages before or at the time of discharge under s 75 of the Navigation Act 1912 (Cth) – whether shipowner had defence based on a reasonable dispute as to its liability for wages within the meaning of s 78 of the Navigation Act 1912 (Cth)**

*Visscher v Teekay Shipping (Australia) Pty Ltd* [2011] FCAFC 137  
(4 November 2011, Justices Greenwood, Rares and Foster)

This appeal concerned a claim by a ship's officer, Timothy Visscher, for unpaid wages against the shipowner-employer, Teekay Shipping Australia Pty Ltd (Teekay). Mr Visscher claimed that on 3 March 2004 the master of *MV Broadwater* signed his discharge from the ship on completion of a voyage from Thailand to Sydney. Mr Visscher contended that Teekay failed to pay him the whole of his wages and accrued leave on his discharge. He asserted that, as a result, sections 75 and 78 of the *Navigation Act 1912* (Cth) gave him the right to be paid at double rates until Teekay paid him in full.

Teekay had employed Mr Visscher in March 2001 as a third officer to sail on its ships. In August 2001, Teekay offered Mr Visscher a promotion to chief officer, which he accepted. However, in late September 2001 Teekay wrote to Mr Visscher and purported to rescind his promotion, which he did not accept. However, Teekay subsequently continued to engage and pay Mr Visscher as a chief officer.

As *Broadwater* sailed to Sydney in late February 2004, Teekay wrote to Mr Visscher informing him that on his next voyage he would sail as second officer. He wrote to Teekay and told the master that he treated this letter as a constructive dismissal. He claimed that *Broadwater's* master agreed to give Mr Visscher his discharge when he left the ship in Sydney. On 3 March 2004, Mr Visscher and the master signed his discharge. On 8 March 2004, Mr Visscher began proceedings against Teekay for wrongful dismissal in the Australian Industrial Relations Commission and told Teekay that he had accepted a new posting with a different employer. Teekay began negotiating with Mr Visscher in late March 2004 and they agreed that he would sail on *Broadwater* as chief officer on her next voyage commencing on 8 April 2004. At the conclusion of that voyage he again asked for his discharge.

The primary judge summarily dismissed Mr Visscher's claim for double wages. Her Honour found that he had no reasonable prospect of negating Teekay's defence under s 78 of the Act that there was a reasonable dispute as to his entitlement to be paid his wages after his discharge from *Broadwater* on 3 March 2004. Her Honour considered that the subsequent events showed that a reasonable dispute existed.

The Full Court allowed the appeal. It held that the master had agreed to discharge Mr Visscher at Sydney on 3 March 2004 on the basis that he had accepted his constructive dismissal. The Court held that because the master and Mr Visscher signed his discharge, s 75(1) of the *Navigation Act* required Teekay to pay him his wages and entitlements due up to 3 March 2004. It found that Teekay had not proved that there was any reasonable dispute that Mr Visscher was not entitled to be paid up to 3 March 2004 as he claimed. The Full Court held that the events after 3 March 2004 were evidence of a different dispute,

namely a dispute about the terms on which Mr Visscher might continue to be employed. Accordingly, his claim should not have been dismissed summarily and ought to go to trial.

**APPEAL – appeal from decision to grant interlocutory injunctions – leave to appeal required – injunction has effect of finally determining the main matter at issue – PATENTS – claim of infringement of two patents – assertion of invalidity of one of those patents – interlocutory injunctive relief sought – whether strength of the infringement case and the balance of convenience and justice sufficient to sustain the grant of interlocutory injunction – fast-moving product – injunction likely to determine the fate of the product**

*Samsung Electronics Co Limited v Apple Inc* [2011] FCAFC 156  
(30 November 2011, Justices Dowsett, Foster and Yates)

The case involved Apple Inc. and its subsidiary, Apple Pty Limited (Apple), bringing an action in the Federal Court of Australia against Samsung Electronics Co. Limited and its subsidiary, Samsung Electronics Australia Pty Limited (Samsung). The question for determination was whether Samsung had infringed certain patents held by Apple, with the proposed release of the Galaxy Tab 10.1. At issue were three claims in two of Apple's patents. Apple sought an interlocutory injunction, restraining Samsung from releasing the Galaxy Tab until after the Court had determined the claim.

At first instance, the primary judge determined that Apple had established a prima facie case that Samsung had infringed certain claims in the two patents. She also held that Samsung had established a prima facie case of invalidity in respect of one of the patents. The primary judge held that, if the Galaxy Tab were released, significant harm would be caused to Apple. Her Honour observed that, in the circumstances, damages would be an inadequate remedy. Having taken account of a number of factors, her Honour concluded that the balance of convenience fell slightly in Apple's favour. Therefore, her Honour restrained the launch of the Galaxy Tab and granted an interlocutory injunction.

The decision of the primary judge was interlocutory, concerned a matter of practice and procedure and involved the exercise of a discretion. It did, however, have a significant impact upon the business of Samsung and on the future prospects of the Galaxy Tab.

On appeal, Samsung contended that substantial injustice had been visited upon Samsung by the grant of interim relief.

The Full Court said that it is well established that the relevant test (or 'litmus test') for whether leave to appeal from an interlocutory judgment will be granted comprises two integers. Firstly, whether, in all the circumstances of the case, the decision is attended by sufficient doubt to warrant its being reconsidered by the Full Court and, secondly, whether substantial injustice would result if leave were refused supposing the decision to be wrong. Applying that test, their Honours unanimously agreed to grant leave to Samsung to appeal from the orders made by the primary judge.

The Full Court then turned to consider the appeal. The Full Court doubted that Apple had established a prima facie case in respect of any of the alleged infringements of Apple's patents. Furthermore, the Full Court held that, in the circumstances of the present case, it was necessary for the Court to assess the strength of Apple's case for infringement and then to weigh that assessment in the balance when considering the balance of convenience and justice. The Full Court decided that the primary judge had failed to do this and had thereby erred. The Full Court exercised the discretion for itself and concluded that the balance of convenience and justice required the discharge of the primary judge's interlocutory orders. The appeal was therefore allowed. The injunctions which her Honour granted were discharged.

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Samsung was permitted to launch the Galaxy Tab 10.1 in Australia provided that it kept a detailed account of all transactions involving sales of that device in Australia or originating from Australia.

Apple's application for special leave to appeal to the High Court was refused on the ground that the High Court saw insufficient prospects of success on the part of Apple demonstrating error by the Full Court and also on the ground that the Full Court's detailed consideration of the strength of Apple's case weighed against a grant of special leave.

### **HUMAN RIGHTS – discrimination – direct disability discrimination – identification of service – refusal of service – whether provision of service would impose unjustifiable hardship**

*King v Jetstar Airways Pty Ltd (No 2)* [2012] FCA 8  
(13 January 2012, Justice Robertson)

The principal issue in this case was whether Jetstar Airways Pty Ltd (Jetstar) unlawfully discriminated against Mrs King under s 24 of the *Disability Discrimination Act 1992* (Cth), as it was in force in 2008, on the ground of her disability because Jetstar imposed a limit of two passengers requiring wheelchair assistance on its flights using the A320 aircraft.

Mrs King had a physical disability and required a wheelchair to aid her mobility. In August 2008 she booked to travel from Adelaide to Brisbane on Jetstar flight JQ 769 departing on 23 September 2008 for \$132 without then stating she needed wheelchair assistance. When she telephoned Jetstar to confirm her arrangements she was told that she could not travel on that flight because two other passengers requiring wheelchair assistance had already booked on the same flight and the limit for such passengers had been reached.

Mrs King applied to the Federal Court under s 46PO of the *Australian Human Rights Commission Act 1986* (Cth) seeking declarations in respect of unlawful discrimination, and seeking an order that Jetstar cease enforcing its policy limiting the number of passengers who required wheelchair assistance to two passengers per flight.

The Court held that the service was flight JQ 769 and that the ground on which Jetstar refused to provide the service to Mrs King for the purposes of s 24 of the Act was her disability.

However, the statutory defence of unjustifiable hardship was made out on the facts, so that s 24 of the Act did not render it unlawful for Jetstar to discriminate against Mrs King on the ground of her disability. Unjustifiable hardship was established by reason of the time taken to provide the assistance to wheelchair passengers to board A320 planes, the 30 minute turnaround time for flights on Jetstar as a low cost carrier and the consequent impact on Jetstar's scheduling, when assessed against the benefits likely to accrue if Jetstar had been required to provide assistance to wheelchair passengers boarding and disembarking from an A320 flight with no limit on the number of passengers requiring such assistance.



**INDUSTRIAL LAW – employment law – prohibited conduct – sham contracting – compensation – breaches of the *Workplace Relations Act 1996* (Cth) and of an industrial instrument by a company – accessory liability of a company director – liability of company for acts of an employee under s 826(1) of the *Workplace Relations Act 1996* (Cth) – dismissal of casuals employed on a regular and systemic basis – meaning of ‘representation’ in s 900(1) of the *Workplace Relations Act 1996* (Cth)**

*Fair Work Ombudsman v Maclean Bay Pty Ltd* [2012] FCA 10  
(16 January 2012, Justice Marshall)

In this proceeding, the Fair Work Ombudsman (FWO) claimed that Maclean Bay Pty Ltd (Maclean Bay), a company which operates a holiday resort at Bicheno on the east coast of Tasmania, contravened various provisions of the *Workplace Relations Act 1996* (Cth) and of an industrial instrument made under that Act.

