



FEDERAL COURT OF AUSTRALIA



admiralty maritime



arrest warrant



arbitration

On 19 September 2006, the Court signed a Memorandum of Understanding (MOU) with the Association of Australian Ports and Marine Authorities Incorporated ('AAPMA'), the peak body representing the interests of ports and marine authorities in Australia. The MOU was signed between the Hon Chief Justice Michael Black AC of the Court and the AAPMA Executive Director, Mr John Hirst.

ANNUAL REPORT 2006-2007

# FEDERAL COURT OF AUSTRALIA

2006-2007  
ANNUAL REPORT



The cover of this year's annual report highlights the Court's admiralty and maritime jurisdiction, which is an important area of the Court's work. The Court's role in this area often requires the arrest or sale of vessels. This involves working with a range of local, national and international authorities. In recent years the Court has focussed on the national management of this work and enhancing its procedures through new Admiralty Rules, communication with practitioners and litigants and work with the Government on legislative issues.

In 2006–07 there were also a number of significant events, including the signing of the MOU with the Association of Australian Ports and Marine Authorities Incorporated, which sets out areas of mutual interest and assistance and underpins a number of initiatives to strengthen the relationship between the Court's Marshals and port authorities in each State and Territory. The Court also welcomed the Attorney-General's announcement in April 2007 of the establishment of the Australian Maritime and Transport Arbitration Commission.



FEDERAL COURT  
OF AUSTRALIA  
2006–2007  
ANNUAL REPORT

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CHIEF JUSTICE'S CHAMBERS  
FEDERAL COURT OF AUSTRALIA  
305 WILLIAM STREET  
MELBOURNE VIC 3000

17 September 2007

The Honourable Philip Ruddock 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 2006-2007 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 eighteenth annual report.

Yours sincerely

A handwritten signature in black ink that reads 'Michael G. Black'.

MEJ BLACK  
Chief Justice

# FEDERAL COURT REGISTRIES

## Principal Registry

Law Courts Building  
Queens Square Sydney NSW 2000  
Phone: (02) 9230 8542 Fax: (02) 9223 7706  
Email: [query@fedcourt.gov.au](mailto:query@fedcourt.gov.au)  
<http://www.fedcourt.gov.au>  
Hours: 8.30am-5.30pm

## Australian Capital Territory District Registry

Nigel Bowen Commonwealth Law Courts Building  
Childers Street  
Canberra City ACT 2601  
Phone: (02) 6267 0566 Fax: (02) 6267 0625  
TTY: (02) 6267 0537  
Email: [actman@fedcourt.gov.au](mailto:actman@fedcourt.gov.au)  
Counter Hours: 10.00am-1.00pm; 2.00pm-4.00pm  
Contact Hours: 8.30am-5.00pm

## New South Wales District Registry

Level 16 Law Courts Building  
Queens Square  
Sydney NSW 2000  
Phone: (02) 9230 8567 Fax: (02) 9230 8535  
TTY: (02) 9230 8270  
Email: [nswdr@fedcourt.gov.au](mailto:nswdr@fedcourt.gov.au)  
Counter Hours: 9.00am-4.00pm  
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  
TTY: (08) 8982 0838  
Email: [ntreg@fedcourt.gov.au](mailto:ntreg@fedcourt.gov.au)  
Counter Hours: 9.00am-4.00pm  
Contact Hours: 8.30am-4.30pm

## 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  
TTY: (07) 3248 1272  
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  
TTY: (08) 8219 1011  
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 1715 Fax: (03) 6232 1701  
TTY: (03) 6232 1865  
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  
TTY: (03) 9670 0320  
Email: [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)  
Counter Hours: 9am-4.30pm  
Contact Hours: 8.30am-5.15pm

## 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  
TTY: (08) 9325 7053  
Email: [waregistry@fedcourt.gov.au](mailto:waregistry@fedcourt.gov.au)  
Counter Hours: 8.30am-4.00pm  
Contact Hours: 8.30am-5.15pm

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# CHAPTER 1

## Overview of the Federal Court of Australia

## 1.1 Establishment

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

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

## 1.2 Functions and powers

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts appears in Appendix 4 on page 86.

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

## 1.3 Objectives

The objectives of the Court are to:

- decide disputes according to law – promptly, courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to 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.

## 1.4 The Court's outcome and output structure

The Court's outcome and output structure appears in Chapter 4 on page 38.

This report uses the outcome and output structure to outline the Court's work and performance during 2006–07. Chapter 3 reports on these issues in detail.

## 1.5 The Court

### Judges

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 70.

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

At 30 June 2007 there were 49 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 49 judges, there were four whose work as members of other courts or tribunals occupied all, or most, of their time.

### Judges of the Court

(at 30 June 2007)

Judge	Location	Other Commissions/Appointments
<b>Chief Justice</b> The Hon Michael Eric John BLACK AC	Melbourne	
The Hon Jeffrey Ernest John SPENDER	Brisbane	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Peter Ross Awdry GRAY	Melbourne	Industrial Relations Court of Australia – Judge Administrative Appeals Tribunal – Presidential Member
The Hon Donnell Michael RYAN	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Robert Shenton FRENCH	Perth	Administrative Appeals Tribunal – Presidential Member Australian Competition Tribunal – Deputy President Australian Law Reform Commission – Part-time Member Supreme Court of Fiji – non-resident, semi-permanent Judge Supreme Court of the ACT – Additional Judge
The Hon Terence John HIGGINS	Canberra	Supreme Court of the ACT – Chief Justice
The Hon Peter Cadden HEEREY	Melbourne	Defence Force Discipline Appeal Tribunal – President Australian Competition Tribunal – Deputy President Administrative Appeals Tribunal – Presidential Member
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge Tonga Court of Appeal – Judge
The Hon Catherine Margaret BRANSON	Sydney	
The Hon Kevin Edmund LINDGREN	Sydney	Copyright Tribunal – President
The Hon Brian John Michael TAMBERLIN	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
The Hon Ronald SACKVILLE	Sydney	Civil and Commercial Court of Qatar – Judge
The Hon Susan Mary KIEFEL	Brisbane	Supreme Court of Norfolk Island – Judge Australian Law Reform Commission – Part-time Commissioner
The Hon Robert David NICHOLSON AO	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Paul Desmond FINN	Adelaide	
The Hon Ross Alan SUNDBERG	Melbourne	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Rodney Neville MADGWICK	Sydney	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon John Ronald MANSFIELD	Adelaide	
The Hon Alan Henry GOLDBERG AO	Melbourne	Australian Competition Tribunal – President
The Hon Arthur Robert EMMETT	Sydney	Copyright Tribunal – Deputy President
The Hon Raymond Antony FINKELSTEIN	Melbourne	Australian Competition Tribunal – Deputy President
The Hon Geoffrey Michael GIUDICE	Melbourne	Australian Industrial Relations Commission – President
The Hon Mark Samuel WEINBERG	Melbourne	Supreme Court of Norfolk Island – Chief Justice Supreme Court of the ACT – Additional Judge Supreme Court of Fiji – non-resident, semi-permanent Judge Australian Law Reform Commission – Part-time Commissioner
The Hon John Alfred DOWSETT	Brisbane	Supreme Court of the ACT – Additional Judge
The Hon Susan Coralie KENNY	Melbourne	Australian Law Reform Commission – Part-time Commissioner
The Hon Roger Vincent GYLES AO	Sydney	Supreme Court of the ACT – Additional Judge Court of Arbitration for Sport – Member Australian Competition Tribunal – Deputy President Administrative Appeals Tribunal – Presidential Member
The Hon Richard Alan CONTI	Sydney	
The Hon Margaret Ackary STONE	Sydney	Supreme Court of the ACT – Additional Judge
The Hon James Leslie Bain ALLSOP	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Garry Keith DOWNES AM	Sydney	Administrative Appeals Tribunal – President
The Hon Peter Michael JACOBSON	Sydney	Supreme Court of Norfolk Island – Judge
The Hon Annabelle Claire BENNETT AO	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member

Judge	Location	Other Commissions/Appointments
The Hon Bruce Thomas LANDER	Adelaide	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Antony Nicholas SIOPIIS	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Peter Ross GRAHAM	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Steven David RARES	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Berna COLLIER	Brisbane	
The Hon Dennis Antill COWDROY OAM	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Anthony James BESANKO	Adelaide	Supreme Court of the ACT – Additional Judge
The Hon Christopher Neil JESSUP	Melbourne	
The Hon Richard Ross Sinclair TRACEY RFD	Melbourne	
The Hon John Eric MIDDLETON	Melbourne	
The Hon Robert John BUCHANAN	Sydney	
The Hon John GILMOUR	Perth	
The Hon Michelle Marjorie GORDON	Melbourne	

The Chief Justice was absent on the following dates during the year. Arrangements for an acting Chief Justice during the periods are indicated below.

<b>25 September – 1 October 2006</b>	The Hon Justice Gray
<b>2 October – 8 October 2006</b>	The Hon Justice French
<b>9 October – 24 October 2006</b>	The Hon Justice Spender
<b>25 April – 30 May 2007</b>	The Hon Justice Spender

Most of the judges of the Court devote some time to other courts and tribunals on which they hold commissions or appointments. Judges of the Court also spend a lot of time on activities related to legal education and the justice system. More information about these activities is set out in Chapter 3 and Appendix 8.

## Appointments and retirements

During the year five judges were appointed to the Court:

- **The Honourable Richard Ross Sinclair Tracey RFD** (resident in Melbourne) was appointed on 24 July 2006.
- **The Honourable Justice John Eric Middleton** (resident in Melbourne) was appointed on 31 July 2006.
- **The Honourable Justice Robert John Buchanan** (resident in Sydney) was appointed on 8 September 2006.
- **The Honourable Justice John Gilmour** (resident in Perth) was appointed on 11 December 2006.
- **The Honourable Justice Michelle Marjorie Gordon** (resident in Melbourne) was appointed on 20 April 2007.

During the year two judges resigned from the Court:

- **The Honourable Justice Murray Rutledge Wilcox** resigned his commission as a judge of the Court on 1 October 2006.
- **The Honourable Justice Neil John Young** resigned his commission as a judge of the Court on 24 January 2007.

Other appointments, resignations and retirements during the year included:

- **The Honourable Justice Wilcox** resigned his commissions as Chief Justice of the Industrial Relations Court of Australia, judge of the Supreme Court of Norfolk Island and Additional Judge of the Supreme Court of the Australian Capital Territory, with effect from 1 October 2006.
- **The Honourable Justice French** was appointed a part-time member of the Australian Law Reform Commission, for a term of three years, with effect from 15 July 2006.
- **The Honourable Justice Sackville** was appointed a judge of the Civil and Commercial Court of Qatar, with effect from 25 February 2007.
- **The Honourable Justice Emmett** was re-appointed a Deputy President of the Copyright Tribunal of Australia for the period 24 June to 10 October 2007.
- **The Honourable Justice Jacobson** was appointed a judge of the Supreme Court of Norfolk Island with effect from 29 June 2007, until the age of 70 years.
- **The Honourable Justices Edmonds, Graham, Rares, Cowdroy and Besanko** were appointed Additional Judges of the Supreme Court of the Australian Capital Territory, with effect from 1 March 2007.

## 1.6 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.

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

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

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

### Officers of the Court

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

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

The registrars must take an oath or make an affirmation of office before undertaking their duties (section 18Y of the *Federal Court of Australia Act*). Registrars perform statutory functions assigned to them by the *Federal Court of Australia Act*, *Federal Court Rules*, *Federal Court Bankruptcy Rules* and the *Federal Court (Corporations) Rules 2000*. These include issuing process, taxing costs and settling appeal indexes. They also exercise various powers delegated by judges under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Magistrates Act 1999*. Appendix 3 on page 84 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 2007 there were 406 staff employed under the *Public Service Act*. Generally, judges have two personal staff members. More details on Court staff are set out in Tables 4.2 to 4.3 in Chapter 4 on pages 42 to 43.





## CHAPTER 2

The year in review

## 2.1 Introduction

During the year under review the Court continued to achieve its objective of promptly, courteously and effectively deciding disputes according to law, in order to fulfil its role as a court exercising the judicial power of the Commonwealth under the Constitution. Through its jurisdiction, the Court applied and upheld the rule of law to deliver remedies and enforce rights and, in so doing, contributed to the social and economic development and well being of all Australians. The Court's innovative approach to managing its work, and the way it operates as an organisation, brought continuing recognition of its leading role.

## 2.2 Significant issues and developments

During 2006–07, the Court maintained its commitment to achieving performance goals for the Court's core work while at the same time developing and implementing a number of key strategic and operational projects.

### **On-line access – the Commonwealth Courts Portal**

The Court's eCourt Strategy is now entering its second stage of implementation involving the development and integration of electronic services to support the Court's aim to provide judges, staff and legal practitioners with improved access to court services via the Internet. During the year the Federal Court, Family Court of Australia, and Federal Magistrates Court of Australia have collaborated to jointly develop a Commonwealth Courts Portal through which all their respective eCourt services will be delivered, including providing access to MyFiles (the Portal) across the three Courts. The services and information to be aggregated and delivered through MyFiles includes:

- eLodgment of documents;
- eSearching of court files;
- eCourtroom – interactive collaborative forums for interlocutory proceedings;
- On-line Orders – parties can submit drafts and the judge can post final orders;
- Judgments – integrated links to judgments from within the registry file;
- Transcript – integrated links to transcript from within the registry file; and
- eTrials (integration of the official court record with large scale collections of electronic evidence).

One of the most interesting aspects of the project is the ability for external users to engage with the court systems directly to submit information and documentation and search for information themselves without assistance from court staff.

During the year the Court along with the other jurisdictions has undertaken considerable work on the Portal project. The Chief Justice spoke in detail about the technology at the Seventh Worldwide Common Law Judiciary Conference in London in May 2007 and generated a great deal of interest in the concept. At a local level, presentations with the profession have raised awareness and helped to build support for the project. Work will continue and it is planned that the service will be launched in 2007–08.

### **Changes to management of native title**

During the reporting period the Court responded to amendments to the Native Title Act designed to promote better communication and coordination and remove duplication between the Court and the National Native Title Tribunal to ensure effective outcomes are delivered more expeditiously for all parties and encourage agreement-making, in preference to litigation.

In this context the Court reviewed its management of native title proceedings and on 8 June 2007 the Chief Justice issued a Notice to Practitioners relating to changes in the conduct of native title proceedings in the Federal Court. The approach outlined in the Notice builds on the Court's current regional case management approach and reflects changes to the allocation of cases on a provisional and substantive basis. More details on the changes are discussed in Chapter 3 of the Report.

## Strategy review initiatives

During the reporting year the Court undertook comprehensive planning exercises with both judges and senior staff. The outcomes of these processes led to a focus on new procedural efficiencies, new organisational efficiencies and jurisdictional improvements.

As part of this process in May 2007 the Court in Victoria launched a ‘Fast Track List’ as a pilot. The key elements of the Fast Track List are:

- to abolish pleadings – in the place of pleadings each party must provide a case summary;
- to arrange a scheduling conference approximately six weeks after filing to identify the principal issues in dispute, indicate the witnesses likely to be called and when the case will be set down for hearing;
- in all but urgent cases, interlocutory applications to be dealt with on the papers;
- a substantial reduction in the volume of discovery;
- trial times will be strictly monitored;
- the Court will endeavour to deliver judgment within six weeks and, in urgent matters, more quickly than that.

There has been extensive consultation concerning the Fast Track List with members of the legal profession in Victoria. The Court will closely monitor and review the implementation of the Fast Track List to ensure that it delivers on its key objectives of providing access to streamlined Court procedures and reducing the cost of litigation.

## The Court’s maritime and admiralty work

The cover of this year’s report highlights the Court’s maritime and admiralty work, which is an important area of the Court’s work. The Court has established a national arrangement for the jurisdiction which involves 13 judges and the Chief Justice being responsible for this body of work at first instance and, as far as practicable, on appeal. There are at least two such judges in each registry of the Court, one of whom is a procedure judge dealing with urgent matters such as applications about arrests. These judges undertake an education program and regularly attend conferences on maritime law.

The Court’s role in this area often requires the arrest or sale of vessels which involves working with a range of local, national and international authorities. In recent years the Court has focused on the national management of this work and enhancing its procedures through new Admiralty Rules, communication with practitioners and litigants and work with the Government on legislative issues. In 2006–07 there were also a number of significant events, including the signing of the Memorandum of Understanding with the Association of Australian Ports and Marine Authorities Incorporated which sets out areas of mutual interest and assistance and underpins a number of initiatives to strengthen the relationship between the Court’s Marshals and port authorities in each State and Territory. The Court also welcomed the Attorney General’s announcement in April 2007 of the establishment of the Australian Maritime and Transport Arbitration Commission.

## 2.3 The Court's Performance

### Workload

During the year there were 5,063 actions commenced in the Court and 12,740 in the general federal law jurisdiction – the combined workload of the Federal Court and the Federal Magistrates Court. The Federal Court's registries provide registry services for the Federal Magistrates Court. This work has continued to grow since 2000, when the Federal Magistrates Court was established. In 1999–2000 the combined filings in the Federal Magistrates Court and the original jurisdiction of the Federal Court were 5,885, compared with 11,220 this year.

### Migration appeals

Migration Act matters form a substantial and increasing proportion of the Court's appellate jurisdiction. In 2006–07, 71.84% of appeals and related actions concerned decisions under the Migration Act. This has increased from 56.4% in 2000–01. The Court has introduced a number of procedures to streamline the preparation and conduct of these appeals and applications, most of which are heard by a single judge rather than a Full Court. This is discussed in more detail in Chapter 3. It is important to note that rather than seeking additional judicial resources, the Court has implemented structural and procedural changes to facilitate the expeditious management of the migration workload.

### Performance against time standards

The Court has two 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. The time goals assist the Court in managing its work to achieve the performance criteria. They do not determine how long all cases will take as some are very long and complex and others will, necessarily, be very short.