The FWO also claimed that Mrs Wells, a director of Maclean Bay, was personally liable as a person involved in certain of Maclean Bay’s contraventions.

The conduct in question took place prior to the Fair Work Act commencing on 1 July 2009 and so the *Workplace Relations Act 1996* (Cth) (WR Act) applied, by virtue of the *Fair Work (Transitional and Consequential Amendments) Act 2009* (Cth).

The contraventions alleged against Maclean Bay concerned breaches of provisions of the Workplace Relations Act dealing with sham contracting arrangements, dismissal of an employee for a prohibited reason and award breaches by failure to make monthly superannuation contributions on behalf of employees and failure to pay employees an amount in respect of their unused leave upon termination.

Sham contracting is defined in s 902 of the Workplace Relations Act as conduct where an employer dismisses or threatens to dismiss an employee where the sole or dominant purpose in so doing is to engage the individual as an independent contractor to perform the same work, or substantially the same work under a contract for services.

The allegations against Mrs Wells concerned breaches of the Act as a ‘person involved in’ Maclean Bay’s contraventions.

Justice Marshall found that all of the FWO’s allegations were established on the balance of probabilities. For his Honour, the unexplained failure to call Mrs Wells, who played a ‘pivotal role in the actions of Maclean Bay’, to give evidence at the trial added to an already ‘strong’ case of contravention.

His Honour rejected the proposition put forward for Maclean Bay, that dismissal of a casual employee cannot attract liability under the WR Act, holding instead that liability can arise where there is an ‘ongoing relationship of regular and systematic employment’.

In light of his findings in respect of the contraventions, the judge ordered Maclean Bay to pay compensation to its dismissed employees. In a later judgment delivered on 31 May 2012, the Court ordered further pecuniary penalties to be paid to reflect the gravity of the findings.

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### **TAXATION – liability to tax in relation to a petroleum project – taxable profit being the excess of assessable receipts over deductible expenditure incurred in the petroleum project – deductible expenditure – general project expenditure**

*Esso Australia Resources Pty Ltd v Commissioner of Taxation* [2012] FCAFC 5  
(20 February 2012, Chief Justice Keane, Justices Edmonds and Perram)

This case involved a joint venture in a petroleum project for exploring, treating and selling petroleum and natural gas (the Project). Esso Australia Resources (EAR), the taxpayer, was the manager of the Project and party to a service agreement with Esso Australia Ltd (EAL).

Under the service agreement, EAL was to provide all technical, operational, financial, accounting, advisory and related services that EAR required from time to time for its exploration, producing and marketing operations in both Australia and the Continental Shelf. EAL was also to make available to EAR trained personnel, equipment and facilities. In return for these services, EAR was to pay for EAL's direct costs, a share of EAL's overhead costs, proportionate to the services that EAL performed for EAR under the service agreement, and a fee of 7.5 per cent of EAL's overhead costs.

To assist in the carrying on of its business, EAR paid a mutualised research charge (MRC) to Exxon Mobile Upstream Research Company (URC) in return for the right to use intellectual property and research by URC.

For the relevant years of income, EAR claimed as deductible expenditure (in respect of its taxable profit for the Project) amounts attributed to its liability to EAL under the service agreement and the MRC.

EAR's claims were allowed in part by the Commissioner of Taxation (Commissioner) but were rejected to the extent that the Commissioner was not satisfied that they were payments of liabilities incurred by EAL in carrying on the operations comprising the Project. The Commissioner disallowed EAR's objections and it appealed to the Court.

The primary judge upheld EAR's appeal in relation to the service agreement issue and resolved the MRC issue in favour of the Commissioner. EAR appealed to the Full Court in relation to the MRC issue and the Commissioner brought a cross appeal in relation to the service agreement issue.

The first issue for the Full Court's consideration was whether the fees payable by EAR to EAL under the service agreement were deductible under s 41 of the *Petroleum Resource Rent Tax Assessment Act 1987* (Cth) (the Act). Chief Justice Keane and Justice Edmonds (Justice Perram agreeing) held that these payments were not deductible because s 41 did not permit a deduction for excluded expenditure or for payments which include excluded expenditure in respect of activities deemed to have been carried on by EAR.

'[E]xcluded expenditure' as defined in s 44 of the Act included, among other things, payments of administrative or accounting costs, wages, salary or other work costs, incurred indirectly in carrying on or providing operations, facilities or other things of a kind referred to in ss 37, 38 and 39 of the Act.

Chief Justice Keane and Justice Edmonds reasoned that the deeming effect of s 41 is that an eligible person is in the same position to claim deductions from assessable receipts in relation to a Project as the person who actually carried on the activities comprising the Project. Therefore, where an eligible person incurs a liability to procure the provision of operations, facilities or things by another person, s 41(a) and (b) makes the eligible person liable to pay for the operations, facilities and things, including liabilities for operations, facilities or things which are excluded expenditure.

Justice Perram also held that deductions cannot be claimed under s 41 in respect of excluded expenditure whether or not the expenditure is incurred by the person carrying on the activities comprising the Project or passed on through a service company (an eligible person).

The second issue for the Full Court's consideration was whether the MRC was deductible. Chief Justice Keane and Justice Edmonds (Justice Perram agreeing) held that the MRC was not deductible because the work conducted by URC, in respect of which EAR paid the MRC, was not conducted in carrying on the activities comprised in the project. Although the work of the URC enured for the benefit of the Project, it could not be said that the URC was incurred to carry on operations, facilities or things comprising the project.

### **WORKERS' COMPENSATION – 'injury' – definition – exclusionary provision – administrative action in respect of employee's employment – whether Administrative Appeals Tribunal erred in construction of exclusionary provision – whether any of causes capable of falling within exclusionary provision**

*Commonwealth Bank of Australia v Reeve* [2012] FCAFC 21  
(8 March 2012, Justices Gray, Rares and Tracey)

This appeal concerned a claim for compensation for a depressive illness that the respondent developed while working as manager of a Perth branch of the Commonwealth Bank of Australia.

The Administrative Appeals Tribunal found that a number of circumstances contributed to the respondent's depression, including staffing changes affecting his branch in June 2008, and a number of events on the day of 18 July 2008. These included a telephone conference with fellow managers and his area manager in which the respondent had to report poor results to colleagues and felt humiliated, an unsupportive visit from his area manager, his receipt of poor customer service results for the branch, and the anxiety he felt about reporting these results to his colleagues at an upcoming teleconference. On the morning of 21 July 2008, the respondent attempted suicide at work but he was not successful and sought medical advice. A psychologist found that he had suffered the onset of a major depressive disorder. The respondent subsequently made a claim against the Bank for compensation.

Under s 14(1) of the *Safety, Rehabilitation and Compensation Act 1988* (Cth), an employee can claim compensation for an 'injury' suffered at work. The definition of 'injury' in s 5A(1) of the Act creates an exclusion for diseases suffered by an employee as a result of reasonable administrative action taken in respect of their employment. The purpose of the exclusion was to limit the situations in which employers would be liable to pay their employees compensation.

On 2 October 2008 the Bank accepted that it was liable to pay the respondent compensation in respect of the depression he suffered, but subsequently reversed its decision after an internal review. The respondent then applied to the Tribunal to review the Bank's decision. On 12 November 2010, the Tribunal found that the Bank was liable to pay compensation. The Bank appealed against the Tribunal's decision and the proceedings were heard by a Full Court.

The Bank asserted that it was not liable to pay the respondent's compensation because the actions that contributed to his depression, such as the staffing changes and use of teleconferences, were 'administrative action' and so excluded the Bank from being liable.

The Full Court found that the Tribunal had interpreted the s 5A exclusion too narrowly when it limited its scope to 'legitimate human resource management actions'. The Full Court held that the exclusion applies to specific action taken in respect of an individual's employment, such as disciplinary action, as opposed to action forming part of the everyday tasks and duties of that employment. Thus, the ordinary work routine, changes to routine and directions to perform work were not 'reasonable administrative action taken in respect of the employee's employment'. The Full Court found, instead that those matters were part of the employment or ordinary work of the employee, not 'administrative action'. Applying this

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reasoning to the facts of the case, the Court held the Tribunal's error would not have affected the result it came to, so the decision in respect of the respondent's claim to compensation should stand.

### **NATIVE TITLE – extinguishment – right to take marine resources for commercial purposes – 130 years of legislation controlling commercial fishing – whether simply regulatory in character or prohibitory – rights and interests – reciprocity based rights founded on a relationship to a person – whether content of rights include a right or interest 'in relation to land or waters': s 223(1) Native Title Act 1993 – extent of determination area – criteria for determining 'boundaries' of several marine estates – whether gaps between, or unused areas – 'connection' to waters**

*Commonwealth of Australia v Akiba on behalf of the Torres Strait Islanders of the Regional Seas Claim Group* [2012] FCAFC 25  
(14 March 2012, Chief Justice Keane, Justices Mansfield and Dowsett)

The Torres Strait Regional Seas Claim was filed on 23 November 2001. The original application was made on behalf of the Torres Strait Regional Seas Claim Group (the Seas Claim Group), who are descendants of a number of identified Torres Strait Islanders. The original application sought a determination of native title rights and interests in a large part of the sea area of the Torres Strait. The Seas Claim Group contended that their native title rights included the taking of fish and other marine resources for sale or trade and that this right had not been extinguished by legislation of the State of Queensland or the Commonwealth of Australia. The primary judge accepted this contention, holding that the Seas Claim Group members enjoyed a non-exclusive right '...to access, to remain in and to use their own marine territories or territories shared with another, or other communities...[and] to access resources and to take for any purpose resources in those territories'.

The Commonwealth of Australia, the State of Queensland and a number of persons described as The Commercial Fishing Parties, appealed against the decision of the primary judge, contending that any native title right to fish for trade or exchange (commercial purposes) had long ago been extinguished by controls placed upon commercial fishing in the Torres Strait by State and Commonwealth legislation. This was the primary question for the Full Court; however, the Full Court also considered the geographic boundaries to the area of sea in which any native title rights and interests subsist and the nature and extent of subsisting native title rights and interests.

The Full Court was divided over the answer to this primary question. The majority (Chief Justice Keane and Justice Dowsett) held that the native title right to fish commercially had been extinguished by State and Commonwealth legislation which prohibited commercial fishing without a licence. The majority held that:

'His Honour's conclusion that the licensing regimes did not extinguish native title because they were merely regulatory of fishing rights sits uneasily with the orthodox approach to the issue of extinguishment whereby one looks to see whether the activity which constitutes the relevant incident of native title is consistent with competent legislation relating to that activity. While it may be correct to describe the licensing regimes as concerned, in a general way, to regulate fishing, it is necessary to observe that these regulatory schemes operate by way of a prohibition on unlicensed fishing for commercial purposes. That prohibition is not deprived of its plain effect because it is an element of a regime which can be described generally as regulatory of fishing.'

His Honour Justice Mansfield, in dissent, upheld the approach taken by the primary judge.

At the time of writing the Seas Claim Group has applied for special leave to appeal the matter to the High Court.

**TRADE PRACTICES – contravention of s 51AD – ‘involved in’ under s 75B – ‘involved in’ requires knowledge of essential elements of a contravention not knowledge of contravention – essential elements of contravention of s 51AD by reason of failure to comply with Franchising Code of Conduct – knowledge must be actual not constructive**

*Rafferty v Madgwicks* [2012] FCAFC 37  
(20 March 2012, Justices Kenny, Stone and Logan)

Mr Rafferty (and his two associated companies) (the Rafferty parties) entered into a business venture with Mr Donovan (and his three associated companies) (the Donovan parties) to sell accommodation units, having been told by Mr Donovan that prototypes were under construction and that significant investors were interested. The business venture was established by a Heads of Agreement, a Joint Venture and Shareholders’ Agreement and a Rights Agreement (the agreements) which were drafted by Mr Donovan’s solicitors, Madgwicks. A separate company, Time 2000 West Pty Ltd (T2W) was incorporated as the vehicle for the business. Under the agreements the Donovan parties agreed to supply the intellectual property to T2W and would retain a significant degree of control over the business. The Rafferty parties agreed to market and sell the units through T2W and to pay \$1.7 million into the business. When the Rafferty parties found out that the prototype and investor representations were false, the venture ended and the Rafferty parties brought claims against the Donovan parties and Madgwicks in the Federal Court.

On appeal, a significant question was whether the business venture involved a franchise. Justices Kenny, Stone and Logan held that it did and that the Donovan parties had accordingly contravened s 51AD of the *Trade Practices Act 1974* (Cth) (TPA) by failing to comply with an industry code (the Franchising Code of Conduct) in dealing with the Rafferty parties. Their Honours also held that the Donovan parties had, by their false representations, engaged in misleading or deceptive conduct, and that Mr Donovan was a person ‘involved in’ these contraventions under s 75B of the TPA. An order under s 87 of the TPA that the \$1.7 million be repaid by the Donovan parties jointly and severally was upheld as even though the moneys had been paid to Mr Donovan’s companies and not Mr Donovan, Mr Donovan was the sole natural person standing behind, controlling and acting for those companies.

Their Honours also held that Madgwicks had not, by failing to advise the Rafferty parties that the agreements might involve a franchise, engaged in misleading or deceptive conduct in breach of s 9 of the *Fair Trading Act 1999* (Vic), because, as Mr Donovan’s solicitors, they had no duty to advise Mr Rafferty. Nor were Madgwicks ‘involved in’ the s 51AD contraventions under s 75B of the TPA as they lacked actual knowledge that the agreements were franchise agreements.

**TRADE PRACTICES – misleading and deceptive conduct – on-line advertising – where advertisers sought to promote their goods or services by means of sponsored links on search results pages – significance of ‘keyword insertion’ when used to generate headline which replicated terms of search query – where headline of sponsored link replicated third party’s business name, trade mark or website address – whether advertiser made representations of association or affiliation – whether advertiser represented that information regarding a competitor could be found by selecting the advertiser’s web address**

*Australian Competition and Consumer Commission v Google Inc* [2012] FCAFC 49  
(3 April 2012, Chief Justice Keane, Justices Jacobson and Lander)

The respondent, Google, operates an Internet search engine which provides results in response to a user’s search. The results include ‘sponsored links’ which are a type of advertisement generated in

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response to a search, displayed separately from the organic search results and designed to link to the advertiser's website. In a number of cases, the advertiser's website address was provided in response to a user search for a competitor of the advertiser. For example, a search using the term 'Harvey World Travel' displayed the web address of STA Travel, one of Harvey World Travel's competitors.

The appellant brought proceedings against Google alleging a contravention of s 52 of the *Trade Practices Act 1974* (Cth) (the Act) which prohibits a corporation from engaging in conduct that is misleading or deceptive or likely to mislead or deceive in the course of trade or commerce. The appellant contended that Google falsely represented that there was a commercial association or affiliation between the advertiser and the competitors. The primary judge found that there was misleading or deceptive conduct; but it was the advertiser, rather than Google, that had engaged in the relevant conduct. The appellant appealed against this decision.

The Full Court concluded that it was Google that was displaying the sponsored link in response to the search, rather than merely the advertiser. Hence, Google actively engaged in the misleading and deceptive conduct. It was significant that the user makes a request and that Google provides a response in accordance with Google's AdWords program which was designed for this purpose.

Google also sought to rely on s 85(3) of the Act which provided a defence for publishers who merely publish or arrange advertisements and do not know or have no reason to suspect that an advertisement contravenes a provision. Again, it was relevant that Google took a more active role than merely publishing advertisements. Rather, the AdWords program was designed to interact with users and to target advertisements to specific searches. Furthermore, Google employees made recommendations to advertisers on how to get the best use out of the AdWords program. There was evidence that this included utilising the names of competitors.

Special leave for appeal to the High Court was granted for this decision on 22 June 2012.

**EXTRADITION – applicant committed to custody – application for bail pending review of Magistrate's order pursuant to s 21(6)(f)(iv) Extradition Act 1988 (Cth) – principles in *United Mexican States v Cabal* (2001) 209 CLR 165 – strong family, business and investment connections with Australia – cooperation with US authorities – previous compliance with bail conditions – four year delay between presentation of indictment and commencement of extradition proceedings – substantial surety offered – whether special circumstances – whether risk of flight – whether strong prospects of success of review of Magistrate's decision**

*Taylor v United States of America* [2012] FCA 366  
(10 April 2012, Justice Collier)

A Queensland Magistrate determined that Mr Taylor was eligible for surrender to the United States of America and committed him to prison under s 19(9) of the *Extradition Act 1988* (Cth). Mr Taylor sought interlocutory relief being his release on bail pursuant to s 21(6)(f)(iv) of the Extradition Act, pending the hearing of his application for review of the Magistrate's decision.

The United States sought Mr Taylor's extradition in relation to criminal offences alleged to have been committed in 2001–02 for which Mr Taylor was indicted by a grand jury in Colorado on 7 February 2007. The allegations related to Mr Taylor's involvement in a scheme designed to defraud issuers of residential home loans, and amounted to, in summary, allegations of bank fraud, wire fraud and money laundering, offences with associated penalties including prison terms of up to 30 years and fines of up to \$1 million.

Mr Taylor submitted that there were 'special circumstances' to justify his release on bail, including his significant business interests in Australia that relied on his presence in the community; his close knit family with strong Australian ties (while Mr Taylor is an Australian permanent resident but not an Australian citizen, his wife and two adult children are Australian citizens); his adherence to conditions of bail granted pending the extradition proceedings; his cooperation with United States authorities; the significant delay between the laying of charges in 2007 and the extradition proceedings in 2011; and the fact that a substantial surety could be provided. Mr Taylor also submitted that he had strong prospects of being successful in his application for review of the Magistrate's decision and set out four bases on which he argued the Magistrate had erred in making his decision.

Justice Collier noted that bail was available if there were special circumstances to justify granting bail. Justice Collier considered the case of *United Mexican States v Cabal* (2001) 209 CLR 165, where the High Court set out principles relating to 'special circumstances' and noted that these circumstances needed to be different from the disadvantages faced by all extradition defendants. The Court also made it clear that a defendant will ordinarily need to demonstrate strong prospects of success and that any real risk of flight should be decisive against granting bail.

Mr Taylor claimed to have demonstrated that he was not a flight risk by providing evidence of his family ties and responsibilities, substantial business interests, compliance with previous bail conditions and the availability of a substantial surety. However, Justice Collier found that the fact that Mr Taylor was relatively young, healthy, facing serious penalties in the US and had access to substantial resources supported a finding that there was at least a slight risk of flight. In addition, Justice Collier found that Mr Taylor had neither demonstrated special circumstances sufficient to support the granting of bail, nor demonstrated strong prospects of success in relation to his application for review of the Magistrate's decision. The interlocutory application was, as a result, dismissed.