#### Time Goal 1: 85% of cases completed within 18 months of commencement

During the reporting year, the Court completed 92.2% of cases in less than eighteen months, compared with 91.1% in the previous year. As shown in Figure 5.5 in Appendix 5 on page 94, over the last four years the Court has consistently exceeded its benchmark of 85%.

#### 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 2006–07 the Court handed down 2,161 judgments. While the Court's reporting system for these statistics is still being refined, initial data indicates that 96.1% of appeals (both full court and single judge) were delivered within three months and 81% of judgments at first instance were delivered within three months of the date of being reserved.



## CHAPTER 3

The work of the Court  
in 2006–2007

## 3.1 Introduction

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

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

## 3.2 Management of cases and deciding disputes

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

As reported in previous annual reports, the Court fully implemented a new case management system, Casetrack, during 2004-05, which replaced the Court's existing FEDCAMS system. Casetrack records matters differently to FEDCAMS with matters in the Court classified according to eleven main categories, described as 'causes of action' (COA). FEDCAMS categorised according to the legislation a matter was filed under (more than 150 different pieces of legislation make up the Court's jurisdiction). The effect of the different counting method is that the Court's annual reports since 2004-05 have reported different figures for earlier years from those recorded in those years.

### The Court's jurisdiction

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

Cases arising under Part IV (restrictive trade practices) and Part V (consumer protection) of the *Trade Practices Act 1974* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. See Figure 5.8 on page 97 for comparative statistics regarding Trade Practices Act matters.

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

The Court has jurisdiction under the *Judiciary Act 1903* to hear applications for judicial review of decisions by officers of the Commonwealth. Until 1 December 2005, this jurisdiction included the review of 'privative clause' and other decisions by the Migration Review Tribunal and the Refugee Review Tribunal under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in this Chapter on page 22.

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.

The Court shares first instance jurisdiction with the Supreme Courts of the States and Territories in the complex area of intellectual property (copyright, patents, trademarks and designs). All appeals in these cases, including appeals from the Supreme Courts, are to a Full Federal Court.

A significant part of the Court's jurisdiction derives from the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications, revised native title determination applications, compensation applications, claim registration applications, applications to remove agreements from the Register of Indigenous Land Use Agreements and applications about

the transfer of records. The Court also hears appeals from the National Native Title Tribunal (NNTT) and matters filed under the Administrative Decisions (Judicial Review) Act involving native title. The Court's native title jurisdiction is discussed on page 23. Figure 5.11 on page 100 shows native title matters filed over the last five years.

Another important part of the Court's jurisdiction derives from the *Admiralty Act 1988*. The Court has concurrent jurisdiction with the Supreme Courts of the States and Territories to hear maritime claims under this Act. Ships coming into Australian waters may be arrested for the purpose of providing security for money claimed from ship owners and operators. If security is not provided, a judge may order the sale of the ship to provide funds to pay the claims. During the reporting year the Court's Admiralty Marshal made 15 arrests. See Figure 5.10 on page 99 for a comparison of Admiralty Act matters filed in the past five years.

The Court's jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* (ASIC Act) 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 5.7 on page 96 for a comparison of corporations matters filed in the last five years.

The Court exercises jurisdiction under the *Bankruptcy Act 1966*. It has power to make sequestration (bankruptcy) orders against persons who have committed acts of bankruptcy and to grant bankruptcy discharges and annulments. The Court's jurisdiction includes matters arising from the administration of bankrupt estates. See Figure 5.6 on page 95 for a comparison of bankruptcy matters filed in the last five years.

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 appellate jurisdiction is discussed on page 20. Figure 5.13 on page 102 shows the appeals filed in the Court since 2002–03.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction are listed in Appendix 4 on page 86.

## Changes to the Court's jurisdiction in 2006–07

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

- *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*
- *Copyright Amendment Act 2006*
- *Independent Contractors Act 2006*
- *Medibank Private Sale Act 2006*
- *Native Title Amendment Act 2007*
- *Private Health Insurance Act 2007*

## Amendments to the Federal Court of Australia Act

During the reporting year there were no amendments to the Federal Court of Australia Act.

The Attorney-General's Department continues to consider proposals by the Court that the Federal Court of Australia Act be amended to:

- empower the Court to refer all or part of a proceeding to a referee for report to the Court;
- allow a single judge to make any interlocutory order in the appellate jurisdiction pending a determination of an appeal to a Full Court; and
- allow for certain types of appeals to be heard and determined by a two judge appeal panel.

## Amendments to the Federal Court of Australia Regulations

On 1 October 2006, the Federal Court of Australia Regulations 2004 was amended to increase the filing and other fees set out in Schedule 1. A minor amendment was made on 2 December 2006 to update references to certain provisions of the *Workplace Relations Act 1996*.

## Federal Court Rules and Practice Notes

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

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

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

- replace Order 8 and the associated forms with a new Order 8 dealing with the rules for service of court documents outside Australia;
- update the provisions for electronic filing in Order 1, including an increase to the limit on the number of pages that may be sent via electronic communication;
- amend Order 33 rule 11 which deals with the giving of evidence or the production of documents that may be the subject of privilege;
- replace Order 46 rule 7A with a new rule 7A which deals with whether certain documents should be accepted for filing;
- amend Order 80 which deals with the referral of litigants to legal practitioners for advice and assistance;
- update Order 48 to reflect the renumbering of provisions of the *Workplace Relations Act 1996* as a result of the *Workplace Relations Amendment (Work Choices) Act 2005*;
- insert new rules in Order 52 to facilitate the determination of certain appellate matters without an oral hearing in accordance with section 25 of the Federal Court of Australia Act;
- clarify the rules in Order 52 dealing with the documents to be provided to the Court on the hearing of an appeal;
- amend Order 27 and Form 41 in relation to the time in which a subpoena must be served, and the disposal of documents or other materials produced to the Court pursuant to a subpoena; and
- update the scale of solicitor's costs set out in Schedule 2.

During the reporting year the judges also adopted amendment rules in relation to the Federal Court (Corporations) Rules 2000 and the Federal Court (Bankruptcy) Rules 2005.

In early 2007 the Chief Justice and the Chief Federal Magistrate established a Harmonised Bankruptcy Rules Monitoring Committee to regularly review the harmonised bankruptcy rules that have been adopted by the Federal Court and the Federal Magistrates Court so that legislative or procedural issues may be addressed in a consistent manner.

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

- a revised Practice Note No 19 – List of Authorities and Legislation, Proceedings Generally;
- a new Practice Note No 25 – Title of proceedings for relief under section 39B of the Judiciary Act 1903 against the Australian Industrial Relations Commission;
- a new Practice Note No 26 – Consent orders in proceedings involving a federal tribunal.

In June 2007 the Chief Justice issued a revised Practice Direction – Guidelines for Expert Witnesses in Proceedings before the Federal Court. Also in June the Chief Justice issued a Notice to Practitioners on changes in the conduct of native title proceedings in the Court.

Practice Notes and Notices to Practitioners are available through District Registries and on the Court’s Internet home page. The Court has also published various Notices to Practitioners issued by the District Registries. These are available from the Court’s home page, the District Registries and in loose-leaf legal services.

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

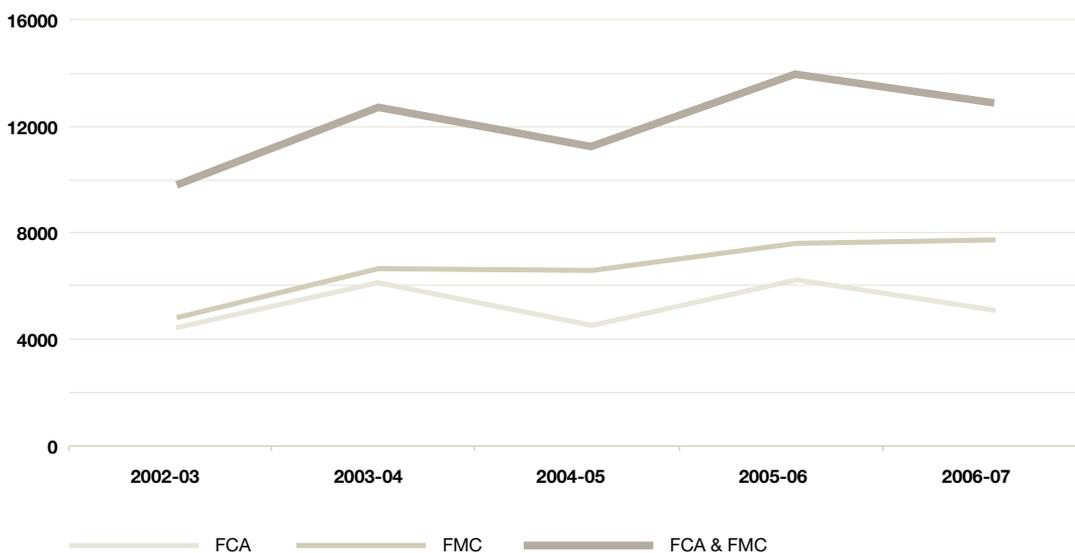
The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law including bankruptcy, human rights, workplace relations and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general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

As shown in Figure 3.1 below, the combined number of filings in the two courts has been growing since the establishment of the Federal Magistrates Court in mid-2000. In 2006–07, a total of 12,740 matters were filed in the two courts. In 1999–2000 there were 6,276 filings in the two courts.

The growth in the number of filings has had a considerable impact on the Federal Court’s registries, which process the documents filed in these matters 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 2007**

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



## Case flow management of the Court's jurisdiction

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

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

### Disposition of matters other than native title

In 1999–2000 the Court set a goal of 18 months from commencement as the period within which it should dispose of at least 85% 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 (such as winding up and related applications under the Corporations Law). 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 18 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 2002 to 30 June 2007, 89.67% of cases (excluding native title matters) were completed in less than 18 months, 83.8% in less than 12 months and 65% in less than six months (see Figure 5.4 on page 93). Figure 5.5 on page 94 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years. The figure shows that in 2006–07, 92.2% of cases were completed within 18 months. This compares to 91.1% in the previous reporting year.

Special issues arise in relation to the disposition of native title matters. This is discussed on page 25.

### Delivery of judgments

In the reporting period, 2,161 judgments were delivered. Of these, 185 were delivered in Full Court appeals and 1,363 in single judge appeals and 613 were judgments in first instance matters. 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 7 on page 108 includes a summary of decisions of interest published 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, 3,543 cases were commenced in, or transferred to, the Court's original jurisdiction.

### Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

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

During 2006–07, 38 matters were remitted or transferred to the Court:

- 10 from the High Court of Australia
- 11 from the Federal Magistrates Court
- 17 from other courts.

Matters may be transferred from the Court under:

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

During 2006–07, 73 matters were transferred from the Court:

- 62 to the Federal Magistrates Court
- 11 to other courts.

### Matters Completed

Table 5.2 on page 90 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 3,808 against 4,887 in the previous reporting year. The decline is due to a decrease in the number of corporations law matters filed and completed during the year.

### Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2,678 (see Table 5.2), compared with 2,943 in 2005–06.

### 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) as at 30 June 2007 is set out in Table 3.1 on the following page.

Native title matters are not included in Table 3.1 because of their complexity, the role of the National Native Title Tribunal and the need to acknowledge regional priorities. The age of pending native title matters is set out in Table 3.4 on page 25.

**Table 3.1 – Age of current matters**

(excluding appeals and related actions and native title matters)

Age at 30 June 2007	Under 6 mths	6 – 12 mths	12 – 18 mths	18 – 24 mths	Over 24 mths	Sub-Total
<b>Cause of Action</b>						
Administrative law	73	43	10	4	11	141
Admiralty	16	17	9	16	5	63
Bankruptcy	63	7	3	5	7	85
Competition law	16	7	4	3	15	45
Consumer protection	69	82	26	46	79	302
Corporations	346	52	28	26	42	494
Human rights	10	6	2	5	7	30
Industrial	63	21	18	4	6	112
Intellectual property	87	65	28	24	38	242
Migration	12	2	2	1	6	23
Miscellaneous	22	6	7	7	9	51
Taxation	115	90	64	37	204	510
<b>Total</b>	<b>892</b>	<b>398</b>	<b>201</b>	<b>178</b>	<b>429</b>	<b>2098</b>
% of Total	42.5%	19.0%	9.6%	8.5%	20.4%	100.0%
<b>Running Total</b>	<b>892</b>	<b>1290</b>	<b>1491</b>	<b>1669</b>	<b>2098</b>	
Running %	42.5%	61.5%	71.1%	79.6%	100.0%	

Table 3.1 shows that as at 30 June 2007 there were 607 matters over 18 months old compared to 660 in 2006 (not including native title matters). Taxation and trade practices make up a high proportion of the matters over 24 months old.

The Court will continue to focus on reducing its pending caseload and the number of matters over 18 months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 5 to this report commencing on page 89.

### The Court's appellate jurisdiction

The appellate workload of the Court continues to be substantial. 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 appeals and related actions are 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.

The *Migration Litigation Reform Act 2005* (Cth) ("the Act"), which commenced on 1 December 2005, amended legislation affecting the Court's original and appellate jurisdiction. The Court's original jurisdiction for the judicial review of decisions under the *Migration Act 1958* (Cth) is now exercisable in only limited circumstances as the Act, in effect, gave the Federal Magistrates Court exclusive first instance jurisdiction in migration cases.

The Act also amended the *Federal Court of Australia Act 1976* (Cth) to provide that the appellate jurisdiction of the Court in relation to an appeal from a migration judgment of the Federal Magistrates Court is to be exercised by: a single judge; or if a judge considers that it is appropriate for the appellate jurisdiction of the Court in relation to the appeal to be exercised by a Full Court – a Full Court.

Subject to s25(1A), (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. Any increase in the number of appellate hearings adds to the workload of the Court. Thus judges who sit on appeals during the four scheduled Full Court sitting periods each year would have less time to devote to their own individual docket work, and this also impacts on the Court's ability to dispose of first instance work. Any substantial increase in appellate work may result in a proportionate reduction in the Court's ability to do trial work.

The Court monitors the effects on its workload of increases in the number of appeals and, as necessary or relevant, will introduce changes to appellate practice and procedure to ameliorate or limit these effects so that the Court continues to deal with its appellate and first instance work in an efficient, effective and timely manner.

Towards the end of each calendar year, the Court publishes its schedule of Full Court sittings for the following year. In the 2007 calendar year, four Full Court sittings 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 sitting 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, hear the appeal in a capital city other than that in which the case was originally heard or use video conferencing facilities. During the reporting year, 15 special hearings of the Full Court (totalling 17 hearing days) were held to enable the early disposition of urgent appeals.

### **The appellate workload**

In 2006–07, 1,520 appeals and related actions were filed in the Court (see Table 5.3 on page 91). An "Appeal or Related Action" includes any appeal or interlocutory application filed in the Court's appellate jurisdiction in relation to a decision of a court exercising federal jurisdiction. The related actions include, for example, applications to the Court for leave or special leave to appeal, an extension of time within which to institute an appeal, security for costs in relation to an appeal or a stay of an appeal.

The Federal Magistrates Court continues to be the most significant source of appeals and related actions accounting for 76.3% (1,160) of the total number of appeals and related actions filed in the Court in 2006–07. Further information on the source of appeals and related actions is set out in Figure 5.14 on page 103.

In the reporting year 1,530 appeals and related actions were completed. This number is attributable to the large number of appeals and related actions, particularly migration cases, from the Federal Magistrates Court.

The majority of appeals and related actions from the Federal Magistrates Court were heard and determined by single judges exercising the appellate jurisdiction of the Court. Over the four Full Court sitting periods during the reporting year, only 34 appeals from the Federal Magistrates Court were fixed for hearing before a Full Court, comprising three judges.

As at 30 June 2007 there were 534 pending appeals and related actions.

The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) as at 30 June 2007 is set out in Table 3.2 on the following page.

At 30 June 2007 there were 32 appeals and related actions over 18 months old – 27 of these involve associated appeals and related actions that arise out of the same or related proceedings at first instance. A number of cases are awaiting resolution of proceedings in a tribunal or other court or have been remitted back to the Court from the High Court following successful appeals. The age of these appeals and related actions generally reflects the nature and complexity of these cases.

**Table 3.2 – Age of current appeals and related actions**

Current Age	Less than 6mths	6–12 mths	12–18 mths	18–24 mths	Over 24 mths	Total
Appeals and related actions	420	69	13	0	32	534
% of total	78.65%	12.92%	2.43%	0%	6%	100.0%
<b>Running total</b>	<b>420</b>	<b>489</b>	<b>502</b>	<b>502</b>	<b>534</b>	
Running %	78.65%	91.57%	94%	94%	100%	

## Managing migration appeals

In recent years the Court has had to deal with a significant number of migration matters at first instance. In 2003–04 there were over 2,590 migration matters filed in, or remitted to, the Court in its original jurisdiction. This included 1,716 matters remitted by the High Court. However, in 2006–07, only 46 migration matters were commenced in the Court's original jurisdiction. The change in workload reflects the fact that most migration applications are now commenced in the Federal Magistrates Court in accordance with the Migration Litigation Reform Act.

Migration Act matters are a substantial and increasing proportion of the Court's appellate jurisdiction. In 2006–2007, 71.8% of appeals and related actions concerned decisions under the Migration Act. Table 3.3 below shows how the number of appeals involving the Migration Act has increased as a proportion of the appellate workload since 2002–03. The Court has introduced a number of procedures to streamline the preparation and conduct of these appeals and applications, most of which are heard by a single judge rather than a Full Court. It is important to note that rather than seeking additional judicial resources, the Court has implemented structural and procedural changes 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 appeals and related applications (whether to be heard by a single judge or by a Full Court) are listed for hearing in the next scheduled Full Court sitting period. Fixing appeals and applications for hearing in the four, four-week, scheduled Full Court sittings periods has, to date, provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same four-week sitting period.