## **INTELLECTUAL PROPERTY – copyright – television broadcast and cinematograph film – copying – infringement – television broadcasts recorded and copied at request of subscriber by automated recording system owned by Optus – 'time-shifting' – copy streamed by system to subscriber at subscriber's request – who is maker of the copy – whether Optus or Optus and subscriber make(s) the copy**

*National Rugby League Investments Pty Limited v Singtel Optus Pty Ltd* [2012] FCAFC 59 (27 April 2012, Justices Finn, Emmett and Bennett)

This appeal was brought by the National Rugby League (NRL), the Australian Football League (AFL) and Telstra against the communication services provider, Singtel Optus and Optus Mobile (Optus).

The issue to be determined was whether Optus had infringed the copyright interests of the appellants in television broadcasts of NRL and AFL games. The alleged infringing acts were the making of copies of the broadcasts.

The primary issues were: (1) who was the maker of the infringing copies?; and (2) if Optus was the maker, could it invoke the defence under s 111 of the *Copyright Act 1968* (Cth)?

Optus launched its 'TV Now' service in mid-2011. The service allowed subscribing customers to select, record and stream free to air TV shows to their mobile phone or computer. The subscriber paid for this service by purchasing parcels of recording time.

The appellants argued that Optus was the 'maker' of the copies. This was because of the control Optus retained over the remote recording system and the responsibility it had to maintain and operate the system. In response, Optus argued that the subscribers were the makers of the copies as they had

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control of which broadcasts were recorded and were responsible for pressing the 'record' button on the Optus 'TV Guide' website. These contentions gave rise to an issue of statutory interpretation about the meaning of 'make' in ss 86 and 87 of the Act.

The Court found that Optus or alternatively, Optus and the subscriber, were jointly and severally responsible for making the copies. Optus was responsible because of the level of control it retained over the recording system and its obligation to keep the system in constant readiness for recording. The role that the subscribers played in selecting a broadcast and instigating the recording was sufficient to constitute them also as makers.

The Court then turned to consider whether Optus could invoke the defence under s 111 of the Act. The Court's interpretation of s 111 was that it was intended to protect individuals who privately made recordings of broadcasts for viewing at a more convenient time. So defined, the section does not extend to commercial copying on behalf of individuals. As the question, 'was Optus a 'maker'?' was answered affirmatively, it follows that Optus was unable to fall within the scope of the defence as it was a commercial, not a private individual, copier.

The appeal was allowed. Optus has since filed a special leave application to the High Court.

**EQUITY – fiduciary duties – company director and CEO – company conducting business on land leased from fiduciary – whether fiduciary entitled to conduct similar business on adjacent tract of his own land – whether opportunity to do so resulted from fiduciary position – whether second business would be in competition with first – whether fiduciary would be confronted with conflict of interest – whether second business within scope of fiduciary obligation – whether removal from position as director and resignation as CEO affected fiduciary obligations – CORPORATIONS – whether director and CEO exercised powers and discharged duties in the best interests of the company**

*Links Golf Tasmania Pty Ltd v Sattler* [2012] FCA 634  
(26 June 2012, Justice Jessup)

The plaintiff, Links Golf Tasmania Pty Ltd, operated a golf course in Tasmania called 'Barnbogle Dunes', occupying the land under lease from the first defendant, Richard Sattler, who was also the majority shareholder in, and a director and the CEO of, the plaintiff. Sattler obtained loans from the Tasmanian Government and from a private investor which he put into the plaintiff as share capital, those funds being used in the construction of the golf course. The plaintiff alleged that the opportunity to obtain those loans came to Sattler by reason of his fiduciary positions. Later, Sattler embarked upon the construction of a second golf course on adjacent land (also owned by him), financed in part by another loan from the government. The plaintiff alleged that the opportunity to establish that second course, and to obtain that loan, also came to Sattler by reason of his fiduciary positions, and that, in conducting the second golf course business and ancillary retail businesses associated with it, Sattler would be competing with the plaintiff, thereby placing himself in a position in which his own interests conflicted with his duty to the plaintiff. One of those ancillary businesses was to be a wellness centre, the construction of which was financed by a grant obtained by Sattler from a Commonwealth Government program. It was alleged that the opportunity to obtain this grant, and to construct the centre, came to Sattler by reason of his fiduciary positions. The plaintiff's case also included allegations that Sattler had diverted labour employed by the plaintiff to the performance of work on his own golf course, and that, in setting the commission which the plaintiff would be paid for handling bookings and other administrative tasks in connection with accommodation units owned by Sattler at the plaintiff's golf course, Sattler was confronted with a conflict of interest.



The Court upheld the plaintiff's case only with respect to the wellness centre (and the grant which funded its construction) and one aspect of its labour diversion allegations. The Court held that Sattler's position as the owner of the adjacent land gave him a capacity which was recognised by those who had invested in the plaintiff as being separate from the capacities in which he served the plaintiff as fiduciary, such that the opportunities to obtain government and private loans, and to construct the second golf course, lay outside the scope of Sattler's fiduciary duty to the plaintiff. It also upheld Sattler's argument that, with respect to the construction of the second course and the second Tasmanian Government loan, the plaintiff had delayed too long before instituting the proceeding; and it upheld a similar defence on the matter of the accommodation commission.

# APPENDIX 9

## JUDGES' PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2011-2012

From 3 to 5 July 2011 Chief Justice **KEANE** attended the Australian Bar Association Conference in Berlin and chaired a session entitled *Remedies for 'Bad' Administration* at which Baroness Hale of the Supreme Court of the United Kingdom and Professor Fedtke, professor of comparative law at the Tulane Law School, presented papers.

At the invitation of the Commonwealth Attorney-General, the Hon Robert McClelland MP, Chief Justice Keane attended the Opening Ceremony of the 2011 Commonwealth Law Ministers Meeting on 11 July 2011 in Sydney.

On 15 July 2011 Chief Justice Keane attended the valedictory ceremony of the Honourable Justice Cullinane at the Supreme Court in Townsville, and later proposed the toast to Justice Cullinane at a lunch organised by the North Queensland Bar Association and the Townsville District Law Association at the North Queensland Club.

On 21 July 2011 Chief Justice Keane presented a paper entitled *Practical and Theoretical Problems in Drafting Tax Laws* at the Australian Treasury Tax Policy Seminar in Canberra.

On 21 July 2011 in Canberra the Chief Justice delivered the Australian Institute of Administrative Law National Lecture entitled *Democracy, Participation and Administrative Law* at the 2011 National Administrative Law Conference.

On 22 July 2011 at Old Parliament House in Canberra Chief Justice Keane participated in the Law Council of Australia's Discussion Forum on Constitutional Change.

On 27 July 2011 at the Federal Court in Brisbane Chief Justice Keane welcomed the Commonwealth Attorney-General to the launch of the QPILCH unrepresented litigant project.

On 5 August 2011 Chief Justice Keane presented a paper entitled *Equitable Doctrines and Financiers' Liabilities* at the 28<sup>th</sup> Annual Conference of the Banking and Financial Services Law Association at the Sheraton Mirage Resort on the Gold Coast in Queensland.

On 6 August 2011, at the invitation of the Chief Justice and Judges of the Supreme Court of Queensland, Chief Justice Keane and Dr Shelley Keane attended a dinner to celebrate the Sesquicentenary of the establishment of the Supreme Court of Queensland at the Water Mall, Queensland Art Gallery.

On 31 August 2011 in Sydney Chief Justice Keane launched the 12<sup>th</sup> edition of *Vermeesch and Lindgren's Business Law of Australia*.

On 2 September 2011 Chief Justice Keane attended the valedictory ceremony of the Honourable Justice Jones AO at the Supreme Court in Cairns.

On 7 September 2011 Chief Justice Keane attended the Australasian Institute of Judicial Administration Oration given by the Lord Chief Justice of England and Wales, the Rt Hon the Lord Igor Judge, at the Federal Court in Sydney.

On 8 and 9 September 2011 Chief Justice Keane attended the Australasian Institute of Judicial Administration Conference: Criminal Justice in Australia and New Zealand – Issues and Challenges for Judicial Administration in Sydney.

On 23 September 2011 Chief Justice Keane delivered the Keynote Address entitled *What's So Special About Judicial Power?* at the Supreme Court Judges, Master and Registrars Conference at Mandurah in Western Australia.

On 29 September 2011 in Jakarta, Indonesia, 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 experiences in the respective courts in relation to leadership, change management and priorities.

On Friday, 7 October 2011 Chief Justice Keane and Dr Shelley Keane attended the South Australian Bar Association Conference Dinner at the McCracken Country Club at Victor Harbor in South Australia. On Saturday, 8 October 2011 Chief Justice Keane presented a paper entitled *Contemporary Perspectives on Judicial Power* at the Conference.

On 12 October 2011 Chief Justice Keane attended a meeting of the Council of Chief Justices of Australia and New Zealand in Hobart. That evening Chief Justice Keane and Dr Shelley Keane attended a Reception hosted by the Tasmanian Attorney-General, the Hon Brian Wightman MP, at Parliament House.

On 13 and 14 October 2011 in Hobart Chief Justice Keane attended the National Judicial College of Australia Judicial Leadership Program. On the evening of 13 October 2011 Chief Justice Keane and Dr Shelley Keane attended a Reception to mark the Meeting of the Council of Chief Justices and Leadership Program at Government House. The Reception was hosted by His Excellency the Honourable Peter Underwood, the Governor of Tasmania, and Mrs Underwood.