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

**Table 3.3 – Migration Act appeals and related actions as a proportion of all appeals and related actions**

Appeals and related actions	2002–03	2003–04	2004–05	2005–06	2006–07
Migration Jurisdiction	437	663	1050	1052	1092
%	61.8%	73.4%	75.8%	78.9%	71.8%
<b>Total Appeals &amp; RA</b>	<b>707</b>	<b>903</b>	<b>1385</b>	<b>1334</b>	<b>1520</b>

**Note.** Migration appeals and related actions finalised in the reporting year was 1,124 and still pending in the reporting year was 331.

## The Court's native title jurisdiction

The *Native Title Act 1993* (Cth) (NTA) confers jurisdiction on the Court to decide applications for the recognition of native title and various other proceedings in relation to native title. The original legislation enacted in 1993 provided for applications to be lodged with the National Native Title Tribunal (referred to as 'the Tribunal' below) and then be referred to the Court only in relation to particular questions of law or in the event that mediation failed to produce a result. The Act was substantially amended in 1998.

The 1998 amendments substantially increased the Court's jurisdiction. In effect, all native title applications are filed in the Court and the Court has a wide range of powers under the Native Title Act in relation to the management and resolution of native title applications.

During the reporting period the Act was further amended by the *Native Title Amendment Act 2007*. The amendments represent the Government's response to the report of the Native Title Claims Resolution Review which was undertaken by Mr Graham Hiley QC and Dr Ken Levy in 2005 and 2006. In relation to the Court, particular amendments are designed to promote better communication and coordination and remove duplication of functions between the Court and the Tribunal.

Overall, the amendments are designed to ensure that effective outcomes are delivered more expeditiously for all parties and agreement-making, in preference to litigation, is encouraged. This has been achieved by a number of means including conferring more mediation powers on the Tribunal.

In this context, during the year the Court has reviewed its management of native title proceedings, which is discussed in more detail below.

In general, the Court has adopted an active approach to the management of native title cases, which aims to create and support a culture of activity and progress. The Court uses a range of innovative strategies to assist with the management of native title cases. These are also discussed below, as is the native title workload for the year and native title decisions of interest.

### National allocation

In 1999 the Court implemented a national system of case allocation, whereby cases are allocated to a 'provisional docket judge' upon filing and are monitored by the Court. All matters in mediation in a particular State or Territory are generally allocated to a Provisional Docket Judge who reviews them from time to time and receives reports from the Tribunal about the progress of mediation. Where the case requires close case management or the hearing of a substantive issue, the matter may be referred to a judge to manage the matter through to trial.

At 30 June 2007, 374 native title matters had been substantively allocated, of which 112 remain active and are managed by judges of the Court. The Court's allocation system has been recently reviewed and is referred to below.

### Case management strategies

The Court has developed case management strategies for native title cases which are appropriately responsive, but also mindful of the general practice and procedure of the Court. As with other litigation, native title cases are subject to intensive case management and there is extensive judicial involvement in the supervision and monitoring of a case in progress. The Court encourages innovative approaches to the settling of a claim, and during the reporting period used a number of different mechanisms to progress matters, including:

- making orders requiring a high level of specificity in the timetabling of mediation,
- the use of pre-mediation conferences or regional case conferences,
- referral of a matter or specific issue to mediation by an officer of the Court, and
- the appointment of Court experts and/or the convening of conferences of experts.

***Regional case conferences***

The Court has developed a practice for the regional management of claims which allows claims from the same region in a State or Territory to be reviewed at the same time in the light of work plans and priorities proposed by the applicants, their representative body and the State or Territory Government.

Through convening regional case conferences, the judge or judges (sometimes sitting together) examine priorities and timeframes for mediation, negotiation and litigation on a regional basis, with regard to regional priorities, interrelated claims and resource considerations. The regional case conferences provide a forum by which parties inform the Court of their priorities on a regional, rather than case-by-case basis. In support of this process the Tribunal produces regional reports so that the judge/s may order appropriate timetables if necessary.

This approach is used consistently and most effectively in Queensland, Western Australia and the Northern Territory and is now reflected to a lesser or greater degree in all States and Territories, with some variation in the approach taken.

***Court annexed mediation***

During the reporting period, the role of the Court in relation to the Tribunal's mediation has been to impose a timetable on matters referred to the Tribunal for mediation and set various deadlines by which progress should be shown. Alternatively the Court will set the matter down for trial and may order that mediation cease.

Although mediation is primarily conducted by the Tribunal, the Court has used its own mediation process from time to time, in particular following a decision of the Court, a case management conference, or having regard to the particular circumstances of the matter or of the parties.

During the year, the Court revised its approach to the national allocation and management of native title cases in light of the legislative amendments arising out of the Native Title Claims Resolution Review mentioned above.

**Revised approach to the national allocation and management of cases**

On 8 June 2007 the Chief Justice issued a Notice to Practitioners relating to changes in the conduct of native title proceedings in the Federal Court. The approach outlined in the Notice builds on the regional case management already in place and reflects a change to the provisional docket/substantive docket system.

Cases in mediation will generally be managed by a Native Title List Judge assigned to a particular region. Matters referred for trial after mediation has been terminated will be allocated to a trial judge. In each Registry one or more judges, referred to as the Native Title List Judges, will manage first instance native title matters. They will be assisted by Native Title Registrars.

The new arrangements encourage a greater emphasis on the regional management of native title cases with a view to allowing their progress to be coordinated and streamlined across a region or regions. The Native Title List Judge may conduct regional case management conferences in conjunction with any trial judges with allocated native title cases in the region. The object of the management of the list by the Native Title List Judge is to ensure that groups of applications within a particular region can be reviewed together regularly and that there is a specific and credible mediation timetable on a case specific and/or regional basis prepared and complied with. The objective of the Native Title List Judge will also be to pursue the timely resolution of cases which are in mediation.

The Native Title List Judges and Court's Native Title Registrars may conduct case management conferences with the Tribunal and the parties to applications within a particular region to identify cases that should proceed to trial with priority. Cases may be given priority if they can function as lead cases within a group of claims or for a region. By resolving legal or factual questions of general application, such matters may provide a basis for consent determinations or negotiated agreements in other matters within the region. As a general rule, a case will be allocated to a trial judge only once it has actively progressed into trial.

When mediation before the Tribunal has ceased, a trial judge may give consideration to case management measures to assist in the progress of the case. These may include the appointment of an expert to assist the Court, the referral of a case to a form of ADR such as mediation or a compulsory conference of experts.

### The native title workload

During the reporting year, the Court made 15 determinations in respect of the existence of native title. One of these determinations was made after contested hearings, six were achieved through mediation and negotiation and eight of the determinations were made in respect of non-claimant applications.

At 30 June 2007 there were 580 current native title cases. Table 3.4 below shows the age of these cases.

**Table 3.4 – Age of current native title matters**

Age at 30 June 2007	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Native Title Action	14	28	21	17	500	580
% of Total	2.4%	4.8%	3.6%	2.9%	86.2%	100.0%
<b>Running Total</b>	<b>14</b>	<b>42</b>	<b>63</b>	<b>80</b>	<b>580</b>	
Running %	2.4%	7.2%	10.9%	13.8%	100.0%	

It is important to note that the figures set out in Table 3.4 are based on all applications under the Native Title Act (NTA) that have been filed in the Court and which remain open on Casetrack. However, a large number of cases have been effectively closed as a result of being combined or consolidated with one or more cases, but remain open on Casetrack. The consolidation and streamlining of native title cases often means that applications are dealt with as a single ‘active claimant application’ with the consolidated or subsidiary files remaining open for practical purposes until the lead matter has been determined or finalised. In effect, this means that as at 30 June 2007 there were, in practical terms, 522 active native title claimant applications of which the NNTT is mediating 287. There were also 11 compensation claims and 33 non-claimant applications.

Of the 522 active claimant applications before the Court, 484 have been notified. The notifications that occurred in 2006–07 resulted in the Court processing and finalising 89 joinder of party applications.

Figure 5.11 on page 100 provides more information on native title act filings.

### Native title decisions of interest

During the reporting year, a number of decisions of the Court clarified the following issues under the Native Title Act (NTA).

- Whether the Court can be satisfied of the appropriateness of an agreement under s87 of the NTA where the parties to the agreement establish that there is an agreement and whether it was freely entered into on an informed basis. In considering this approach the Court said that the NTA does not intend to substitute a trial conducted by State parties for a trial before the Court, it contemplates a more flexible process than is undertaken in some cases. *Lovett on behalf of the Gunditjmarra People v Victoria*
- Reaffirmed the view of the full court in *Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya* that, in recognising the existence of native title, the native title right to live on the land and erect structures could include the right to permanently live on the land, subject to the inconsistency principle. *King v Northern Territory of Australia (Newcastle Waters)*
- Whether references in the NTA to ‘the applicant’ prevent the authorisation of persons as applicant being viewed individually and the resulting applicability of O 6 r 9 of the *Federal Court Rules* being applied to remove members of the group no longer authorised.

*Chapman v Queensland*

- Gave further consideration to the meaning of interest under s84 of the NTA and ultimately refused to join a local government authority as a respondent party. *Akiba v Queensland (No.1)*
- Whether a grant of fee simple under the *Aboriginal Land Rights (NT) Act* extended to the low water mark confers an exclusive right over the inter tidal zone. *Gumana v Northern Territory*

**Assisted Dispute Resolution (ADR)**

The Court has provided a court-annexed mediation scheme (where judges make orders that the parties attend mediation before a registrar, or someone agreed upon by the parties and then formally appointed by the District Registrar) since 1987. In 1997 the *Federal Court of Australia Act 1976* (Cth) was amended with the result that a case can be referred to mediation with or without the consent of the parties.

Since the introduction of the Court's Individual Docket System there has been a greater emphasis on the early identification of cases suitable for ADR and court-ordered mediation is increasingly viewed by the Court and by the profession as an integral and valuable part of the judicial case management process. The Court continues to encourage the parties to any litigation to adopt more efficient ways of managing a case and reducing the costs associated with litigating and mediation is one response to this issue.

While parties have the option of selecting their own external mediator the majority of Court-ordered mediations are conducted by Court registrars who have been trained as mediators and are required to continually improve their skills. Since the last report the Court has made considerable progress towards the introduction of a program for the accreditation of the Court's Mediators. Whilst a National Mediator Accreditation scheme is yet to be introduced, the Court is developing its own scheme with reference to proposed national standards.

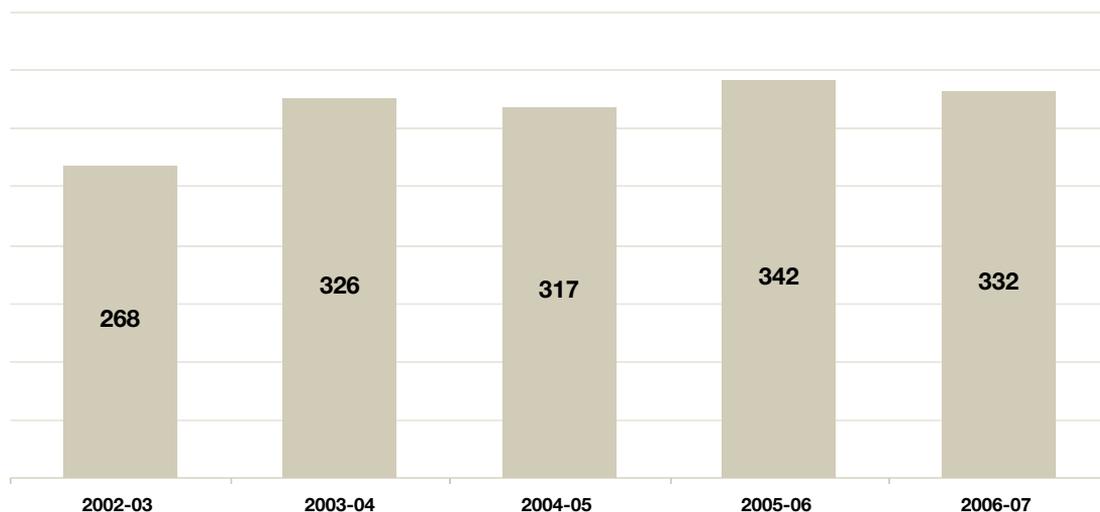
Figure 3.2 on page 27 sets out the number of matters referred to mediators during the five year period to 2006–07. The program has proved popular, with a total of 4,358 matters referred to mediation since its commencement in 1987. In the last five years, an average of 317 matters has been referred each reporting year. In the reporting year 332 matters were referred to ADR.

The types of matters referred can relate to most matters in the Court's jurisdiction. However, the majority of referrals have been in matters concerning trade practices, intellectual property, taxation, workplace relations, and bankruptcy.

The settlement rates of cases referred to mediation since the commencement of the program in 1987 has averaged 55 per cent. Settlement rates at mediation should not, however, be the sole criteria by which the program is evaluated. Many matters which do not settle proceed to trial with issues better defined, or on the basis of agreed facts settled by the parties with the assistance of the mediator. In some instances the parties also agree that the Court should only be asked to determine liability or quantum. These types of results mean savings in costs to the parties and the Court.

**Figure 3.2 – Assisted Dispute Resolution (ADR) 2002–03 to 2006–07**

Matters referred for mediation



### Management of cases and deciding disputes by Tribunals

The Court provides operational support to the Australian Competition Tribunal, 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 to 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.

The Court also provided support to the Federal Police Disciplinary Tribunal which ceased to exist during the year with the enactment of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006*.

A summary of the functions of each tribunal and the work undertaken by it during the reporting year is set out in Appendix 6 on page 104.

### 3.3 Improving access to the Court and contributing to the Australian legal system

#### Introduction

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

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

#### Practice and procedure reforms

The Practice Committee is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee considered a range of issues, including:

- issues arising from the Law Council's paper on case management in the Court;
- the implementation of a proposed new 'fair and reasonable' test for the fixing of party and party costs in lieu of the current 'necessary and proper' test;
- current registry Individual Docket System practices;
- the operation of the Court's legal assistance scheme under Order 80 of the Federal Court Rules;
- the powers of the Court that may be exercised by Registrars pursuant to a delegation under section 35A of the Federal Court of Australia Act;
- a review of the Practice Direction – Guidelines for Expert Witnesses to provide for expert evidence which is 'argumentative' and which might be accepted as submissions rather than evidence;
- procedures for dealing with certain applications 'on the papers';
- the exercise of appellate jurisdiction by a single judge;
- representative proceedings;
- the review of advocates' immunity by the Standing Committee of Attorneys-General;
- the development of a new Practice Note dealing with the title of proceedings for relief under section 39B of the Judiciary Act 1903 against the Australian Industrial Relations Commission;
- the establishment of a joint courts committee to replace the Federal Costs Advisory Committee which is to be abolished; and
- the structure and content of appeal books.

#### Liaison with the Law Council of Australia

The Committee met during the reporting year with the Law Council's Federal Court Practice Committee to discuss matters concerning the Court's practice and procedure, including:

- the rules revision project;
- the Law Council's paper on case management issues;
- the Court's review of how party and party costs should be determined;
- abolition of the Federal Costs Advisory Committee; and
- electronic trials, discovery of electronic records and related issues.

## Assistance for self represented litigants

In recent years the Court has undertaken a range of activities in response to the challenges raised by self represented litigants. A number of these activities were identified in the Court's Self Represented Litigants Management Plan which was adopted in late 2002. The Court continues to develop and implement strategies in relation to self represented litigants, and is compiling a new Management Plan.

During the year the Court has developed new functions to enable Casetrack to produce a range of statistical reports which will allow the Court to more closely monitor the impact that self represented litigants have on the litigation process and to measure the effectiveness of initiatives to assist them. These reports are expected to be available from August 2007 and will enable the Court to report more comprehensively next year. In the meantime, it is not possible to provide definitive information on the number of self represented litigants in the Court. Anecdotal evidence suggests that the number is decreasing, probably as an outcome of the Federal Magistrates Court hearing most of the first instance bankruptcy and migration cases, which historically involve a very high number of self represented litigants.

## Interpreters

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

## Remission or waiver of court and registry fees

Under the Federal Court of Australia Regulations, fees are charged for commencing a proceeding and for setting a matter down for hearing (including a daily hearing fee). A setting down fee is not payable on all matters and the amount of the daily hearing fee will vary depending on the nature of the hearing. The court fees increased on 1 July 2006 in accordance with regulation 8, which provides a formula for increasing specific court fees every two years from 1 July 2004.

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

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

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

Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 81.

## Remote hearings

Where appropriate, the Court will conduct hearings in remote locations. For example, in a number of native title cases the Court has travelled to remote areas of Western Australia, Queensland and the Northern Territory to take evidence from witnesses who may not otherwise be able to attend the Court.

## Public Information

### Internet website

The website is integral to the Court's business and contains useful information about the Court and its work including full text judgments, daily court lists, practice and procedure guides, forms and fees, information for litigants and legal practitioners. It also provides access to electronic filing, eCourt online forum and eSearch for selected case information.

This year, at judges' discretion, papers delivered by judges of the Court have been added to the website. Two educational DVDs, *The role of judicial officers* and *How a case travels through the Federal Court*, were also added to the site.

### 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 bankruptcy, native title and human rights cases; information on the Court's use of mediation. These brochures are available from any of the Court's registries and are downloadable from the website.

### Access to judgments

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

Judgments are also made available in full text on the Internet at the Australasian Legal Information Institute ("AustLII") site. A link to this site is provided on the Court's web site. High profile judgments usually are made available at the AustLII site within a few hours of publication and other judgments within a few days.

The rapid availability of judgments electronically assists their speedy dissemination to the legal and wider community.

### Information for the media and televised judgments

During the reporting year the Court's Director Public Information provided a range of assistance to journalists covering Federal Court cases and issues related to the Court's work. This included managing access to court proceedings by television and radio news outlets in matters of public interest. In 2006–07 this included the following cases:

- *New Zealand v Moloney* – a case in which the New Zealand Government sought the extradition of two members of a religious order who were alleged to have committed sexual offences. Television New Zealand was allowed to record vision of a five-judge appeal court sitting in Sydney.
- *Bennell v State of Western Australia & Ors* – cases involving six native title claims concerning land and waters in, or near to, the Perth metropolitan area. The ABC were permitted to record Justice Wilcox reading a summary of judgment that was shared with all major Perth outlets.
- *Gunditjmara People's application for native title determination* – delivered by Justice North at Mt Eccles (near Portland) and covering lands in Victoria's south west. Covered by ABC's "Stateline" program.
- *Yungngora People's application for native title determination* – delivered by Justice French at remote Noonkanbah Station in far north Western Australia. Covered by ABC, WIN, and Golden West.

A number of educational and training DVDs were also produced on: “The Role of Judicial Officers”, “How a Case Travels through the Federal Court”, “Working in the Federal Court”, “The Court Room”, and “Pre-Trial Judicial Management in the Federal Court”. Some of these are now viewable on the Court’s website.

## **Community relations**

The Court is actively engaged in a program of national strategies to enhance public understanding of the Court and its work, as well as confidence in the justice system and courts more generally. These strategies include ongoing initiatives such as regular meetings at a national and local level with different users of the Court, as well as a program of engagement with schools and other educational and community organisations. The following highlights some of the activities during the year.

### **Federal Court user groups**

The Court continued its involvement in user groups to provide an opportunity for information exchange with practitioners and other people with an interest in particular areas of its jurisdiction. During the year meetings were held with local law societies and bar associations in the states and territories and regular liaison meetings were held between the Practice Committee and the Law Council of Australia. In the course of the Rules Revision Project Justice Lander met with the Law Council and other representative bodies in each State and Territory. More detailed consultation will be held when the draft rules are finalised.

User group meetings for general Court users, as well as in specific areas of the Court’s jurisdiction, such as migration, corporations (including bankruptcy), admiralty, intellectual property and trade practices were also held. In Victoria in particular prior to the implementation of the ‘Fast Track List’, an extensive consultation program was undertaken with the legal profession. The ‘Fast Track List’ Practice Directions were circulated to the Federal Court Users Committee Group and Litigation Partners of several law firms to seek their feedback. The Law Institute of Victoria hosted a meeting with representatives from the Victorian Registry and several law firms to review the ‘Fast Track List’. A meeting was also held with representatives of the Victorian Bar and the Victorian Registry to review the ‘Fast Track List’.

### **Activities with the community**

During the year the Court undertook the following activities with the legal profession, schools, students and community organisations.

The NSW registry presented a paper at the Australian Legal Education Council National Conference in November 2006 and adjudicated a semi-final of SCRAM (Schools Conflict Resolution and Mediation) – a competition for year 9 and 10 students organised by the various State Law Societies. The registry also gave presentations to new litigation solicitors on practising in the Federal Court and the Federal Magistrates Court. The Registry hosted seven school students undertaking work experience placements during the year.

The ‘Fast Track List’ came into effect from 1 May 2007 in the Victorian Registry. The Victorian Registry hosted a number of Moot courts for the LaTrobe, Deakin and Monash Universities. On two occasions staff presented to the Victorian Bar Readers course providing an overview of the Federal Court, the Victorian Registry and federal jurisdiction. The registry hosted a delegation of Japanese students from the Chuo Law School and gave a presentation on the Court’s role, powers and procedure with respect to corporate governance issues. The Registry also has hosted five work experience students. Students have undertaken various duties in the Registry.

In Queensland, judges of the Court hosted a Practice Moot for the University of Queensland and Queensland University of Technology Maritime Moot Teams. The Practice Moot was held with a view to assisting the team participants in their preparation for the National Moot Competition held later in June. The adjudication panel comprised Justice Kirby of the High Court of Australia, Justice Kiefel of the Federal Court of Australia and Dr M White QC Adjunct Professor, Centre for Marine Studies, Marine and Shipping Law Unit, University of Queensland. There were also visits to the Court by law students of Bond University, Gold Coast. The Queensland District Registry continued its association with the Faculty of Law, Queensland University of Technology in conducting practice court sessions for students in bankruptcy matters.

The West Australian registry ran two comprehensive information sessions on Court and registry processes for junior solicitors and paralegals. A handbook covering information during the session was provided on a CD. The registry also ran information sessions and tours of Court facilities for various groups, including summer clerks and articled clerks. The registry hosted the grand finals of the Australian Law Students Association Humanitarian Law Moot and the Murdoch Law Society Trial Advocacy competition and an event for the University of Western Australia moot team. Justices French and Lee chaired an admiralty colloquia. The registry also delivered a talk on mediation as part of the Law Week activities and participated in a panel session on mediation for final year law students at the University of Western Australia.

The South Australian registry presented information sessions for practitioners and contributed to the SA Bar Readers Course. It also gave a presentation to the Insolvency Practitioners Association of Australia. There was a presentation on the Court for secondary school children during Law Week and presentations and building tours for Probus and other community groups during the year.

In May 2007 the Northern Territory Registry arranged a seminar for Justices French, Branson and Sundberg while their Honours were involved in Full Court sittings in Darwin. The function commenced with a presentation by Branson J on “Understanding the jurisdiction of the Federal Court – It’s easier than you think”. The presentation was very well received by a broad cross-section of practitioners. In addition, French J gave a presentation to the Law Society of the Northern Territory entitled: “Stopping the Train after the Wreck – Corporate Group Collapse and Protective Orders under Section 1323 of the Corporations Act” which was also well received. The registry also facilitated seminars by Justice Mansfield to the NT Law Society on a number of topics.

In the ACT, a reception was held on 8 February 2007 to mark the 30th Anniversary of the Federal Court in Canberra and the opening of a new entrance to the Nigel Bowen Commonwealth Courts Building where the ACT registry is situated. The Chief Justice addressed the gathering of distinguished guests including members of Canberra’s legal and political community. The Attorney-General, Philip Ruddock MP, also spoke about the history of the Court in Canberra.

## **Complaints about the Court’s processes**

During the reporting year 21 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 or the Court, which may only be dealt with by way of appeal.

## **Involvement in legal education programs and legal reform activities**

The Court is an active supporter of legal education programs, both in Australia and overseas. Information about the Court’s engagement with legal education programs for international jurisdictions is described below. During the reporting year, 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, university law schools; and
- 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 8 on page 120.

## 3.4 Work with international jurisdictions

### Introduction

The Federal Court of Australia provides development assistance to neighbouring judiciaries across the Asia–Pacific Region. The Court is involved in numerous large programs and also coordinates official visits of judges and Court staff to and from Australia.

### Asia Pacific Judicial Reform Forum

The Court is part of the Secretariat for the Asia Pacific Judicial Reform Forum (APJRF), (also including the High Court of Australia, the Supreme Court of NSW, Judicial Commission of NSW, the Supreme Court of the Philippines and the United Nations Development Program) which is a network of superior courts and justice sector agencies from 49 countries across the Asia Pacific region. The official APJRF website was launched in May 2007 at the second Round Table Discussion held in Putrajaya, Malaysia. Work has begun on the APJRF Handbook, which will be a tool for judicial reform targeting developing and transitional countries and supporting successful judicial reform programs.

### China: Supreme People's Court

During the year, the Court focused on building a new institutional relationship with the Supreme People's Court of China which is intended to build the capacity of the Court in a number of technical legal areas. Several of the Court's judges travelled to Beijing in June 2007 to deliver presentations and hold discussions with their counterparts with the intention of discussing areas of mutual interest and establishing a long-term cooperation relationship between the two courts.

### Indonesia–Australia Legal Development Facility

The Federal Court has worked with the Supreme Court of Indonesia to strengthen the capacity of the Court and its officers for over 15 years. In November 2006, the Court hosted the annual meeting between Chief Justice Bagir Manan of the Supreme Court of Indonesia and Chief Justice Black. The purpose of the visit was to review the progress of current development programs between the courts and discuss potential assistance programs. As part of their visit, the Indonesian delegates visited both the Melbourne and Sydney registries of the Court, as well as the Family Court of Australia which is working with the Religious Courts of Indonesia.

In April 2007, the Court delivered a *Budgeting and Financial Management Program* to officials from the Supreme Court of Indonesia, which was designed to assist the Supreme Court with their financial management. The goal of the Program was to assist the delegates with the development of a transparent, accountable and consultative budgeting process for all jurisdictions managed by the Supreme Court.

During the year significant progress was made in reducing the backlog of cases in the Supreme Court of Indonesia, as part of the Backlog Reduction Program being conducted under the *Memorandum of Understanding* between the Supreme Court and the Federal Court of Australia. In addition, as part of this agreement, Federal Court judges in Sydney and Melbourne have been taking Indonesian language lessons, in an effort to improve the cultural awareness between the two courts.

In June 2007 delegates from the Supreme Court participated in a *Leadership and Change Management Program* in Sydney to provide selected judges and senior managers with the skills to assist them in implementing the Blueprint for Reform within the Supreme Court.

## Pacific Judicial Development Program

In January 2007, the Court commenced the Pacific Judicial Development Program to strengthen governance and the rule of law in 15 participating Pacific Island countries. This will be achieved through a range of activities which will enhance the competence of judicial and court officers and improve the systems and processes they use. The Program will run for at least five years, and is jointly supported by AusAID and NZAID. It has a number of key focus areas, including:

- *Orientation and Refresher Programs* to enhance skills, knowledge and professionalism in key competencies associated with the roles of judicial and court officers within the particular courts they serve.
- *Community and Social Context for Justice* which informs and empowers Pacific judiciaries to contend with issues of national and regional importance, including traditional and innovative systems of dispute resolution, the rights of women and children, family and sexual violence, and HIV/AIDS.
- *Judicial Independence* to bolster the strength of the judiciary as an unfettered branch of government able to uphold the rule of law particularly in the face of national and regional instability.
- *Sustainable Systems and Processes* to enable Pacific judiciaries to function efficiently and effectively.
- *Information and Communication* to ensure Pacific judiciaries remain abreast of national and regional legal, policy and systemic developments. This will include providing access to regional and national information databases, publications, law reports, precedents, legislative and policy instruments.

## Tonga: Pacific Governance Support Program

During the year, the Court continued its support to Tonga under the Pacific Governance Support Program. Several expert exchanges occurred between the Federal Court and the Supreme Court of Tonga, with the objective of improving judicial and court administration systems. The Court has also been instrumental in the re-design of the Supreme Court's workflow and case management and a network of computers has been installed along with a file room. Most recently a mediator was trained and accredited by LEADR<sup>1</sup> and is now conducting mediations in Tonga.

## Vietnam: Benchbook revision

The Federal Court has been asked to manage the revision of the first Vietnamese Benchbook. Justice Moore was integral to the development of the Benchbook and the Court is looking forward to working with the Supreme People's Court in ensuring their Benchbook remains up to date.

## Visitors to the Court

In addition to the aforementioned, the Court has hosted visits from more than 90 overseas visitors, including delegations from:

- Supreme Court of Korea
- Courts Service Ireland
- Thailand Supreme Administrative Court
- Supreme People's Court, People's Republic of China.

1. An Australasian, not-for-profit membership organisation serving the community by promoting and facilitating the use of consensual dispute resolution processes generally known as Alternative Dispute Resolution or ADR.



## CHAPTER 4

### Management of the Court

## 4.1 Introduction

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. 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.

The management of the Court is supported by the collegiate involvement of the judges of the Court through formal meetings of all judges and the judges' committee structure (discussed below).

As outlined in Chapter 1 of this report, the Court's administration is supported by a national registry structure, with a Principal Registry responsible for managing national issues and supporting the corporate services functions of the Court, and a District Registry in each State and Territory which supports the work of the Court at a local level. A diagram of the management structure of the Court is set out in Appendix 2 on page 83.

### Judges' committees

There are a number of standing 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. The committees provide advice to the Chief Justice and to all judges at the regular judges' meetings. The current standing committees are:

Admiralty	Library
Assisted Dispute Resolution	Management of Appeals
Audit	Native Title Coordination
Bankruptcy	Policy and Planning
Corporations	Practice
Equality and the Law	Rules
Finance	Security
Information Technology	Self Represented Litigants
International Development	Transcript
Judicial Education	

In addition, a number of other committees and working parties have been established from time to time to deal with particular issues. The committees are supported by registry staff.

During the reporting year the Court commenced a review of the governance and committee structure with the aim of moving to a smaller number of committees organised along functional lines. The review will be finalised in 2007–08.

### Judges' meetings

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

## 4.2 Corporate services

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

### Financial management

The Finance Committee oversees the financial management of the Court and is made up of judges from each of the registries, as well as the Registrar. The Corporate Services Branch provides administrative support to the Finance Committee and during 2006–07 the Committee met on five occasions.

During the reporting period the Court initiated several activities to enhance financial management processes and reporting structures. These activities included:

- development of a detailed certificate of compliance checklist to be completed by each registry to provide further assurance to the Registrar in undertaking his reporting obligations;
- review of the Court's new domestic travel accommodation provider arrangements;
- development of financial management requirement specifications for the new eLodgement system; and
- development of system specifications for the integration of Court fee management, including new credit account facilities, between the Court's financial management and case management information systems.

### Financial accounts

The net operating result from ordinary activities for 2006–07 was an operating surplus of \$0.457m. The positive variance resulted primarily from deferred expenditure. Equity increased from \$38.068m in 2005–06 to \$40.228m in 2006–07.

During 2006–07 revenues from ordinary activities totalled \$101.602m. Total revenue, in the main, comprised:

- an appropriation from Government of \$85.333m;
- resources received free of charge, including \$5.928m for accommodation occupied by the Court in Sydney;
- \$8.423m of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges;
- \$1.918m from the sale of goods and services.

Total Court expenses of \$101.145m in 2006–07 comprised: \$53.544m in judges' and employees' salaries and related expenses; \$26.990m in property related expenses; \$17.622m in other administrative expenses and \$2.989m in depreciation expenses.

The Court also received an equity injection of \$1.703m in 2006–07. Funding of \$1.4m was provided for the construction of jury facilities and jury court rooms as well as funds for the development of a jury system for the proposed criminal cartel jurisdiction. A further \$0.303m was provided under the anti-terrorism legislation for the construction of secure rooms and security equipment within each of the Court's registries.

The total price of the Court's outputs for 2006–07 is \$101.602m as detailed in Table 4.1 below.

**Table 4.1 – Outcome and output statement**

	Budget 06–07 \$'000	Actual 06–07 \$'000	
Output 1.1 Federal Court Business	Revenue from Government (Appropriations)	85.333	85.333
	Total revenue from other sources	15.522	16.269
	<b>Total price of departmental outputs</b>	<b>100.855</b>	<b>101.602</b>

## Audit and risk management

The Audit Committee met five times during 2006–07, including a special meeting to examine the Court's annual financial statements. The Committee comprises an independent chairperson, two judges, the Registrar, and the NSW District Registrar. The Court's Executive Director, Corporate Services and Chief Financial Officer and representatives from the internal audit provider Ernst & Young and the Australian National Audit Office (ANAO) attend committee meetings as observers.

The Audit Committee aims to enhance the Court's control framework, assist the Court to comply with legislative and other obligations and improve the objectivity and reliability of externally published financial information.

During 2006–07 the Audit Committee reviewed its terms of reference and endorsed a new charter to further strengthen the governance role of the committee. The Court's internal audit provider Ernst & Young undertook a number of audit reviews during 2006–07 as agreed in the internal audit plan. The Court undertook reviews of its IT security and IT system change management processes as well as reviewing the Court's management of court recording and transcript charges under the new contract with its reporting provider.

Staff of the Australian National Audit Office inspected the Court's 2006–07 financial statements and provided an unqualified audit certificate.

During the year the Court had in place a fraud control plan that complies with the Commonwealth Fraud Control Guidelines as well as appropriate fraud prevention, detection, investigation and reporting procedures and processes. During the year the Court reported to the Attorney-General's Department that there were no cases of fraud during 2006–07.

## 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. The Court achieves a high level of performance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes.

## Consultants

During 2006–07, 11 new consultancy contracts were entered into involving total actual expenditure of \$437,000, including GST. In addition, two ongoing consultancy contracts were active during the 2006–07 year, involving total actual expenditure of \$49,000, including GST. Information on expenditure on contracts and consultancies is also available on the AusTender website [www.tenders.gov.au](http://www.tenders.gov.au). In 2006–07 there were no contracts or standing offers exempt by the Chief Executive from publication in the contract reporting section on AusTender.

Table 10.1 on page 129 provides more detailed information on consultancy service contracts entered into during 2006–07.

## Competitive tendering and contracting

During 2006–07, there were no contracts let to the value of \$100,000 or more for the delivery of activities previously performed by the Federal Court of Australia that did not provide for the Auditor General to have access to the contractor's premises.

## Advertising and marketing services

A total of \$79,307 was paid for recruitment advertising services throughout the reporting period.

The Court does not use market research organisations, polling organisations, direct mail organisations or media advertising agencies.

## Technology services

### Data centre

The Court entered into a commercial agreement with Macquarie Telecom to host the Data Centre and to provide WAN communications and new gateway and secure remote logon services. The migration to these new services will be completed in 2007–08.

### eTrials

As outlined in Chapter 2 of the report, the Court has adopted a more proactive approach to the conduct of electronic trials in the Court and has held wide discussions with legal firms on a new document management protocol and a new Practice Note to facilitate more of these trials. Following the drafting of these documents, discussions will be held with legal representative organisations for their input.

### IT governance

A review was undertaken into how the principles for good IT governance have been applied within the Court's Technology Services section and a series of recommendations have been adopted and will be implemented over 2007–08.

### New email system

The Court is currently migrating to the Microsoft Outlook email system replacing the GroupWise email system. This is due for completion by the end of 2007.

### High availability

Work began in 2006–07 to upgrade the Court's infrastructure to a 24 hour, 7 day a week status by introducing backup data communication links and associated components. This work will continue into 2007–08.