On 17 October 2011 at the Federal Court in Melbourne Chief Justice Keane welcomed Chief Justice the Hon Truong Hoa Binh and a delegation from the Supreme People's Court of Vietnam.

On 20 October 2011 at Charles Darwin University in Darwin Chief Justice Keane delivered the Inaugural Austin Asche Oration in Law and Governance entitled *Sticks and Stones May Break My Bones, But Names Will Never Hurt Me*.

On 24 October 2011 at the invitation of Her Excellency Ms Penelope Wensley AC, Governor of Queensland, and Mr Stuart McCosker, Chief Justice Keane attended a luncheon in Brisbane on the occasion of the visit to Queensland by Her Majesty The Queen and His Royal Highness The Duke of Edinburgh.

On 17 November 2011 at the Federal Court in Sydney Chief Justice Keane launched the International Commercial Law, Litigation and Arbitration Conference booklet relating to the conference which was held at the Federal Court in Sydney in May 2011.

On 29 November 2011 at the Federal Court in Brisbane Chief Justice Keane and the Queensland Federal Court Judges made a presentation to the Judges of the Supreme Court of Queensland to mark the 150<sup>th</sup> anniversary of the Supreme Court of Queensland.

On 2 December 2011 Chief Justice Keane delivered the Australian Institute of Administrative Law National Lecture entitled *Democracy, Participation and Administrative Law* at an event hosted by the Western Australia Chapter of the Australian Institute of Administrative Law at the Federal Court in Perth.

# APPENDIX 9

## JUDGES' PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2011-2012

On 8 December 2011 Chief Justice Keane was conferred with the degree of Doctor of Laws, *honoris causa*, by the University of Queensland and delivered an Address to Graduands. Chief Justice Keane and Dr Shelley Keane later attended a dinner in his honour.

In January 2012, Chief Justice Keane attended the Annual Supreme Court and Federal Court Judges' Conference in Melbourne and participated in a panel discussion on unrepresented litigants.

On 31 January 2012 at the invitation of the Chairman and Directors of Law Courts Limited, Chief Justice Keane attended the opening of the refurbished Ground Floor Lobby of the Law Courts building, Queens Square, Sydney, in the company of the Commonwealth Attorney-General, the Hon Nicola Roxon MP and the NSW Attorney General, the Hon Greg Smith MP.

On 23 March 2012 Chief Justice Keane attended a conference on Managing Discovery jointly presented by the Australasian Institute of Judicial Administration and the National Judicial College of Australia in Melbourne.

On 3 April 2012 at the invitation of Her Honour the Honourable Sally Thomas AM, Administrator of the Northern Territory, and Mr Duncan McNeill, Chief Justice Keane and Dr Shelley Keane attended a dinner for the Council of Chief Justices of Australia and New Zealand at Government House in Darwin.

On 4 April 2012 Chief Justice Keane attended a meeting of the Council of Chief Justices of Australia and New Zealand in Darwin.

On 18 April 2012 at the invitation of the ABC Chairman, the Hon James Spigelman AC QC, Chief Justice Keane attended a dinner with the ABC Board to mark the opening of the ABC's new headquarters in Brisbane.

On 26 April 2012 Chief Justice Keane addressed the Federal Magistrates at their 2012 Plenary meeting in Brisbane.

In July 2011, Justice **MARSHALL**, organised and chaired the law and justice section of a sustainable development conference in Dili, Timor-Leste. The conference was co-sponsored by Victoria University and the National University of Timor Lorosa'e.

In August 2011, Justice Marshall was guest speaker at the Alumni Sunset Seminar conducted by the Monash Law School Ambassador program and spoke about the challenges confronting professionals dealing with depression whilst being engaged in high pressure roles.

In September 2011, Justice Marshall was guest speaker at an event to celebrate the 25<sup>th</sup> anniversary of the Wyndham Legal Service and spoke on the topic of 'access to justice'. In December 2011, Justice Marshall hosted a visit to the Victoria District Registry by a visiting delegation of judges from the Supreme People's Court and Maritime Courts of China.

In April 2012, Justice Marshall presided over the final of the Deakin University Law School Moot. In May 2012, Justice Marshall presided over the Monash Law Students Society International Humanitarian Law Moot, Grand Final.

Justice **NORTH** continued to serve as a member of the International Humanitarian Law Advisory Committee of the Victorian Branch of the Red Cross; the Monash Law School, Centre for Employment and Labour Relations Law Advisory Committee; and Chair of the Advisory Committee of the Centre for Employment and Labour Relations Law at the University of Melbourne.

In September 2011, Justice North attended the 9<sup>th</sup> biennial World Conference of the International Association of Refugee Law Judges in Slovenia and delivered the keynote address on the subject of *Extraterritorial Effect of Non-Refoulement*.

On 12 and 13 September 2011 Justice North coordinated a judicial training program for Israeli judges in Tel Aviv and addressed the participants on the subject of *Exclusion under Article 1F of the Refugees Convention*.

In April 2012, Justice North hosted a Court visit by journalism students from Monash University. In May 2012, Justice North coordinated a new program of Court visits by law students from the University of Melbourne, and hosted a visit of a group of students to a Court hearing.

In August 2011, Justice **MANSFIELD**'s paper entitled *The 2009 amendments to the Native Title Act 1993: The extended powers of the Federal Court* was published in the *Public Law Review*.

Justice Mansfield participated in the SA Bar Association Bar Readers Course on 31 August 2012 and also attended and presented a session on the new Federal Court Rules to the SA Bar Association Annual Conference held in Victor Harbor on 7 October 2011.

On 14 October 2011 Justice Mansfield attended and gave opening remarks at the University of South Australia Trade Practices Workshop.

Justice Mansfield presented a paper entitled *Conceptual Challenges for IP Lawyers* at the IPSANZ Conference in Adelaide on 29 November 2011.

As part of the Pacific Judicial Development Program, Justice Mansfield participated, on behalf of Chief Justice Keane, in the Chief Justices' Leadership Workshop held in Apia, Samoa on 28–30 March 2012 in relation to the 20th Pacific Regional Judicial Conference which is to be held in Honiara, Solomon Islands in November 2012.

On 11 April 2012 Justice Mansfield presented a paper to the Northern Territory Law Society entitled *How do you advise a Whistleblower*.

On 5 May 2012 a paper of Justice Mansfield's entitled *Public Interest: Judges as Economic Regulators* was delivered to the 2012 Competition Law Conference in Sydney.

Justice Mansfield is a member of the University of South Australia Law School Advisory Board and is also Chair of the Centre for Regulation and Management Advisory Board at the University of South Australia.

In October 2011 and May 2012, Justice **EMMETT** participated in the New South Wales Bar Association readers' course. On 1–2 December 2011, Justice Emmett attended the University of New South Wales (UNSW) Dispute Resolution Conference and presented a paper on Discovery. On 13 June 2012, Justice Emmett participated in The College of Law's 2012 Judges' Series, presenting a paper on *Affidavit Evidence in the Federal Court*.

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On 20 June 2012 Justice Emmett presented a paper entitled *Limitation Actions* at the Maritime Industry Group/Maritime Law Association of Australia and New Zealand lecture series in Sydney.

Justice Emmett, in his role as arbitrator of the Court of Arbitration for Sport, published an arbitral award on 8 May 2012 in the matter CAS 2012/A/2758 (*Stewart and Ors v Simpson and Anor*).

Justice Emmett is the Challis Lecturer in Roman Law at the University of Sydney and in first semester of 2012 presented his regular course on Roman private law.

Justice **DOWSETT** continues to be a member of the Programs Advisory Committee of the National Judicial College of Australia and Chair of the College's Steering Committee of the National Judicial Orientation Program (NJOP). In November 2011, Justice Dowsett attended the NJOP held in Melbourne where he chaired a session on *Familiarisation* and delivered the closing remarks.

On 15 November 2011 Justice Dowsett presented awards at the College of Law Queensland Awards Evening.

Justice Dowsett continues in his capacity as Community Member of the Board of the College of Law in Sydney. In that capacity his Honour attended the Annual General Meeting which was held in Sydney on 28 November 2011.

On 11 and 12 February 2012 Justice Dowsett attended the 'Current Issues in Federal Crime and Sentencing Conference' conducted by the National Judicial College of Australia at the Australian National University (ANU), Canberra.

Justice Dowsett attended the annual Bar Association of Queensland conference held at the Gold Coast from 2 to 4 March 2012.

From 20 to 24 May 2012 Justice Dowsett attended the NJOP conducted by the National Judicial College of Australia which was held in Glenelg.

Justice **KENNY** in her capacity as a part-time Commissioner, Australian Law Reform Commission, was a Member of the Division constituted under the *Australian Law Reform Commission Act 1996* (Cth) for the purposes of the reference that resulted in ALRC Report 118, Classification – Content Regulations and Convergent Media.

Justice Kenny is a member of the Council of the Australian Institute of Judicial Administration; the International Law Advisory Board, Law School, Monash University; Chair of the Advisory Board of the Institute of Legal Studies, Australian Catholic University; Executive member, Future Justice; member of the Advisory Board of the Centre for International and Public Law; and a Foundation Fellow of the Australian Academy of Law.

In July 2011, in Thailand, Justice Kenny, with Professor Spencer Zifcak and Alison King, taught a course on International Human Rights Law for the Diploma in Liberal Studies, Australian Catholic University, offered to Burmese refugees.