### Public WiFi service

Work has begun on introducing a public WiFi (wireless internet) service in and around courtrooms. A pilot will be launched in Brisbane in late 2007 and if successful, it will be setup in all registries.

### **eCourt project**

The Court's eCourt Strategy is now entering its second stage of implementation involving the development and integration of electronic services supporting the Court's aims to provide judges, staff and legal practitioners with improved access to court services via the Internet. More detail on the Commonwealth Courts Portal (and "MyFiles") project is provided in Chapter 2 of the report. It is also referred to below.

### **eCourtroom**

In May 2007 the Court introduced eCourtroom to replace the eCourt Forum, the virtual courtroom that assists in the management of pre-trial matters by allowing directions and other orders to be made online by the judge hearing the case.

The eCourtroom has enhanced features including the ability to post a single hearing entry to multiple linked cases and advanced search functions and reporting facilities. The service has been expanded to include a case administration service for judges' staff to communicate with practitioners on case management issues.

### **eFiling**

The number of firms and practitioners using the Court's eFiling System (EFS) to lodge documents with the Court continues to increase. In March 2007 the Australian Taxation Office commenced electronically filing their applications in the Federal Court. In May 2007 the Court received in excess of 1,000 e-filings per month for the first time and those monthly e-filing figures have been maintained in the subsequent months. The total e-filings in 2006–07 were 7,427, which represents a 40% increase from the previous year.

### **eLodgment**

It is proposed that eLodgment will replace e-filing as a fully integrated application enabling the lodgment of documents, associated supporting information and fee payments by legal practitioners to be seamlessly uploaded directly into the Court's case management system. eLodgment's design specification and contract tendering process concluded in June 2007 and work has commenced. Its target release date is the first quarter of 2008.

### **Portal**

The Federal Court, Family Court of Australia, and Federal Magistrates Court of Australia have formed a collaboration to jointly develop a Commonwealth Courts Portal for the provision of a single sign-on identity management service supporting all law firms and their staff to gain access to their specific case files information (MyFiles) across the three Courts. The project has progressed significantly during the past nine months and will be trialled with a selected number of law firms during the third quarter of 2007.

### **eSearch**

eSearch, the Court's online case search facility, continues to be the most visited page on the Court's website, with the hits per month increasing during the year to 17,500, with the top month receiving 19,292. More than one matter is usually searched by the user during each visit to the site. More enhancements are proposed to eSearch including links to judgments and transcripts where available.

## Case management system – Casetrack

Following a review of Casetrack the Court has continued to make enhancements to improve the functionality and usability of the system for staff across the Court.

During 2006–07 the Court also integrated the Native Title case management system into Casetrack, thereby ensuring that one system is used across the Court.

## Human resources

### Workplace relations

The Court's National Consultative Committee (NCC) operated effectively through the year and continued to oversight implementation of initiatives from the Court's 2005–2008 Certified Agreement, including:

- the Court's Work Level Standards which were finalised;
- the re-classification of judges' personal assistants; and
- a national trial of new arrangements for staff travel.

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

### Workplace bargaining

The Court's 2005–2008 Certified Agreement continued to operate and arrangements will be made later in 2007 to commence negotiations on the 2008 Agreement.

Australian Workplace Agreements (AWAs) were entered and re-negotiated with a number of new and existing staff. These changes were necessitated by the Work Choices amendments to the Workplace Relations Act.

The Court currently has 24 staff on AWAs, 9 of whom are officers in the Senior Executive Service ('SES'). All staff not covered by AWAs are covered by the Court's Certified Agreement.

Non SES AWAs generally mirror Certified Agreement provisions with the exception of base salary and, in a small number of cases, leave entitlements.

### Staffing overview

At 30 June 2007 the Court employed 406 employees under the Public Service Act. This figure comprised 231 ongoing full-time employees, 19 ongoing part-time employees and 156 non-ongoing employees. The high number of non-ongoing employees is due to the nature of employment of judges' associates (who are generally employed for 12 months) and casual court officers. The Court had an average staffing level of 358 during the reporting period.

Tables 4.2 and 4.3 on the following page contain an overview of the Court's staffing by location at 30 June 2007 and details of the Court's SES staff. Table 4.4 outlines the Court's salary ranges by classification.

**Table 4.2 – Staffing overview by location**

(actual occupancy at 30 June 2007 – 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	6
FCL2	3	5	3	3	1	2	1		1	1	20
FCL1	1	1				1		1		1	5
FCM2	12	1	2	1	1	1				1	19
FCM1	11		4	2	1	1	1	1	1	4	26
FCS6	4	27	19	6	5	4			1	4	70
FCS5	14	42	24	9	5	9	1	1	1	9	115
FCS4	2	2	8		7	4			2	1	26
FCS3	4	12	7	11		5	6				45
FCS2	1	24	16	11	4	8		4	2		70
FCS1			1								1
<b>Total</b>	<b>54</b>	<b>116</b>	<b>86</b>	<b>44</b>	<b>25</b>	<b>36</b>	<b>9</b>	<b>7</b>	<b>8</b>	<b>22</b>	<b>406</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
- FCM Federal Court Manager
- FCL Federal Court Legal
- NAT National –
  - Includes the following staff:
    - National Native Title
    - Chambers of Chief Justice
    - Full-Court
    - Research Assistants/Indigenous Research Assistants

**Table 4.3 – Senior Executive Service**

(at 30 June 2007 – includes full-time and part-time staff)

<b>Principal Registry</b>		<b>Senior Executive Service Grading Occupied</b>
Senior Deputy Registrar	Philip Kellow	Senior Executive Band 1
Executive Director, Corporate Services Branch	Gordon Foster	Senior Executive Band 2
<b>National</b>		
National Native Title Registrar	Louise Anderson	Senior Executive Band 1
<b>New South Wales District Registry</b>		
District Registrar	Michael Wall	Senior Executive Band 2
Deputy District Registrar	Jennifer Hedge (part-time)	Senior Executive Band 1 (Specialist)
<b>Victoria District Registry</b>		
District Registrar	Sia Lagos	Senior Executive Band 2
Deputy District Registrar	Vacant at 30 June 2007	Senior Executive Band 1
<b>Queensland District Registry</b>		
District Registrar	Graham Ramsey	Senior Executive Band 1
<b>South Australia District Registry</b>		
District Registrar	Patricia Christie	Senior Executive Band 1
<b>Western Australia District Registry</b>		
District Registrar	Martin Jan PSM	Senior Executive Band 1

**Table 4.4 – Salary ranges by classification level under Certified Agreement or AWA**  
(at 30 June 2007)

Court Designation	Australian Public Service (APS) Classification	Salary
<b>Clerical Administrative Positions</b>		
Federal Court Staff Level 1	APS Level 1	34 050 37 630
Federal Court Staff Level 2	APS Level 2	38 535 42 731
Federal Court Staff Level 3	APS Level 3	43 891 47 371
Federal Court Staff Level 4	APS Level 4	48 921 53 115
Federal Court Staff Level 5	APS Level 5	54 563 57 857
Federal Court Staff Level 6	APS Level 6	58 931 67 695
Federal Court Manager Level 1	Executive Level 1	75 427 81 460
Federal Court Manager Level 2	Executive Level 2	86 955 98 605
		101 907
<b>Legal Positions</b>		
Federal Court Legal 1	From APS Level 3 to Executive Level 1	49 279 95 797
Federal Court Legal 2	Executive Level 2	110 979 115 327
<b>Senior Executive Positions</b>		
Senior Executive Service Band 1	SES Band 1	144 966
Senior Executive Service Band 2	SES Band 2	187 474

### Performance management

The Court's performance management program continued to operate effectively through the reporting period.

### Performance pay

There were no performance pay arrangements in 2006–07.

### Training and development

During the year the Court consolidated the first stage of a major new staff development initiative – the Court's National Training Program – and made significant progress in developing and rolling-out the second phase of the program for staff across the Court. The second stage focuses on the Court's caseload management.

The program seeks to provide all staff with the core skills and knowledge necessary to work effectively in the Court. The first part of the program now forms the core of the Court's Induction Program. Training is conducted by local registry staff who have completed a Train the Trainer course.

Other areas of national focus were:

- ongoing development of the Court's Client Services Network, which meets quarterly by teleconference and has an annual conference;
- the ongoing development of the Court's National Training Network, members of which present the National Training Program and meet regularly via teleconference and annual conference to ensure the Court addresses the training needs of staff, and;
- the development of a National Leadership Program for the Court's senior managers.

More generally, training was carefully targeted towards the development of essential core skills and the Court spent \$313,339 on external training during the period.

The Court's Studybank policy also continued to operate and provided staff with leave and financial assistance to pursue approved tertiary studies. During the reporting period \$13,442 was reimbursed to staff undertaking studies under the policy.

### **Occupational health and safety (OHS)**

The Court's national Occupational Health and Safety (OHS) Committee continued to meet through the reporting period and oversee occupational health and safety within the Court. The Court entered into a new Occupational Health and Safety Agreement during the reporting period.

Information sessions were also arranged for all members of the Court's national Occupational Health and Safety (OHS) Committee on the recent significant amendments to the Occupational Health and Safety Act and the Safety, Rehabilitation and Compensation Act.

The program of optional annual health checks and flu shots for all staff, provided for in the Certified Agreement, was again conducted with around 35% of all staff taking advantage of the free health checks and immunisations.

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

A total of 56 working weeks were lost due to work related injuries compared to 4.05 weeks for the previous reporting period. One staff member was absent for the whole reporting period. The Court's Comcare premium remained at 1.12 per cent of the wages and salary bill.

The Commonwealth Rehabilitation Services (CRS) continued to provide free, confidential counselling services to all staff of the Court.

### **Workplace diversity**

The Court is actively committed to the principles of workplace diversity. Some of the Court's initiatives during the reporting period are set out below.

- The Indigenous Research Assistant Program employed two assistants during the year. The program commenced in 2001 and has attracted a significant response to subsequent programs. Participants, and those in the Court associated with the program, report that considerable benefits are derived from the program.
- The Court's Victorian Registry offered a four month internship to an overseas law student.

## Commonwealth Disability Strategy

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

- The Court continued to work on the implementation of initiatives in its Workplace Diversity Plan, the overall aim of which is to accommodate the personal circumstances of all staff as far as this is practicable, including staff with disabilities. This principle is carried through into the Court's Certified Agreement and human resources policies.
- The Court's Orientation and Induction programs reinforce the Court's commitment to the principles of workplace diversity and reasonable adjustment. The focus of these programs is on both the Court's own staff and its clients.
- The Court runs a number of national staff networks, such as the Client Services Network and a network of the managers of Court Officers. Among other things, these networks help ensure the needs of all clients, including those with disabilities and other special needs, are addressed.
- The Court's OH&S Committee regularly undertakes checks to ensure the physical needs of all staff and clients are being met; eg, thoroughfares are kept clear and fire drills take into account the physical needs of all staff and clients.
- The Court's recruitment and selection practices continue to provide information to prospective applicants via as many means as practicable, including a TTY phone (telephone–typewriter) for the hearing impaired. During the reporting period the Court received no requests for information in alternative formats.

Further, the Court is conscious of the need for its facilities to be accessible to all members of the community and is committed to ensuring that people with a disability do not face access problems in their contact with the Court.

Building works on existing and proposed buildings continue to take into account the needs of people with disabilities. Examples include:

- ensuring enquiry counters are appropriately designed for use by people in wheelchairs;
- fully integrated hearing assistance systems have been installed in courtrooms for those with hearing difficulties;
- ensuring signage is appropriate; and
- continuing improvements to access and facilities within buildings.

Similarly, the Court's National Training Program addresses issues such as client service and access and equity with a view to raising the awareness of staff of the need to be flexible and understanding in meeting the needs of all Court users. This is also reinforced by a number of national networks of staff including Court Officers and Client Services staff. These networks routinely address the needs of specific client groups, with the aim of ensuring that their needs are met as far as possible. These questions have and are being addressed in instructional material for staff, for example; a national manual is currently being prepared for Court Officers which will highlight the importance of access and equity principles.

## Property management

The Court's facilities are located in Commonwealth owned buildings in Adelaide, Brisbane, Canberra, Melbourne, Hobart and Perth. The Court occupies premises in the Northern Territory Supreme Court building in Darwin and the Queens Square Law Courts building in Sydney. All buildings are shared with other jurisdictions.

The Court participates in the management of the Commonwealth owned buildings through the National Building Management Committee, which comprises senior representatives from jurisdictions housed in more than one building. The committee meets quarterly and establishes budgets, approves works programs and sets policies. Local Building Management Committees manage day-to-day operations in each building.

Major achievements during the year include:

- Refinement of accommodation in the new Commonwealth Law Courts building in Adelaide. Works included enhancements to security systems, courtroom technology and adjustments to plant and services.
- Upgrading of courtroom audio and video conferencing systems in Canberra; planning also commenced on a more extensive upgrade to Court 1 in Hobart, the first major upgrade of the Court's facilities in the building.
- Detailed design was commenced on the major upgrade of the Sydney Queens Square Law Courts building. This will include removal of asbestos, renewal of worn out building services and upgraded court and public facilities. In June 2007 the Court's Principal Registry moved into temporary accommodation in the nearby Lionel Bowen Commonwealth Law Courts building to facilitate the refurbishment.
- Commencement of architectural space use studies in Brisbane, Melbourne, Canberra and Perth to identify opportunities to make better use of existing space in particular to accommodate new jury and courtroom facilities, upgraded mediation facilities and upgraded registry facilities.
- With other jurisdictions, the Court has commenced a major national program to upgrade security infrastructure, including access control, CCTV and other facilities.

### Security

Installation of x-ray scanning facilities at the public entrances of all buildings was completed during the year. Training for security staff has taken place and a program of regular refresher training is now in place. Software management systems are also in place for all scanning equipment.

A project commenced during the year to plan for the upgrade of access control systems in all buildings which will convert all buildings to a standard proximity card system. Budget approval has been obtained and tenders are due to be called so that installation will be completed on a rolling program throughout 2007–08.

### Environmental management

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

The nature of the Court's core business, outcomes and activities is such that it does not impact or affect the principles of ecologically sustainable development. However, the Court is seeking to minimise the impact of its activities on the environment through the following measures:

- Testing of cooling towers and water features in Court buildings in accordance with Commonwealth, State and local statutory requirements.
- Energy consumption is closely managed and data is provided to the Australian Greenhouse Office as part of the Court's obligations to Government as part of the Kyoto Protocol.
- Environmental Management Systems are being implemented in all buildings, which focus on further reducing energy consumption, water and waste.

## **Library and information services**

The Court maintains 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 is also available to the legal profession and self represented litigants. The Judges' Library Committee oversees the provision of library and information services. Key achievements in 2006–07 are set out below.

### **Federal Court and Family Court libraries merger**

A pilot program to merge library services provided to judges and magistrates of the Federal Court, Family Court and Federal Magistrates Court commenced in the Adelaide registry in April 2007. Depending on the success of this trial, library services in other registries may also be provided on a coordinated basis.

### **Intranet**

The Court's new intranet went into production in July 2006 when all the Federal Court judgments were converted. Work has continued on further developing intranet features and adding content. National training sessions to raise awareness of new features and obtain feedback to assist with further development have been conducted. The new site uses different views for different user groups to target relevant information. Additional features include a visiting judges' location tool, discussion forums, search term highlighting, navigation in judgment searches and customised telephone listings.

### **Judgment template and style guide**

A new judgment template with additional features to assist judges' staff with the uniform production of judgment formats was rolled out across the Court with training provided to relevant staff. Several stylistic changes were also made to achieve greater consistency with the Federal Court Reports.

### **Archives and records management**

The Court's archives collection has been transferred to the National Archives of Australia on a temporary basis while the Law Courts Building in Sydney is being refurbished to protect it from any possible damage caused by building works.

The Chief Justice met with the Director of the National Archives to seek advice on managing the Court's archive. An outcome of this meeting was the development of an oral history proposal which is at the request for tender stage.

The DIRKS (Designing and implementing record keeping systems) project has continued with the third revision of Step C provided to National Archives in December 2006 and returned by them in March for further amendment.



# APPENDICES

## APPENDIX 1 – Financial Statements



### INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

#### Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the Federal Court of Australia (the Court) for the year ended 30 June 2007. The Court's Registrar is responsible for the integrity of both the annual report and the web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If the users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the Federal Court of Australia's annual report.

#### Scope

We have audited the accompanying financial statements of the Federal Court of Australia for the year ended 30 June 2007. The financial statements comprise: a statement by the Registrar and Chief Finance Officer; income statement; balance sheet; statement of changes in equity; cash flow statement; schedules of commitments, contingencies and administered items; a summary of significant accounting policies and other explanatory notes.

#### *The Responsibility of the Registrar for the Financial Statements*

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

#### *Auditor's Responsibility*

My responsibility is to express an opinion on the financial statements based on our audit. Our audit has been conducted in accordance with Australian National Audit Office Auditing

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Standards, which incorporate Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

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 controls relevant to the Federal Court of Australia's preparation and fair presentation of the financial statements in designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Court's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Court's Registrar, as well as evaluating the overall presentation of the financial statements.

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

### ***Independence***

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

### **Auditor's Opinion**

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

- (a) have been prepared in accordance with Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and Australian Accounting Standards, including Australian Accounting Interpretations; 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 2007 and of its financial performance and its cash flows for the year then ended.

Australian National Audit Office



P Hinchey  
Senior Director  
Delegate of the Auditor-General

Sydney  
6 September 2007

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 2007 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Ministers Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Signed .....

Warwick Soden  
Registrar and Chief Executive Officer

6 September 2007



Signed .....

David Llewelyn  
Chief Financial Officer

6 September 2007

## FEDERAL COURT OF AUSTRALIA

## INCOME STATEMENT

*for the period ended 30 June 2007*

	Notes	2007 \$'000	2006 \$'000
<b>INCOME</b>			
<b>Revenue</b>			
Revenue from Government	2A	85,333	81,126
Sale of goods and rendering of services	2B	1,898	2,472
Interest	2C	16	614
<b>Total revenue</b>		<u>87,247</u>	<u>84,212</u>
<b>Gains</b>			
Sale of assets	2D	4	18
Other gains	2E	14,351	13,380
<b>Total gains</b>		<u>14,355</u>	<u>13,398</u>
<b>Total Income</b>		<u>101,602</u>	<u>97,610</u>
<b>EXPENSES</b>			
Judges and employee benefits	3A	53,544	48,687
Suppliers	3B	44,518	41,205
Depreciation and amortisation	3C	2,989	2,485
Finance costs	3D	69	60
Write-down and impairment of assets	3E	25	264
<b>Total Expenses</b>		<u>101,145</u>	<u>92,701</u>
<b>Surplus (Deficit)</b>		<u>457</u>	<u>4,909</u>

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

## FEDERAL COURT OF AUSTRALIA

## BALANCE SHEET

as at 30 June 2007

	Notes	2007 \$'000	2006 \$'000
<b>ASSETS</b>			
<b>Financial Assets</b>			
Cash	4A	516	348
Receivables	4B	<u>37,534</u>	<u>32,800</u>
<b>Total financial assets</b>		<u><b>38,050</b></u>	<u><b>33,148</b></u>
<b>Non-Financial Assets</b>			
Land and buildings	5A	7,420	5,620
Infrastructure, plant and equipment	5B	10,495	10,907
Intangibles	5C	432	444
Other non-financial assets	5E	<u>2,183</u>	<u>5,492</u>
<b>Total non-financial assets</b>		<u><b>20,530</b></u>	<u><b>22,463</b></u>
<b>Total Assets</b>		<u><b>58,580</b></u>	<u><b>55,611</b></u>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	6	<u>508</u>	<u>404</u>
<b>Total payables</b>		<u><b>508</b></u>	<u><b>404</b></u>
<b>Interest Bearing Liabilities</b>			
Leases	7	<u>986</u>	<u>1,411</u>
<b>Total interest bearing liabilities</b>		<u><b>986</b></u>	<u><b>1,411</b></u>
<b>Provisions</b>			
Judges and employee provisions	8	<u>16,858</u>	<u>15,728</u>
<b>Total provisions</b>		<u><b>16,858</b></u>	<u><b>15,728</b></u>
<b>Total Liabilities</b>		<u><b>18,352</b></u>	<u><b>17,543</b></u>
<b>Net Assets</b>		<u><b>40,228</b></u>	<u><b>38,068</b></u>
<b>EQUITY</b>			
Contributed equity		9,617	7,914
Reserves		1,614	1,614
Retained Surplus		<u>28,997</u>	<u>28,540</u>
<b>Total Equity</b>		<u><b>40,228</b></u>	<u><b>38,068</b></u>
<b>Current Assets</b>		<b>40,234</b>	36,634
<b>Non-Current Assets</b>		<b>18,346</b>	18,977
<b>Current Liabilities</b>		<b>16,835</b>	15,930
<b>Non-Current Liabilities</b>		<b>1,517</b>	1,613

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

## FEDERAL COURT OF AUSTRALIA

## STATEMENT of CHANGES in EQUITY

for the period ended 30 June 2007

	Accumulated Results		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2007	2006	2007	2006	2007	2006	2007	2006
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Opening balance</b>	<b>28,540</b>	23,631	<b>1,614</b>	1,614	<b>7,914</b>	6,543	<b>38,068</b>	31,788
<b>Income and expense</b>								
Revaluation Adjustment	-	-	-	-	-	-	-	-
<b>Subtotal income and expenses recognised directly in equity</b>	<b>28,540</b>	23,631	<b>1,614</b>	1,614	<b>7,914</b>	6,543	<b>38,068</b>	31,788
Net Operating Result	<b>457</b>	4,909	-	-	-	-	<b>457</b>	4,909
<b>Total income and expenses recognised directly in equity</b>	<b>28,997</b>	28,540	<b>1,614</b>	1,614	<b>7,914</b>	6,543	<b>38,525</b>	36,967
<b>Transactions with Owners</b>								
Appropriation (equity injection)	-	-	-	-	<b>1,703</b>	1,371	<b>1,703</b>	1,371
<b>Closing balance at 30 June</b>	<b>28,997</b>	28,540	<b>1,614</b>	1,614	<b>9,617</b>	7,914	<b>40,228</b>	38,068

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

## FEDERAL COURT OF AUSTRALIA

## CASH FLOW STATEMENT

for the period ended 30 June 2007

	Notes	2007 \$'000	2006 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Goods and services		1,916	2,059
Appropriations		81,630	64,200
Refunds credited		4,416	3,500
Net GST received		36	-
<b>Total cash received</b>		<b>87,998</b>	<b>69,759</b>
<b>Cash used</b>			
Judges and employees		44,937	41,662
Suppliers		40,141	24,290
Net GST paid		-	209
Borrowing costs		69	60
<b>Total cash used</b>		<b>85,147</b>	<b>66,221</b>
<b>Net cash from or (used by) operating activities</b>	9	<b>2,851</b>	<b>3,538</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		6	14
<b>Total cash received</b>		<b>6</b>	<b>14</b>
<b>Cash used</b>			
Purchase of property, plant and equipment		2,858	4,888
Purchase of intangibles		64	77
<b>Total cash used</b>		<b>2,922</b>	<b>4,965</b>
<b>Net cash from or (used by) investing activities</b>		<b>(2,916)</b>	<b>(4,951)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations – contributed equity		233	-
<b>Total cash received</b>		<b>233</b>	<b>-</b>
<b>Net cash from or (used by) financing activities</b>		<b>233</b>	<b>-</b>
<b>Net increase or (decrease) in cash held</b>		<b>168</b>	<b>(1,413)</b>
Cash at the beginning of the reporting period		348	1,761
<b>Cash at the end of the reporting period</b>	4A	<b>516</b>	<b>348</b>

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

## FEDERAL COURT OF AUSTRALIA

## SCHEDULE OF COMMITMENTS

as at 30 June 2007

	2007 \$'000	2006 \$'000
<b>BY TYPE</b>		
<b>Capital commitments</b>		
Infrastructure, plant and equipment <sup>1</sup>	<u>621</u>	<u>7</u>
<b>Total capital commitments</b>	<b>621</b>	<b>7</b>
<b>Other commitments</b>		
Operating leases <sup>2</sup>	176,519	175,327
Other <sup>3</sup>	<u>7,844</u>	<u>4,155</u>
<b>Total other commitments</b>	<b>184,363</b>	<b>179,482</b>
<b>Commitments receivable</b>	<u>(16,817)</u>	<u>(16,317)</u>
<b>Net commitments by type</b>	<u><b>168,167</b></u>	<u><b>163,172</b></u>
<b>BY MATURITY</b>		
<b>Capital commitments</b>		
One year or less	<u>621</u>	<u>7</u>
<b>Total capital commitments</b>	<b>621</b>	<b>7</b>
<b>Operating lease commitments</b>		
One year or less	20,379	22,035
From one to five years	70,796	67,647
Over five years	<u>93,188</u>	<u>89,800</u>
<b>Total operating lease commitments</b>	<b>184,363</b>	<b>179,482</b>
<b>Commitments receivable</b>	<u>(16,817)</u>	<u>(16,317)</u>
<b>Net Commitments by Maturity</b>	<u><b>168,167</b></u>	<u><b>163,172</b></u>

NB: Commitments are GST inclusive where relevant.

1. Plant and equipment commitments are primarily contracts for the purchase of furniture and fittings.
2. Operating leases included are effectively non-cancellable and comprise:

**Nature of leases/General description****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.

**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 2010.

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.

## FEDERAL COURT OF AUSTRALIA

### SCHEDULE OF CONTINGENCIES

*as at 30 June 2007*

There were no contingent losses or gains as at 30 June 2007 (2006 nil).

# FEDERAL COURT OF AUSTRALIA

## SCHEDULE OF ADMINISTERED ITEMS

	Notes	2007 \$'000	2006 \$'000
<b>Income administered on behalf of Government</b>			
<i>for the year ended 30 June 2007</i>			
<b>Revenue</b>			
Fees (filing and hearing fees)	14	<b>6,372</b>	6,167
Fines	14	<b>47</b>	43
Other	14	<b>105</b>	86
<b>Total revenue administered on behalf of Government</b>		<b>6,524</b>	6,296
<b>Expenses administered on behalf of Government</b>			
<i>for the period ended 30 June 2007</i>			
Refund of fees and fines	15	<b>87</b>	89
Fees and fines – provision for doubtful debts	15	<b>66</b>	-
<b>Total expenses administered on behalf of Government</b>		<b>153</b>	89
<b>Assets administered on behalf of Government</b>			
<i>as at 30 June 2007</i>			
<b>Financial assets</b>			
Cash and cash equivalents	16A	<b>38</b>	19
Receivables	16B	<b>326</b>	372
<b>Total assets administered on behalf of Government</b>		<b>364</b>	391

This schedule should be read in conjunction with the accompanying notes.

## FEDERAL COURT OF AUSTRALIA

## SCHEDULE OF ADMINISTERED ITEMS (Continued)

	Notes	2007 \$'000	2006 \$'000
<b>Administered Cash Flows</b>			
<i>for the period ended 30 June 2007</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fees and Fines		6,399	6,172
Other		105	86
<b>Total cash received</b>		<u>6,504</u>	<u>6,258</u>
<b>Cash used</b>			
Refund of court fees and fines		(87)	(89)
<b>Total cash used</b>		<u>(87)</u>	<u>(89)</u>
<b>Net Cash from or (used by) Operating Activities</b>		<u>6,417</u>	<u>6,169</u>
<b>Net Increase (Decrease) in Cash Held</b>		<u>6,417</u>	<u>6,169</u>
Cash at the beginning of the reporting period		19	30
Cash from Official Public Account for:			
- Appropriations		90	90
		<u>90</u>	<u>90</u>
Cash to Official Public Account		(6,488)	(6,270)
		<u>(6,488)</u>	<u>(6,270)</u>
<b>Cash at End of Reporting Period</b>	16A	<u>38</u>	<u>19</u>

**Administered Contingencies***as at 30 June 2007*

There were no Administered contingent losses or gains as at 30 June 2007.

This schedule should be read in conjunction with the accompanying notes.

## FEDERAL COURT OF AUSTRALIA

## NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

- Note 1: Summary of Significant Accounting Policies
- Note 2: Income
- Note 3: Operating Expenses
- 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: Average Staffing Levels
- Note 13: Financial Instruments
- Note 14: Income Administered on Behalf of Government
- Note 15: Expenses Administered on Behalf of Government
- Note 16: Assets Administered on Behalf of Government
- Note 17: Administered Reconciliation Table
- Note 18: Administered Financial Instruments
- Note 19: Appropriations
- Note 20: Special Accounts
- Note 21: Comcare Account
- Note 22: Compensation and Debt Relief
- Note 23: Reporting of Outcomes

## FEDERAL COURT OF AUSTRALIA

### Note 1: Summary of Significant Accounting Policies

#### 1.1 Objectives of the Court

The Federal Court of Australia is an Australian Public Service organisation. 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 has one Output and 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, or items controlled or incurred by the Government.

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

#### 1.2 Basis of Preparation of the Financial Statements

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

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

- Finance Minister's Orders (or FMO's, for reporting periods ending on or after 1 July 2006; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements are prepared on an accrual basis and are in accordance with historical cost convention, except for certain assets, which are at fair value or amortised cost. 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, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of assets or liabilities can be reliably measured. Assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

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

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 the Court.

## FEDERAL COURT OF AUSTRALIA

### Notes to and forming part of the Financial Statements

#### 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 Statement of Compliance

Australian Accounting Standards require a statement of compliance with International Financial Reporting Standards (IFRSs) to be made where the financial report complies with these standards. Some Australian equivalents to IFRSs and other Australian Accounting Standards contain requirements specific to not for profit entities that are inconsistent with IFRS requirements. The Court is a not for profit entity and has applied these requirements, so while this financial report complies with Australian Accounting Standards including Australian Equivalents to International Financial Reporting Standards (AEIFRSs) it cannot make this statement.

No accounting standard has been adopted earlier than the effective date in the current period.

#### 1.5 Revenue

The revenues described in this note and Note 1.22 are revenues relating to the core operating activities of the Court, whether in its own right or on behalf of the Commonwealth. Details of revenue amounts are given in Note 2 and Note 14.

##### Revenues from Government

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

Appropriations receivable are recognised at their nominal amounts.

##### Other Types of Revenue

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

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

Receivables for services are recognised at the nominal amounts due less any provision for bad and doubtful debts. Debts are reviewed at balance date. Provision is made when collection of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139.

#### 1.6 Gains

##### Resources Received Free of Charge

Resource 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 at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructure of administrative arrangements.

## FEDERAL COURT OF AUSTRALIA

### Notes to and forming part of the Financial Statements

#### 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

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

#### 1.8 Judges and Employee Benefits

Liabilities for services rendered by Judges and employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts. The nominal amount is calculated at the rates expected to be paid on settlement of the liability.

All other judges 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 at the reporting date.

#### Leave

The liability for employee benefits includes 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 based on the judges' and employees' remuneration. 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).

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.

The Court makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the 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.

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

## FEDERAL COURT OF AUSTRALIA

### Notes to and forming part of the Financial Statements

#### 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 \$8,422,562 (2005-06: \$7,283,979). The contribution rate has been provided by the Australian Government Actuary.

#### 1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. 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 the lower of the fair value of the lease property or the present value of minimum lease payments at the beginning of the lease term 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 unless another systematic approach is more representative of the pattern of benefits derived from the leased assets.

#### 1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

#### 1.11 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

#### 1.12 Financial Risk Management

The Court's activities expose it to normal commercial financial risk. As a result of the nature of the Court's business and internal and Australian Government policies, dealing with the management of financial risk, the Court's exposure to market, credit, liquidity, cash flow and interest rate risk is considered to be low.

#### 1.13 Derecognition of Financial Assets and Liabilities

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, the risks and rewards of ownership must be transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged, cancelled or expires.

For the comparative year, financial assets were derecognised when the contractual right to receive cash no longer existed. Financial liabilities were derecognised when the contractual obligation to pay cash no longer existed.

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**1.14 Impairment of Financial Assets**

Financial assets are assessed for impairment at each balance date.

**Financial Assets held at Amortised Cost**

If there is objective evidence that an impairment loss has occurred for loans and receivables, the amount of loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The loss is recognised in the Income Statement.

**1.15 Supplier and other payables**

Trade creditors and accruals are recognised at the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received irrespective of having been invoiced.

**1.16 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.

**1.17 Property, Plant and Equipment (PP&E)****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****Basis**

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

<i>Asset class</i>	<i>Fair value measured at:</i>
Buildings	Market selling price
Leasehold improvements	Depreciated replacement cost
Plant & Equipment	Market selling price

Following initial recognition, buildings, infrastructure, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency such that the carrying amount of each asset class is not materially different, at reporting date, from its fair value. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets. Valuations are done as at 30 June.

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

## FEDERAL COURT OF AUSTRALIA

### Notes to and forming part of the Financial Statements

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 offset against the gross carrying amount of the asset and the net amount restated to the revalued amount.

#### Depreciation and amortisation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Court using 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:

	2007	2006
Leasehold improvements	<b>10 years or Lease term</b>	10 years or Lease term
Plant and equipment – excluding library materials	<b>3 to 10 years</b>	3 to 10 years
Plant and equipment – library materials	<b>5 to 40 years</b>	5 to 40 years

#### Impairment

All assets were assessed for impairment at 30 June 2007. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less than its carrying amount.

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

#### 1.18 Intangibles

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

Software is amortised on a straight line basis over its anticipated useful life of 5 years (2005-06: 5 years).

All software assets were assessed for indications of impairment at 30 June 2007.

#### 1.19 Taxation

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

Revenues, expenses and assets are recognised net of GST:

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

## FEDERAL COURT OF AUSTRALIA

### Notes to and forming part of the Financial Statements

#### 1.20 Resources provided free of charge

##### Federal Magistrates Court

The Court provides resources free of charge to the Federal Magistrates Court (FMC) in accordance with sections 90, 92 and 99 of the *Federal Magistrates Act 1999*. Resources provided free of charge include:

- Court staff performing work on behalf of the FMC; and
- accommodation, including access to the Court's courtrooms.

The estimated cost of resources provided free of charge by the Court to the FMC during 2006-07 was \$7,959,551 (2005-06: \$7,936,932).

##### Industrial Relations Court of Australia

Schedule 16 of the *Workplace Relations and Other Legislation Amendment Act 1996* (WROLA), provided for the jurisdiction previously exercised by the Industrial Relations Court of Australia (IRC) to be transferred to the Court on 26 May 1997.

The IRC continued to have jurisdiction over certain matters where a substantive hearing in the proceedings had commenced, or where hearings had been completed before the transfer date. Schedule 16 of the *Workplace Relations and Other Legislation Amendment Act 1996* provides that the Chief Justice of the Court may arrange with the Chief Justice of the IRC for staff, facilities and any other necessary support to be made available to the IRC.

In 2005-06 all outstanding matters were finalised by the IRC. There was therefore no resources provided free of charge in the 2006-07 year (2005-06 \$1,730).

#### 1.21 Insurance

The Court is insured for risks through the Government's insurable risk managed fund, 'Comcover'. Workers compensation for Court employees is insured through Comcare Australia. The Chief Justice and Judges of the Court are provided for by the *Judges Pension Act 1968* and Act of Grace provisions.

#### 1.22 Reporting of Administered Activities

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

Except where stated below, administered items are accounted for on the same basis and using the same policies as the Court.

##### Administered Cash Transfers to and from Official Public Account

Revenue collected by the Court for the Government rather than the Court is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Administration. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Court on behalf of the Government and reported as Administered Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 17. Thus, the Schedule of Administered Items reflects the Government's transactions, through the Court, with parties outside the Government.