On 17 August 2011 Justice Kenny spoke on *Dreams for a better future: issues for Burmese refugees and migrant workers in Thailand*, for the *Melbourne Journal of International Law*.

In September 2011, Justice Kenny contributed to 'Topics in Legal History' for the Sydney Law School by writing a paper entitled *Colonies to Dominion, Dominion to Nationhood*.

Between 27 and 28 October 2011, at the invitation of the Canadian Federal Court and Federal Court of Appeal, Justice Kenny participated in a conference to mark the 40<sup>th</sup> anniversary of the Canadian Federal Courts Act and, on 28 October 2012, spoke on *The evolving jurisdiction of the Federal Court of Australia – administering justice in a federal system*.

On 14 February 2012 Justice Kenny spoke at a Refugee Seminar and Presentation of the Future Justice International Prize held at the Australian Catholic University, Melbourne.

In April 2012, Justice Kenny chaired and spoke briefly at a seminar on 'Constitutional Interpretation' in the Australian Association of Constitutional Law's Victorian Seminar Series.

In May 2012, at the invitation of the Melbourne University Law School, Justice Kenny participated in a symposium to commemorate the 30<sup>th</sup> anniversary of *Koowarta v Bjelke-Petersen* (1982) 153 CLR 16.

In June 2012, Justice Kenny chaired the 'Rights of the Children Forum', conducted by Future Justice and the Law Institute of Victoria.

Justice **BENNETT** served as Pro-Chancellor of the Australian National University from 1998 to 2011, and in July 2011 was awarded the honorary degree of Doctor of the University by the ANU.

On 12 October 2011 Justice Bennett met with a Vietnamese delegation at the Federal Court in Sydney. On 13 October 2011 Justice Bennett was invited to speak at the AGS Symposium Dinner which was held at the Monash University Law Chambers in Melbourne.

Chief Executive Women invited Justice Bennett to be the guest speaker at a session of their CEW Talent Development Program, on 15 November 2011, on *Career breakthrough moments, a personal view*.

The Lowy Institute for International Policy held a conference in Sydney on 'Australian-Pakistan Law and Access to Justice Dialogue: 2011' on 28 and 29 November 2011. Justice Bennett participated generally and spoke on *Major Achievements in Judicial Leadership of the Past Decade*. The objective of the Conference was to open a dialogue between leading legal thinkers from Pakistan and Australia and to establish a legacy of engagement between Australian and Pakistani legal thinkers and policy makers. In December 2011, Justice Bennett's article was featured in the *UNSW Law Alumni News* 40th Anniversary Inspirational Alumni edition.

Justice Bennett spoke, by invitation, at the 16th Human Genome Meeting 2012, held in Sydney, on 12 March 2012. The topic was *Challenges in Intellectual Property* as part of a session on 'Delivering economic value from synthetic biology: current challenges and opportunities'.

Justice Bennett was invited to attend and participate as a member of the Faculty at the 20th Annual Conference on Intellectual Property Law and Policy which was held at the Fordham University School of Law, New York. Her Honour was a speaker/panellist on two topics: *The Judiciary and IP in the 21st Century: Views from the Judges*; and *Patent Law: Remedies – Injunctions*.

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Justice Bennett was also invited to attend the Global Event for Biotechnology, held in Boston, USA from 18 to 21 June 2012. Her Honour was both speaker and panellist at two different sessions: the first on *IP Challenges to Personalised Medicine and Diagnostics* and the second on *Biotechnology on Trial: Scientific Literacy in the Courts, and the Reaction of Judicial Systems to Disruptive Innovation in the Life Sciences*.

Justice Bennett became a member of the Dean of Medicine's Advisory Group of the University of Sydney and a Director of Neuroscience Research Australia [NeuRA] during 2011. During the reporting year Justice Bennett continued to be involved in a number of other judicial and extra-judicial commitments including 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, member of the Australian Academy of Forensic Sciences and member of Chief Executive Women. Her Honour was also a member of the judging panel for the Australian Veuve Clicquot Award for Business Woman of the Year.

On 21 July 2011 Justice **SIOPIS** chaired a seminar on Asylum Seekers and Migration Law organised by the Western Australian Bar Association.

On 7-9 September 2011 Justice Siopis attended the conference of the International Association of Refugee Law Judges in Lake Bled, Slovenia.

On 12 December 2011 Justice Siopis addressed participants in a Summer Clerkship Program on the workings of the Federal Court.

On 7 February 2012 Justice Siopis delivered the opening address at a seminar on 'Migration and Administrative Law' organised by CASE for Refugees.

On 8 September 2011 Justice **EDMONDS** presented the keynote address at the Taxation Institute of Australia's National GST Intensive Conference in Melbourne entitled *Judicial Assessment of the Performance of the Goods and Services Tax as an Instrument of Tax Reform*.

On 9 and 10 September 2011 Justice Edmonds attended the Second Assembly of the International Association of Tax Judges held in Paris and spoke to that Assembly on how tax disputation is handled in Australia as well as on Australia's general anti-avoidance rules.

On 7 October 2011 Justice Edmonds gave the keynote address at the 2011 Victorian State Convention of the Taxation Institute of Australia entitled *Judicial Approaches to the Application of the Income Tax Assessment Acts to Intra-Group Transactions Discernable from Recent Cases*.

On 27 October 2011 Justice Edmonds launched the republication of the late Ross Parsons' seminal work *Taxation in Australia: Assessability, Deductibility and Tax Accounting*, at the University of Sydney's Law Faculty as a precursor to the 2012 Ross Parsons Address in Taxation and Corporate Law.

The Institute of Chartered Accountants and Melbourne University's Law School jointly hosted a national GST symposium in Melbourne on 1 May 2012 focussing on the interpretation and application of ss 11-15 of the GST Act. Justice Edmonds spoke on the subject *Interpretation of ss 11-15: Significance of the Text, Context and History*.

From 7 to 10 July 2011, Justice **RARES** travelled to Johannesburg, South Africa to attend the Access to Justice Conference where he presented a paper entitled *Judicial Intervention and Caseflow Management*.



On 14 September 2011 Justice Rares presented a paper entitled *The Federal Court of Australia's International Arbitration List* at the Senior Counsel Arbitration Seminar of the NSW Bar Association.

From 21 to 23 September 2011, Justice Rares attended at the invitation of the Government of the Republic of Indonesia its 'International Conference on Liability and Compensation Regime for Transboundary Oil Damage resulting from Offshore Exploration and Exploitation Activities', in Bali. At the conference he delivered a paper entitled *An International Convention on Off-Shore Hydrocarbon Leaks?*, revised from an earlier paper presented at the 2011 Biennial Mini Conference of the Maritime Law Association of Australia and New Zealand.

On 14 October 2011 Justice Rares published a paper, *Some Issues that Arise in Arrests of Ships*.

Between 3 and 6 December 2011, Justice Rares attended the 2011 annual conference of the Maritime Law Associations of the United States of America, Canada, Australia and New Zealand in Honolulu, Hawaii.

On 5 May 2012 Justice Rares delivered introductory remarks on a paper presented by the Chairman of the Australian Competition and Consumer Commission, Rodney Sims, to the 2012 Competition Law Conference held at the Shangri-La Hotel, Sydney.

On 6 June 2012 Justice Rares presented, with Justice Richard White of the Supreme Court of New South Wales, a seminar entitled *Pleadings and Case Management* as part of the College of Law's 2012 Judges Series. Justice Rares also presented an update of a paper *A Judge's Viewpoint: the Role of Pleading* prepared by Justices Lindgren and Tamberlin and a paper on *Judicial Intervention and Caseflow Management*. On 12 June 2012, he participated as a panellist in a seminar entitled 'Fitting the Forum to the Fuss: ADR – More than Mediation', organised by the Law Society of New South Wales' Dispute Resolution Committee and held at the Federal Court, Sydney.

In March 2012, Justice Rares was appointed to the Executive Committee and the Governing Council of Judicial Conference of Australia. Justice Rares continues to be Chair of the Consultative Council of Australian Law Reporting, a member of the Steering Committee of the National Judicial Orientation Program and a member of the Council of the Australian Institute of Judicial Administration.

Justice **COLLIER** is a member of the Advisory Board to the bankruptcy and insolvency law scholarship unit of the Adelaide Law School and a member of the Editorial Board of *The Conveyancer and Property Lawyer*.

On 6 August 2011 Justice Collier attended the Australian Association of Women Judges' Conference in Brisbane and in January 2012 attended the Supreme and Federal Court Judges' Conference in Melbourne.

Justice Collier, in her capacity as a judge of the Supreme and National Courts of Justice of Papua New Guinea attended a Judicial Ethics Workshop in Port Moresby in February 2012.

From 2 to 14 May 2012, Justice **COWDROY** travelled to Vietnam on behalf of the Court's International Programs Unit to conduct workshops on environmental law for Vietnamese judges. Approximately 150 judges from the Vietnamese Supreme People's Court, lower courts and other officials attended the three sessions.

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Justice **BESANKO** has been a member of the Legal Practitioners' Education and Admissions Council of South Australia since February 2002. During 2011, he was appointed a member of the Law Admissions Consultative Committee. In September 2011, as in previous years, he gave a presentation for the SA Bar Association Bar Readers' Course and Reading Program on Legal Argument and Appellate Advocacy. In October, Justice Besanko attended the SA Bar Association Annual Conference and participated in a panel discussion on the Federal Court Rules and recent developments in the law of expert evidence.