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**Revenues**

All administered revenues are revenues relating to the core operating activities performed by the Court on behalf of the Commonwealth.

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

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

<b>Note 2: Income</b>	<b>2007</b>	<b>2007</b>
<i>Revenue</i>	<i>\$'000</i>	<i>\$'000</i>
<b>Note 2A: Revenue from Government</b>		
Appropriation:		
Departmental outputs	<u>85,333</u>	<u>81,126</u>
<b>Total revenue from Government</b>	<u><u>85,333</u></u>	<u><u>81,126</u></u>
<b>Note 2B: Sale of goods and rendering of services</b>		
Rendering of services – related entities	1,441	2,065
Rendering of services – external entities	<u>457</u>	<u>407</u>
<b>Total rendering of services</b>	<u><u>1,898</u></u>	<u><u>2,472</u></u>
<b>Total sale of goods and rendering of services</b>	<u><u>1,898</u></u>	<u><u>2,472</u></u>
<b>Note 2C: Interest</b>		
Deposits	<u>16</u>	<u>614</u>
<b>Total interest</b>	<u><u>16</u></u>	<u><u>614</u></u>
<b>Gains</b>		
<b>Note 2D: Sale of Assets</b>		
Infrastructure, plant and equipment:		
Proceeds from sale	6	14
Carrying value of assets sold	<u>(2)</u>	<u>4</u>
<b>Net gain from sale of assets</b>	<u><u>4</u></u>	<u><u>18</u></u>
<b>Note 2E: Other gains</b>		
Liabilities assumed by other agencies	8,423	7,284
Resources received free of charge	<u>5,928</u>	<u>6,096</u>
	<u><u>14,351</u></u>	<u><u>13,380</u></u>

Resources received free of charge includes an amount of \$5,547,582 (2005-06: \$5,547,582) in respect of rent and outgoings associated with the accommodation occupied by the Court in the Law Courts Building located in Sydney, New South Wales. This building is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments.

**Note 3: Expenses****Note 3A: Judges and Employee benefits**

Judges remuneration	16,780	15,533
Judges notional superannuation	8,423	7,284
Employee wage & salaries	24,621	22,624
Employee superannuation	3,548	3,108
Employee separation and redundancies	172	138
<b>Total judges and employee benefits</b>	<u><u>53,544</u></u>	<u><u>48,687</u></u>

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

	2007 \$'000	2006 \$'000
<b>Note 3B: Suppliers</b>		
Provision of goods - external entities	3,127	3,096
Rendering of services - related entities	1,668	1,591
Rendering of services - external entities	19,076	15,335
Operating lease rentals:		
Minimum Lease Payments	20,430	20,940
Workers compensation premiums	217	243
<b>Total supplier expenses</b>	<b>44,518</b>	<b>41,205</b>
<b>Note 3C: Depreciation and Amortisation</b>		
Depreciation:		
Buildings	1,114	1,048
Infrastructure, plant and equipment	1,028	770
<b>Total depreciation</b>	<b>2,142</b>	<b>1,818</b>
Amortisation:		
Intangibles:		
Computer Software	181	212
Leased plant and equipment	666	455
<b>Total amortisation</b>	<b>847</b>	<b>667</b>
<b>Total depreciation and amortisation</b>	<b>2,989</b>	<b>2,485</b>
<b>Note 3D: Finance costs</b>		
Finance leases	69	60
<b>Total finance costs</b>	<b>69</b>	<b>60</b>
<b>Note 3E Write-down and impairment of assets</b>		
Financial assets		
Bad & doubtful debt	21	-
Non-financial assets		
Plant & equipment	4	264
<b>Total write-down and impairment of assets</b>	<b>25</b>	<b>264</b>
<b>Note 4: Financial Assets</b>		
<b>Note 4A: Cash and cash equivalents</b>		
Cash at bank and at hand	516	348
<b>Total cash and cash equivalents</b>	<b>516</b>	<b>348</b>

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

	2007 \$'000	2006 \$'000
<b>Note 4B: Trade and other receivables</b>		
Goods and services	99	536
GST receivable from the Australian Taxation Office	582	563
Appropriations receivable:		
for existing outputs	36,874	31,701
<b>Total trade and other receivables (gross)</b>	<b>37,555</b>	<b>32,800</b>
Less Allowance for doubtful debts:		
Goods and Services	(21)	-
<b>Total trade and other receivables (net)</b>	<b>37,534</b>	<b>32,800</b>
Receivables are aged as follows:		
Not overdue		
Overdue by:	37,490	32,741
Less than 30 days	11	7
30 to 60 days	-	1
61 to 90 days	1	-
More than 90 days	53	51
	65	59
<b>Total receivables (gross)</b>	<b>37,555</b>	<b>32,800</b>
The allowance for doubtful debts is aged as follows:		
Overdue by:		
More than 90 days	(21)	-
<b>Total allowance for doubtful debts</b>	<b>(21)</b>	<b>-</b>

All receivables are current. Credit terms are net 30 days (2006: 30 days).

**Note 5: Non-Financial Assets****Note 5A: Land and buildings**

Leasehold improvements		
– fair value	10,179	7,265
– accumulated depreciation	(2,759)	(1,645)
<b>Total leasehold improvements</b>	<b>7,420</b>	<b>5,620</b>
<b>Total land and buildings (non-current)</b>	<b>7,420</b>	<b>5,620</b>

**Note 5B: Plant and Equipment**

Plant and equipment		
– 'gross carrying value (at fair value)'	14,280	13,015
– accumulated depreciation	(3,785)	(2,108)
	10,495	10,907
<b>Total plant and equipment (non-current)</b>	<b>10,495</b>	<b>10,907</b>

All revaluations are conducted in accordance with the valuation policy stated in Note 1. In 2004-05, formal valuations were conducted by an independent valuer, the Australian Valuation Office.

**Note 5C: Intangible Assets**

Computer software at cost		
Internally developed – in progress	98	-
Purchased – in use	2,206	2,135
<b>Total Computer Software</b>	<b>2,304</b>	<b>2,135</b>
Accumulated amortisation	(1,872)	(1,691)
<b>Total intangibles (non-current)</b>	<b>432</b>	<b>444</b>

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**Note 5D: Analysis of property, plant, and equipment****TABLE A - Reconciliation of the opening and closing balances of property, plant, and equipment (2006-07)**

Item	Leasehold improvement – Total land and buildings \$'000	Infrastructure, plant and equipment \$'000	Computer Software – Intangibles \$'000	Total \$'000
<b>As at 1 July 2006</b>				
Gross book value	7,265	13,015	2,135	22,415
Accumulated depreciation/amortisation	(1,645)	(2,108)	(1,691)	(5,444)
<b>Net book value 1 July 2006</b>	<b>5,620</b>	<b>10,907</b>	<b>444</b>	<b>16,971</b>
Additions:				
by purchase	2,914	1,289	169	4,372
Depreciation/amortisation expense	(1,114)	(1,694)	(181)	(2,989)
Disposals:				
Other disposals	-	(7)	-	(7)
<b>As at 30 June 2007</b>				
Gross book value	10,179	14,280	2,304	26,763
Accumulated depreciation/amortisation	(2,759)	(3,785)	(1,872)	(8,416)
<b>Net book value 30 June 2007</b>	<b>7,420</b>	<b>10,495</b>	<b>432</b>	<b>18,347</b>

**TABLE A - Reconciliation of the opening and closing balances of property, plant, and equipment (2005-06)**

Item	Leasehold improvement – Total land and buildings \$'000	Infrastructure, plant and equipment \$'000	Computer Software – Intangibles \$'000	Total \$'000
<b>As at 1 July 2005</b>				
Gross book value	5,007	9,665	2,058	16,730
Accumulated depreciation/amortisation	(952)	(919)	(1,479)	(3,350)
<b>Net book value 1 July 2005</b>	<b>4,055</b>	<b>8,746</b>	<b>579</b>	<b>13,380</b>
Additions:				
by purchase	2,876	3,393	77	6,346
Depreciation/amortisation expense	(1,048)	(1,224)	(213)	(2,485)
Disposals:				
Other disposals	(263)	(7)	-	(270)
<b>As at 30 June 2006</b>				
Gross book value	7,265	13,015	2,135	22,415
Accumulated depreciation/amortisation	(1,645)	(2,108)	(1,691)	(5,444)
<b>Net book value 30 June 2006</b>	<b>5,620</b>	<b>10,907</b>	<b>444</b>	<b>16,971</b>

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**Note 5D: Analysis of Property, Plant, Equipment and Intangibles****TABLE B – Property, Plant, Equipment under construction**

Item	Leasehold improvement – Total land and buildings \$'000	Total plant and equipment \$'000	Total Intangibles Internally Developed \$'000
Carrying amount at 30 June 2007	1,996	-	98
Carrying amount at 30 June 2006	-	782	-

**Note 5E: Other Non-Financial Assets**

	2007 \$'000	2006 \$'000
Prepayments	2,183	5,492
<b>Total other non-financial assets</b>	<b>2,183</b>	<b>5,492</b>

All other non-financial assets are current assets.

**Note 6: Payables**

Trade creditors	508	404
<b>Total supplier payables</b>	<b>508</b>	<b>404</b>

Supplier payables are all current

Settlement is usually made net 30 days.

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

Finance leases	986	1,411
<b>Total finance leases</b>	<b>986</b>	<b>1,411</b>

## Payable:

Within one year		
Minimum lease payments	623	700
Deduct: future finance charges	(44)	(63)
<b>Total leases payable within one year</b>	<b>579</b>	<b>637</b>

## In one to five years

Minimum lease payments	429	812
Deduct: future finance charges	(22)	(38)
<b>Total leases payable within one year to five years</b>	<b>407</b>	<b>774</b>

**Finance lease recognised on the balance sheet**

<b>986</b>	<b>1,411</b>
------------	--------------

Finance leases are for certain major IT equipment assets and some office equipment. The leases are non-cancellable and for fixed terms averaging three years, with a maximum of five years. The interest rate implicit in the leases averaged 5.61% (2006: 5.39%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

	2007	2006
	\$'000	\$'000

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

Salaries and wages	222	203
Long Leave (Judges)	9,707	8,743
Leave	6,085	5,823
Superannuation	844	768
Fringe Benefits Tax	-	191
<b>Total judges and employee provisions</b>	<b>16,858</b>	<b>15,728</b>
Employee provisions are represented by:		
Current	15,748	14,889
Non-current	1,110	839
<b>Total judges and employee provisions</b>	<b>16,858</b>	<b>15,728</b>

**Note 9: Cash flow reconciliation****Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement****Report cash and cash equivalents as per:**

Cash Flow Statement	516	348
Balance Sheet	516	348

**Reconciliation of operating result to net cash from operating activities:**

Operating result	457	4,909
Depreciation/amortisation	2,989	2,485
Net write down of non-financial assets	25	264
(Gain)/Loss on disposal of assets	(4)	(18)
(Increase)/decrease in net receivables	(4,734)	(18,815)
(Increase)/decrease in prepayments	3,309	13,665
Increase/(decrease) in suppliers payables	104	(212)
Increase/(decrease) in judge and employee provisions	1,130	609
Increase/(decrease) in other liabilities	(425)	651
<b>Net cash from operating activities</b>	<b>2,851</b>	<b>3,538</b>

**Note 10: Executive Remuneration**

	2007	2006
--	------	------

The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:

\$145,000 to \$159,999	-	1
\$160,000 to \$174,999	-	1
\$175,000 to \$189,999	1	4
\$190,000 to \$204,999	1	2
\$205,000 to \$219,999	3	1
\$220,000 to \$234,999	3	2
\$250,000 to \$264,999	1	-
\$280,000 to \$294,999	1	1
<b>Total</b>	<b>10</b>	<b>12</b>

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

	<b>2007</b>	2006
	<b>\$</b>	<b>\$</b>
The aggregate amount of total remuneration of executives shown above:	<b>2,254,730</b>	2,391,069
The aggregate amount of separation and redundancy/termination benefit	-	3,627

**Note 11: Remuneration of Auditors**

	<b>2007</b>	2006
	<b>\$</b>	<b>\$</b>
Financial statement audit services are provided free of charge to the Court.		
The fair value of the services provided was:	<u><b>82,000</b></u>	<u>76,000</u>

**Note 12: Average Staffing Levels**

	<b>2007</b>	2006
The average staffing levels for the Federal Court during the year were:	<b>358</b>	351

**Note 13: Financial Instruments****Note 13A: Interest Rate Risk**

Financial Instrument	Note	Floating Interest Rate		Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		2007	2006	2007	2006	2007	2006	2007	2006
		\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	%	%
<b>Financial Assets</b>									
Cash at bank	4A	516	348	-	-	516	348	2	2
Receivables for goods and services	4B	-	-	36,874	32,800	36,874	32,800	n/a	n/a
<b>Total</b>		<b>516</b>	<b>348</b>	<b>36,874</b>	<b>32,800</b>	<b>37,390</b>	<b>33,148</b>		
<b>Total Assets</b>						<b>58,580</b>	<b>55,611</b>		
<b>Financial Liabilities</b>									
Trade creditors	6	-	-	508	404	508	404	n/a	n/a
Finance lease liabilities	7	986	1,411	-	-	986	1,411	5.46	5.22
<b>Total</b>		<b>986</b>	<b>1,411</b>	<b>508</b>	<b>404</b>	<b>1,494</b>	<b>1,815</b>		
<b>Total Liabilities</b>						<b>18,352</b>	<b>17,543</b>		

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

The net fair values of cash, investments and non-interest-bearing financial assets approximate their carrying amounts. The net fair values for finance lease liabilities, lease incentives and trade creditors are approximated by their carrying amounts.

**Note 13B: Credit Risk Exposures**

The Court's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The Court has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or to other security.

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

**Note 14: Income Administered on Behalf of Government**

	2007 \$'000	2006 \$'000
Fees (filing and hearing fees)	6,372	6,167
Fines	47	43
Other	105	86
<b>Total revenue administered on behalf of government</b>	<b>6,524</b>	<b>6,296</b>

**Note 15: Expenses Administered on Behalf of Government****Note 15: Other**

Refund of fees and fines	87	89
Fees and fines – provision for doubtful debts	66	-
<b>Total expenses administered on behalf of government</b>	<b>153</b>	<b>89</b>

**Note 16: Assets Administered on Behalf of Government****Note 16A: Cash and cash equivalents**

Cash on hand or on deposit	38	19
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**Note 16B: Receivables**

Fees (filing and hearing fees)	436	416
Less: Allowance for doubtful debts	(110)	(44)
<b>Total receivables (net)</b>	<b>326</b>	<b>372</b>

Credit terms are net 30 days (2006: 30 days).

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

	2007 \$'000	2006 \$'000
Receivables are aged as follows:		
Not overdue	66	101
Overdue by:		
- Less than 30 days	136	95
- 30 to 60 days	79	79
- 60 to 90 days	39	23
- More than 90 days	116	118
<b>Total receivables (gross)</b>	<b>436</b>	<b>416</b>
<b>Total Assets Administered on Behalf of Government</b>	<b>364</b>	<b>391</b>

**Note 17: Administered Reconciliation Table**

<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>391</b>	363
Plus: Administered revenues	6,524	6,296
Less: Administered expenses	(153)	(89)
Appropriation transfers from OPA	90	90
Transfers to OPA	(6,488)	(6,269)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>364</b>	<b>391</b>

**Note 18: Administered Financial Instruments**Administered Interest Rate Risk

Financial Instrument	Notes	Non-Interest Bearing		Total		Weighted Average	
		2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 %	2006 %
<b>Financial Assets</b>							
Cash and cash equivalents	16A	38	19	38	19	n/a	n/a
Receivables (gross)	16B	436	416	436	416	n/a	n/a
<b>Total</b>		<b>474</b>	435	<b>474</b>	435		
<b>Total Assets</b>				<b>364</b>	391		

The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**Note 19: Appropriations****TABLE A - Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations**

Particulars	Departmental Outputs	
	2007 \$	2006 \$
Balance carried from previous period	30,678,000	13,839,300
Appropriation Act:		
Appropriation Act (No.1)	84,655,000	79,428,000
Appropriation Act (No.3)	678,000	1,698,000
Departmental adjustments by the Finance Minister (Appropriation Acts)	-	1,325,700
Comcover receipts (Appropriation Act s13)	64,673	4,548
Refunds credited (FMA s30)	4,351,192	3,500,000
FMA Act:		
Appropriations to take account of recoverable GST (FMA s30A)	4,085,745	3,557,000
Annotations to 'net appropriations' (FMA s31)	1,915,797	2,068,992
Total appropriations available for payments	126,428,407	105,421,540
Cash payments made during the year (GST inclusive)	91,879,147	74,743,540
Appropriations credited to special Accounts (excluding GST)	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations	34,549,260	30,678,000
<b>Represented by:</b>		
Cash at bank and on hand	516,260	348,000
Departmental appropriations receivable	34,033,000	30,330,000
<b>Total</b>	<b>34,549,260</b>	<b>30,678,000</b>

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

	Non-operating				Total	
	Equity		Previous Years' Outputs			
	2007 \$	2006 \$	2007 \$	2006 \$	2007 \$	2006 \$
Balance carried forward from previous period	1,371,000	-	-	-	1,371,000	-
Appropriation Act (No.2)	1,703,000	1,371,000	-	-	1,703,000	1,371,000
Total appropriations available for payments	3,074,000	1,371,000	-	-	3,074,000	1,371,000
Cash payments made during the year (GST inclusive)	233,260	-	-	-	233,260	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Other Than Ordinary Annual Services Appropriations	2,840,740	1,371,000	-	-	2,840,740	1,371,000
<b>Represented by:</b>						
Cash at bank and on hand	-	-	-	-	-	-
Departmental appropriations receivable	2,840,740	1,371,000	-	-	2,840,740	1,371,000
<b>Total</b>	<b>2,840,740</b>	<b>1,371,000</b>	<b>-</b>	<b>-</b>	<b>2,840,740</b>	<b>1,371,000</b>