Justice Besanko has an ongoing involvement with the Law Society of SA continuing professional development program and, in March 2012, he chaired a session on 'Commonwealth Regulation in the Murray Darling Basin Irrigation Industry'. In September and November 2011, and in May 2012, Justice Besanko gave presentations to practitioners on *the Corporations Jurisdiction (Schemes of Arrangement, Directors' Duties and Shareholders' Remedies* and *the Rights and Duties of Receivers and other Controllers of Property)* at the Federal Court in Adelaide.

Justice **MIDDLETON** is a Council Member of the University of Melbourne, a member of the American Law Institute, a Council Member of the National Judicial College of Australia, a member of the Judicial Liaison Committee for the Australian Centre for Commercial International Arbitration, and a Board member of the Victorian Bar Foundation.

From 3 to 6 July 2011, Justice Middleton attended the Australian Bar Association Conference held in Berlin.

In September 2011 and April 2012, Justice Middleton delivered a paper, in conjunction with Mr David O'Callaghan SC, to the Victorian Bar Readers' Course on *Written Advocacy*.

On 25 October 2011 Justice Middleton was the guest speaker at the Camberwell Grammar School annual award/prize giving ceremony.

On 18 February 2012 Justice Middleton attended the 2012 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.

On 15 March 2012 Justice Middleton hosted an Intellectual Property function for the profession practising in Victoria.

From 19 to 20 May 2012, Justice Middleton visited Timor-Leste at the invitation of Prime Minister Kay Rala Xanana Gusmao to participate in the celebration of the 10 year anniversary of the Restoration of Independence of Timor-Leste.

For the reporting period Justice **GORDON** delivered the following addresses or papers:

- 21 July 2011 – Law Institute of Victoria – Alternative Dispute Resolution Conference – *Be Civil – The Civil Dispute Resolution Act 2011*.
- 10 August 2011 – International Arbitration Seminar – Welcoming Address.

Justice Gordon is the Chair of the Academic Advisory Board, Faculty of Business and Law, Deakin University. Justice Gordon is a member of the Elders and Respected Persons Panel of Tarwirri – The Indigenous Laws Students and Lawyers Association of Victoria.

On 14 February 2012 Justice Gordon hosted the Chuo Summer School for Japanese students – University of Melbourne.

From 27 February to 21 May 2012 – Justice Gordon co-taught ‘Statutes in the 21<sup>st</sup> Century’ in the Law Masters program at the University of Melbourne.

From 27 February to 23 March 2012 – Justices Gordon and Gray participated in the Indigenous Clerkship Program in conjunction with the Supreme Court of Victoria and the Victorian Bar.

Justice **PERRAM** attended, on the Commonwealth’s behalf, the second meeting of the follow-up and implementation committee relating to the Unidroit Convention on Intermediated Securities in Rio de Janeiro on 27 and 28 March 2012. His Honour also delivered a speech to the Society of Trust and Estate Practitioners on 16 May 2012 entitled *The Origins and Present Operation of the Action in Devastavit* and another speech to the National Security College of the Australian National University on 28 September 2011 entitled *National Security – A view from the Bench*.

On 2 August 2011 Justice **FOSTER** presented a Continuing Professional Development Seminar for members of the New South Wales Bar Association on *International Arbitration*. The seminar addressed the scope of the defences and arguments available against the enforcement of foreign arbitral awards under the public policy ground as set out in ss 8(7) and 8(7A) of the *International Arbitration Act 1974* (Cth).

On 10 October 2011 at the invitation of the Australian Centre for International Commercial Arbitration, Justice Foster spoke at Skadden Arps in New York at an event to promote Australia as a neutral venue for international arbitration in the Asia-Pacific region. On 11 and 12 October 2011 his Honour attended meetings with international law firms in New York and with judges and Court executives from the United States Second Circuit Court of Appeals to promote international arbitration in Australia.

On 24 March 2012 Justice Foster presented a session *Competition and Consumer Act: Après Metcash, le deluge?* at the 2012 Lecture Series promoted by the Salvation Army’s law firm, Salvos Legal. The Lecture Series was a full day conference attended by several hundred legal practitioners as a fundraiser for Salvos Legal Humanitarian (a law firm for the disadvantaged members of the community in times of crisis).

On 5 May 2012 Justice Foster attended the 2012 Competition Law Conference promoted by Christopher Hodgekiss, barrister. In Justice Mansfield’s absence, Justice Foster presented Justice Mansfield’s paper at that Conference on *Public Benefit—are Judges Economic Regulators?*

On 19 May 2012 Justice Foster was the keynote speaker at the Institute of Arbitrators and Mediators 2012 National Conference, held on the Gold Coast. The theme for the 2012 National Conference was ‘ADR – The Quiet Revolution’.

Justice **BARKER** attended the Supreme and Federal Court Judges’ Conference in Melbourne, Victoria from 21 to 25 January 2012.

On 24 February 2012 Justice Barker chaired the Administrative Law Session at the 2012 Law Summer School, organised by the Law Society of Western Australia and the University of Western Australia Law School.

On 16 March 2012 Justice Barker adjudicated the Grand Final of the Trial Advocacy Competition conducted by the Murdoch University Student Law Society in Perth.

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From 28 to 30 May 2012, Justice Barker presented and participated in the Commercial Case Management Workshop for Pacific Judges in Brisbane, Queensland.

On 15 June 2012 Justice Barker presented a paper *Native Title – past, present and future* at the Native Title Conference, '20<sup>th</sup> Anniversary of Mabo: Reflections', LegalWise Seminars, Perth.

On 19 June 2012 Justice Barker was one of the panellists at an interactive forum organised by the Law Society of Western Australia 'Making Native Title Happen: the Legacy of Mabo'.

On 5 July 2011 Justice **KATZMANN** attended, at her own expense, the Australian Bar Association Conference in Berlin and chaired the session 'Business Structures for the Bar and Ethical Issues'.

On 28 September 2011 her Honour addressed the Judges and Commissioners of the Land and Environment Court of NSW and presented a paper entitled *Unrepresented Litigants – What Can Be Done?*

On 8 November 2011 her Honour spoke at the launch of the NSW Young Lawyers Mental Health and Wellbeing Website. Also, on 25 November 2011 her Honour spoke to solicitors at McCabe Terrill Lawyers about mental health and work/life balance.

On 1 December 2011 Justice Katzmann presented a paper entitled *Judging the Future* for the session at the UNSW Law 40th Anniversary Conference entitled 'The Future Role of the Judge – Umpire, Manager, Mediator Or Service Provider?'

In January 2012, Justice Katzmann attended the Annual Supreme and Federal Court Judges' Conference in Melbourne.

As Patron of the NSW Young Lawyers for 2011–12, Justice Katzmann was invited to judge the UNSW Young Lawyers Golden Gavel Competition on 18 May 2012 and on 26 May 2012 her Honour delivered the opening address at the UNSW Young Lawyers 2012 Mid Year Assembly in Wollongong.

Justice Katzmann continues to be involved in a number of extra-judicial commitments including as a director of the Tristan Jepson Memorial Foundation.

In September 2011, Justice **ROBERTSON** delivered the keynote address to the New South Wales Administrative Decisions Tribunal Annual Members Conference. The paper was entitled *The importance of the work of administrative tribunals, particularly in fact finding*. In October 2011 he gave the after dinner speech at the annual dinner of the Constitutional and Administrative Law Section of the New South Wales Bar Association.

In February 2012, Justice Robertson presented a paper entitled *The Federal and State Courts on Constitutional Law: The 2011 Term* to the Gilbert + Tobin Centre of Public Law 2012 Constitutional Law Conference. In March 2012 Justice Robertson addressed the inaugural meeting (in Sydney) of the Australian Government Solicitor's Alumni program. In April 2012 he presented a paper entitled *Finding Facts and Giving Reasons* to the Motor Accident Authority of NSW Claims Assessors' Annual Members briefing. In May 2012 Justice Robertson chaired the session 'Is there a need for changes to the Australian informal merger clearance process following the Metcash decision? – an international comparison and perspective' at the 2012 Competition Law Conference in Sydney.

Recently, Justice Robertson was appointed a member of the CCH Law and Business Editorial Board.

# 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	0	0	1								1
SES1	Male	1	0	1			1					3
	Female	0	1	0	1	1	0				1	4
FCL2	Male	3	4	5	1	0	2				1	16
	Female	0	3	0	2	1	1				2	9
FCL1	Female	0	0	0	0	0	0	1				1
FCM2	Male	6	1	1	0	0	1	0			1	10
	Female	2	0	1	1	1	0	0				5
FCM1	Male	8	0	1	0	0	0	0				9
	Female	4	1	2	1	1	1	0			1	11
FCS6	Male	3	1	1	1	1	1	0	0	0	1	9
	Female	11	21	13	7	4	5	0	1	1	3	66
FCS5	Male	0	13	4	5	2	2	0	0	0	1	27
	Female	7	15	15	2	4	6	0	0	0	3	52
FCS4	Male	0	3	2	0	2	1	0				8
	Female	2	4	11	10	5	3	3	1	3		42
FCS3	Male	1	6	0	1	1	0	0				9
	Female	1	6	2	1	0	3	1		1		15
FCS2	Male		8	3	6	5	4	0	2	0	0	28
	Female		19	9	0	1	2	0	0	0	0	31
FCS1	Male			1								1
<b>Total</b>		<b>50</b>	<b>107</b>	<b>73</b>	<b>39</b>	<b>29</b>	<b>33</b>	<b>5</b>	<b>4</b>	<b>5</b>	<b>14</b>	<b>359</b>

Key: PR Principal Registry  
SES Senior Executive Service  
FCS Federal Court Staff  
FCM Federal Court Manager  
FCL Federal Court Legal  
NAT National  
Includes the following staff:  
– National Native Title  
– Chambers of Chief Justice  
– Appeals

# 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		2	1	1	16
	Female	6	2			1	9
FCL1	Female		1				1
FCM2	Male	9		1			10
	Female	3	2				5
FCM1	Male	9					9
	Female	10	1				11
FCS6	Male	8				1	9
	Female	59	4	3			66
FCS5	Male	10		16	1		27
	Female	20	1	31			52
FCS4	Male	5	1	2			8
	Female	31	4	6		1	42
FCS3	Male	8				1	9
	Female	7	3	5			15
FCS2	Male					27	27
	Female					30	30
FCS2	Male					1	1
	Female	1					1
FCS1	Male	1					1
<b>Total</b>		<b>209</b>	<b>19</b>	<b>66</b>	<b>2</b>	<b>63</b>	<b>359</b>

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	323	222	36	53	4	1
Professional	26	10	3	4		
<b>TOTAL</b>	<b>359</b>	<b>237</b>	<b>40</b>	<b>59</b>	<b>4</b>	<b>1</b>

Table 10.4 – Representation of EEO Groups within salary levels

SALARY	TOTAL STAFF	WOMEN	NESB1	NESB2	ATSI	PWD
FCS1	1					
FCS2	59	31	8	15	1	
FCS3	24	15	7	6	1	
FCS4	50	42	6	9	1	
FCS5	79	52	11	17		1
FCS6	75	66	3	6	1	
FCM1/FCL1	21	12	1	0		
FCM2/FCL2	40	14	3	4		
SES	10	5	1	2		
<b>TOTAL</b>	<b>359</b>	<b>237</b>	<b>40</b>	<b>59</b>	<b>4</b>	<b>1</b>

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 – Aboriginal and Torres Strait Islander peoples  
 PWD – People with disabilities  
 FCS – Federal Court Staff  
 FCM – Federal Court Manager  
 FCL – Federal Court Legal  
 SES – Senior Executive Service

# APPENDIX 11

## COMPLIANCE WITH ANNUAL REPORT REQUIREMENTS

This is a guide to the report's compliance with the requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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# GLOSSARY

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<b>Administrative Notices</b>	See Practice Notes
<b>Appeal</b>	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.
<b>Appellate jurisdiction</b>	The power given to a court to hear appeals in certain matters.
<b>Applicant</b>	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.
<b>Application</b>	The document that starts most proceedings in the Federal Court.
<b>Cause of action</b>	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.
<b>Cross appeal</b>	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.
<b>Cross claim</b>	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.
<b>Directions</b>	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.
<b>Discovery</b>	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.
<b>Docket system</b>	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).
<b>Exhibit</b>	A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.
<b>Filing of documents</b>	The process of the Court accepting a document or documents lodged by a party to a proceeding.
<b>First Instance</b>	A proceeding heard in the Court's original jurisdiction.
<b>Full Court</b>	Three or more judges sitting together to hear a proceeding.
<b>Hearing</b>	That part of a proceeding where the parties present evidence and submissions to the Court.

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<b>Interlocutory Application</b>	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. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).
<b>Judgment</b>	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.
<b>Jurisdiction</b>	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.
<b>Litigants</b>	Individuals, organisations or companies who/which are the parties to a proceeding before the Court.
<b>Mediation or (Assisted Dispute Resolution)</b>	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.
<b>Original Jurisdiction</b>	The authority or legal power of the Court to hear a case in the first instance.
<b>Parties</b>	People involved in a court case. Applicants, appellants, respondents, defendants, are generally called 'parties'.
<b>Practice Notes and Administrative Notices</b>	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.
<b>Practice Notes</b>	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.
<b>Administrative Notices</b>	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.
<b>Proceeding</b>	The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.
<b>Regulations</b>	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.
<b>Respondent</b>	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.
<b>Rules</b>	Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules, Federal Court (Corporations) Rules 2000 (for proceedings under the Corporations Act 2001) and Federal Court (Bankruptcy) Rules 2005 (for proceedings under the Bankruptcy Act 1966).
<b>Self Represented Litigant</b>	A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.

# FEDERAL COURT REGISTRIES

## Principal Registry

Law Courts Building  
Queens Square, Sydney NSW 2000

**Phone:** (02) 9230 8567 **Fax:** (02) 9280 1381

**Email:** [query@fedcourt.gov.au](mailto:query@fedcourt.gov.au)  
<http://www.fedcourt.gov.au>

**Contact hours:** 8.30am–5.00pm

## Australian Capital Territory District Registry

Nigel Bowen Commonwealth Law Courts Building  
Childers Street, Canberra City ACT 2600

**Phone:** (02) 6267 0666 **Fax:** (02) 6267 0625

**Email:** [actman@fedcourt.gov.au](mailto:actman@fedcourt.gov.au)

**Counter hours:** 9.00am–4.30pm

**Contact hours:** 8.30am–5.00pm

## New South Wales District Registry

Level 17 Law Courts Building  
Queens Square, Sydney NSW 2000

**Phone:** (02) 9230 8567 **Fax:** (02) 9230 8535

**Email:** [nswdr@fedcourt.gov.au](mailto:nswdr@fedcourt.gov.au)

**Counter hours:** 9.00am–4.30pm

**Contact hours:** 8.30am–5.00pm

## Northern Territory District Registry

Level 3 Supreme Court Building  
State Square, Darwin NT 0800

**Phone:** (08) 8941 2333 **Fax:** (08) 8941 4941

**Email:** [ntreg@fedcourt.gov.au](mailto:ntreg@fedcourt.gov.au)

**Counter hours:** 9.00am–4.00pm

**Contact hours:** 8.30am–5.00pm

## Queensland District Registry

Level 6 Harry Gibbs Commonwealth  
Law Courts Building  
119 North Quay, Brisbane QLD 4000

**Phone:** (07) 3248 1100 **Fax:** (07) 3248 1260

**Email:** [qldreg@fedcourt.gov.au](mailto:qldreg@fedcourt.gov.au)

**Counter hours:** 9.00am–4.00pm

**Contact hours:** 8.30am–5.00pm

## South Australia District Registry

Level 5 Roma Mitchell Commonwealth  
Law Courts Building  
3 Angas Street, Adelaide SA 5000

**Phone:** (08) 8219 1000 **Fax:** (08) 8219 1001

**Email:** [sareg@fedcourt.gov.au](mailto:sareg@fedcourt.gov.au)

**Counter hours:** 9.00am–4.30pm

**Contact hours:** 8.30am–5.00pm

## Tasmania District Registry

Edward Braddon Commonwealth  
Law Courts Building  
39–41 Davey St, Hobart TAS 7000

**Phone:** (03) 6232 1615 **Fax:** (03) 6232 1601

**Email:** [tasreg@fedcourt.gov.au](mailto:tasreg@fedcourt.gov.au)

**Counter hours:** 9.00am–4.30pm

**Contact hours:** 8.30am–5.00pm

## Victoria District Registry

Level 7 Owen Dixon Commonwealth  
Law Courts Building  
305 William Street, Melbourne VIC 3000

**Phone:** (03) 8600 3333 **Fax:** (03) 8600 3281

**Email:** [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

**Counter hours:** 9am–4.30pm

**Contact hours:** 8.30am–5.00pm

## Western Australia District Registry

Level 6 Peter Durack Commonwealth  
Law Courts Building  
1 Victoria Avenue, Perth WA 6000

**Phone:** (08) 9268 7100 **Fax:** (08) 9221 3261

**Email:** [waregistry@fedcourt.gov.au](mailto:waregistry@fedcourt.gov.au)

**Counter hours:** 8.30am–4.00pm

**Contact hours:** 8.30am–5.00pm

## Contact officer for Annual Report

Elizabeth Connolly  
Principal Registry

**Phone:** (02) 9230 8720 **Fax:** (02) 9223 1906

**Email:** [Elizabeth.Connolly@fedcourt.gov.au](mailto:Elizabeth.Connolly@fedcourt.gov.au)

**If you have a hearing or speech impairment,  
contact us through the National Relay Service  
(NRS):**

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

An electronic version of the report is available at  
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	+3,03	10,80%
	+0,34	10,38%
	+0,00	11,93%
	-3,73	11,32%
	+3,96	10,32%
	-3,21	10,99%
	-0,32	15,32%
	+9,73	10,32%
	+2,09	12,87%
	+3,93	10,89%
	+0,34	10,93%
	+0,00	11,93%
	+2,23	13,78%
	-2,23	11,32%
	-2,21	10,73%
	+3,98	10,32%
	+1,32	12,12%
	-3,21	10,99%
	0	15,32%
	+9,73	10,02%
	+2,09	11,87%
	+9,32	11,96%
	+0,32	0,32%
	-0,21	0,32%
	+3,33	0,32%
	+0,32	0,32%
	+4,10	0,32%
	-0,43	0,32%
	+3,93	0,32%
	+0,32	0,32%
	+0,00	0,32%
	+0,32	0,32%

I have a contract of employment with an employer and I have the right to be paid for my work.