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**Note 20: Special Accounts**

<b>Other Trust Moneys Account</b>	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
Legal Authority: <i>Financial Management and Accountability Act 1997; s 20</i>		
<i>Purpose:</i> for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. This account is interest bearing.		
<b>Balance carried from previous year</b>	<b>47,623</b>	38,782
Receipts during 2006/07	<b>69,865</b>	1,047,261
<b>Available for payments</b>	<b>117,488</b>	1,086,043
Payments made during 2006/07	<b>79,156</b>	1,038,420
<b>Balance carried to next year</b>	<b>38,332</b>	47,623
Represented by:		
Cash – held by the Court	<b>38,332</b>	47,623
<b>Total</b>	<b>38,332</b>	47,623

<b>Services for other Governments &amp; Non-agency bodies</b>	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
Legal authority: <i>Financial Management and Accountability Act, 1997, s 20</i>		
<i>Purpose:</i> for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies. This account is interest bearing.		
<b>Balance carried from previous year</b>	<b>10,398</b>	10,398
Receipts during 2006/07	-	-
<b>Available for payments</b>	<b>10,398</b>	10,398
Payments made during 2006/07	-	-
<b>Balance carried to next year</b>	<b>10,398</b>	10,398
Represented by:		
Cash – held by the Court	<b>10,398</b>	10,398
<b>Total</b>	<b>10,398</b>	10,398

<b>Federal Court of Australia Litigant's Fund</b>	<b>2007</b>	<b>2006</b>
	<b>\$</b>	<b>\$</b>
Legal Authority: <i>Financial Management and Accountability Act, 1997, s20</i>		
<i>Purpose:</i> to hold private moneys for litigants pending acceptance of moneys paid into Court by litigants; security for costs or pursuant to an order of a Federal Court Judge. This account is non-interest bearing.		
<b>Balance carried from previous year</b>	<b>1,671,643</b>	1,199,753
Receipts during 2006/07	<b>3,070,498</b>	2,466,458
Available for payments	<b>4,742,141</b>	3,666,211
<b>Payments made during 2006/07</b>	<b>2,713,515</b>	1,994,568
Balance carried to next year	<b>2,028,626</b>	1,671,643
Represented by:		
Cash – held by the Court	<b>2,028,626</b>	1,671,643
<b>Total</b>	<b>2,028,626</b>	1,671,643

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

Federal Court of Australia Litigant's Fund	2007	2006
	\$	\$
Legal authority: <i>Financial Management and Accountability Act, 1997, s39</i>		
<i>Purpose:</i> to invest private moneys paid by litigants pursuant to an order of a Federal Court Judge, pending an order for payment out by a Federal Court Judge. This account is interest bearing.		
<b>Balance carried from previous year</b>	<b>12,399,712</b>	1,674,832
Receipts during 2006/07	<b>5,830,614</b>	15,548,065
Available for payments	<b>18,230,326</b>	17,222,897
<b>Payments made during 2006/07</b>	<b>9,631,809</b>	4,823,185
Balance carried to next year	<b>8,598,517</b>	12,399,712
Represented by:		
Cash – held by the Court	<b>8,598,517</b>	12,399,712
Total	<b>8,598,517</b>	12,399,712

**Note 21: Comcare Account**

Comcare account	2007	2006
	\$	\$
This account holds monies advanced to the Court by COMCARE to distribute compensation payments made in accordance with the <i>Safety Rehabilitation and Compensation Act 1998</i> . Where the Court makes payments against accrued sick leave entitlements pending determination of an employee's claim, permission is obtained in writing from each individual to allow the Court to recover the payments from the monies in the account.		
<b>Balance carried from previous year</b>	<b>782</b>	-
Receipts during 2006/07	<b>64,673</b>	4,548
Available for payments	<b>65,455</b>	4,548
<b>Payments made during 2006/07</b>	<b>65,455</b>	3,766
Balance carried to next year	-	782
Represented by:		
Cash – held by the Court	-	782
Total	-	782

**Note 22: Compensation and Debt Relief**

	2007	2006
<b>Administered</b>	\$	\$
No Act of Grace payments were made during the financial year 2006-07 under sub-section 33(1) of the <i>Financial Management and Accountability Act 1997</i> .	-	-
No payments were waived during the financial year 2006-07 under subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> .	-	-
3,246 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 <i>Federal Court of Australia Regulations 2004</i> .	<b>3,418,307</b>	<b>2,812,085</b>

**Departmental**

No payments were made under the 'Defective Administration Scheme' during 2006-07 (2005-06 nil).

## FEDERAL COURT OF AUSTRALIA

## Notes to and forming part of the Financial Statements

**Note 23: Reporting of Outcomes****Note 23A: Net Cost of Outcome Delivery**

The Court has one Output and Outcome:

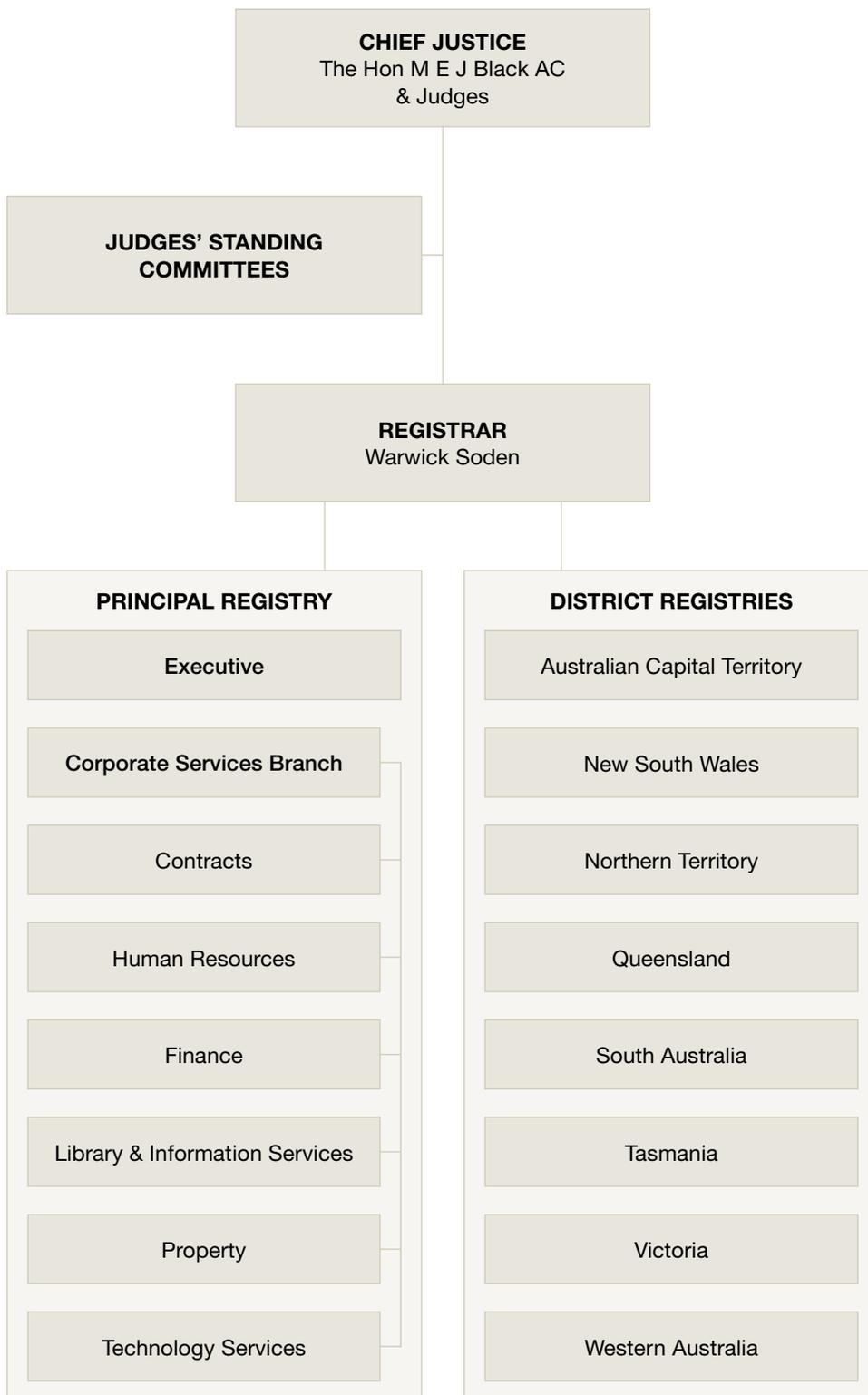
To apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.

Outcome 1	Outcome 1	
	2007 \$'000	2006 \$'000
<b>Expenses</b>		
Administered	153	89
Departmental	101,145	92,701
<b>Total expenses</b>	<b>101,298</b>	<b>92,790</b>
<b>Costs recovered from provision of goods and services to the non-government sector</b>		
Administered	-	-
Departmental	-	-
<b>Total costs recovered</b>	<b>-</b>	<b>-</b>
<b>Other external revenues</b>		
Administered	6,524	6,296
Departmental	1,918	3,104
<b>Total other external revenues</b>	<b>8,442</b>	<b>9,400</b>
<b>Net cost/(contribution) of outcome</b>	<b>92,856</b>	<b>83,390</b>

**Note 23B: Major Classes of Departmental Revenues and Expenses by Outputs**

Outcome 1	Outcome 1	
	2007 \$'000	2006 \$'000
<b>Departmental expenses</b>		
Judges and Employees	53,544	48,687
Suppliers	44,518	41,205
Depreciation and Amortisation	2,989	2,485
Finance costs	69	60
Other Expenses	25	264
<b>Total departmental expenses</b>	<b>101,145</b>	<b>92,701</b>
<b>Funded by:</b>		
Revenues from government	99,684	94,506
Sale of goods and services	1,902	2,490
Other non-taxation revenues	16	614
<b>Total departmental revenues</b>	<b>101,602</b>	<b>97,610</b>

## APPENDIX 2 – Management Structure



## APPENDIX 3 – Registrars of the Court

(as at 30 June 2007)

Registry	Name	Other Appointments	
<b>Principal Registry</b>			
Registrar	Warwick Soden		
Deputy Registrar	Philip Kellow	A Registrar, Federal Magistrates Court	
	Louise Anderson		
	Lance Grant	A Registrar, Federal Magistrates Court Deputy Sheriff, Admiralty Marshal	
<b>New South Wales</b>			
District Registrar	Michael Wall	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	Registrar, Copyright Tribunal A Registrar, Federal Magistrates Court	
	Stephanie Kavallaris	A Registrar, Federal Magistrates Court	
	Kim Lackenby	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court	
	Thomas Morgan	A Registrar, Federal Magistrates Court	
	Jennifer Farrell	A Registrar, Federal Magistrates Court	
	<b>Victoria</b>		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal Tribunal Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court	
	Jane Mussett	A Registrar, Federal Magistrates Court	
	Timothy Luxton	A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal	
	Adam Moore	A Registrar, Federal Magistrates Court	
	Ian Irving	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal	
	Sheriff of the Federal Court of Australia	Laurence Keynon	Admiralty Marshal
<b>Queensland</b>			
District Registrar	Graham Ramsey	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court	
	Deputy District Registrars	David Robson	A Registrar, Federal Magistrates Court
		Kenneth Berry	A Registrar, Federal Magistrates Court
Christine Fewings			

<b>Registry</b>	<b>Name</b>	<b>Other Appointments</b>
<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
	June Eaton	A Registrar, Federal Magistrates Court
	Rainer Gilich	A Registrar, Federal Magistrates Court
<b>South Australia</b>		
District Registrar	Patricia Christie	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrar	Lynette Duncan	A Registrar, Federal Magistrates Court
<b>Tasmania</b>		
District Registrar	Alan Parrott	District Registrar, Administrative Appeals Tribunal Deputy Registrar, Australian Competition Tribunal Deputy Registrar, National Native Title Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court Deputy Sheriff
<b>Australian Capital Territory</b>		
District Registrar	Jennifer Hedge (Based in Sydney)	Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Geoffrey Segal (Based in Sydney)	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero (Based in Sydney)	Registrar, Copyright Tribunal A Registrar, Federal Magistrates Court
	Stephanie Kavallaris (Based in Sydney)	A Registrar, Federal Magistrates Court
	Anna Quilter (Based in Sydney)	Deputy Registrar Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Kim Lackenby (Based in Sydney)	Deputy Registrar, Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Natalie Cujes (Based in Canberra)	A Registrar, Federal Magistrates Court
<b>Northern Territory</b>		
District Registrar	James Brohier	A Registrar, Federal Magistrates Court

## APPENDIX 4 – Statutes of the Court

(as at 30 June 2007)

[Only Principal Acts are included]

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<i>Aboriginal and Torres Strait Islander Act 2005</i>	<i>Australian Wine and Brandy Corporation Act 1980</i>
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	<i>Aviation Transport Security Act 2004</i>
<i>Aboriginal Councils and Associations Act 1976</i>	<i>Banking Act 1959</i>
<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>	<i>Bankruptcy Act 1966</i>
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	<i>Broadcasting Services Act 1992</i>
<i>ACIS Administration Act 1999</i>	<i>Building and Construction Industry Improvement Act 2005</i>
<i>Administrative Appeals Tribunal Act 1975</i>	<i>Building Industry Act 1985</i>
<i>Administrative Decisions (Judicial Review) Act 1977</i>	<i>Charter of the United Nations Act 1945</i>
<i>Admiralty Act 1988</i>	<i>Child Support (Registration and Collection) Act 1988</i>
<i>Advance Australia Logo Protection Act 1984</i>	<i>Circuit Layouts Act 1989</i>
<i>Age Discrimination Act 2004</i>	<i>Civil Aviation (Carriers' Liability) Act 1959</i>
<i>Aged Care Act 1997</i>	<i>Coal Industry Repeal Act 2001</i>
<i>Agricultural and Veterinary Chemicals Act 1994</i>	<i>Commonwealth Authorities and Companies Act 1997</i>
<i>Air Navigation Act 1920</i>	<i>Commonwealth Electoral Act 1918</i>
<i>Airports Act 1996</i>	<i>Commonwealth Places (Mirror Taxes) Act 1998</i>
<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>	<i>Commonwealth Serum Laboratories Act 1961</i>
<i>Anti-Personnel Mines Convention Act 1998</i>	<i>Complaints (Australian Federal Police) Act 1981</i>
<i>Australian Crime Commission Act 2002</i>	<i>Copyright Act 1968</i>
<i>Australian Energy Market Act 2004</i>	<i>Corporations Act 2001</i>
<i>Australian Federal Police Act 1979</i>	<i>Crimes Act 1914</i>
<i>Australian Industry Development Corporation Act 1970</i>	<i>Criminal Code Act 1995</i>
<i>Australian National Railways Commission Sale Act 1997</i>	<i>CSL Sale Act 1993</i>
<i>Australian Postal Corporation Act 1989</i>	<i>Customs Act 1901</i>
<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>	<i>Dairy Industry Service Reform Act 2003</i>
<i>Australian Securities and Investments Commission Act 2001</i>	<i>Dairy Produce Act 1986</i>
<i>Australian Sports Anti-Doping Authority Act 2006</i>	<i>Debits Tax Administration Act 1982</i>
	<i>Defence Act 1903</i>
	<i>Defence Force Discipline Appeals Act 1955</i>
	<i>Defence Reserve Service (Protection) Act 2001</i>

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*Designs Act 2003*  
*Diplomatic and Consular Missions Act 1978*  
*Disability Discrimination Act 1992*  
*Education Services for Overseas Students Act 2000*  
*Egg Industry Service Provision Act 2002*  
*Environment Protection and Biodiversity Conservation Act 1999*  
*Evidence Act 1995*  
*Evidence and Procedure (New Zealand) Act 1994*  
*Excise Act 1901*  
*Export Markets Development Grants Act 1997*  
*Extradition Act 1988*  
*Federal Court of Australia Act 1976*  
*Federal Court of Australia (Consequential Provisions) Act 1976*  
*Federal Proceedings (Costs) Act 1981*  
*Financial Sector (Collection of Data) Act 2001*  
*Financial Sector (Shareholdings) Act 1998*  
*Financial Sector (Transfer of Business) Act 1999*  
*Financial Transaction Reports Act 1988*  
*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*  
*Fringe Benefits Tax Assessment Act 1986*  
*Fuel Quality Standards Act 2000*  
*Gas Pipelines Access (Commonwealth) Act 1998*  
*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*  
*Human Rights and Equal Opportunity Commission Act 1986*  
*Income Tax Assessment Act 1936*  
*Independent Contractors Act 2006*  
*Industrial Chemicals (Notification and Assessment) Act 1989*  
*Industrial Relations Reform Act 1993*  
*Insurance Acquisition and Takeovers Act 1991*  
*Insurance Act 1973*  
*Interactive Gambling Act 2001*  
*International Criminal Court Act 2002*  
*International War Crimes Tribunals Act 1995*  
*Judiciary Act 1903*  
*Jurisdiction of Courts (Cross-vesting) Act 1987*  
*Lands Acquisition Act 1989*  
*Law Enforcement Integrity Commissioner Act 2006*  
*Life Insurance Act 1995*  
*Liquid Fuel Emergency Act 1984*  
*Maritime Transport and Offshore Facilities Security Act 2003*  
*Medibank Private Sale Act 2006*  
*Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*  
*Members of Parliament (Life Gold Pass) Act 2002*  
*Migration Act 1958*  
*Military Rehabilitation and Compensation Act 2004*  
*Moomba–Sydney Pipeline System Sale Act 1994*  
*Motor Vehicle Standards Act 1989*  
*National Environment Protection Measures (Implementation) Act 1998*  
*National Health Act 1953*  
*National Measurement Act 1960*

<i>National Security Information (Criminal Proceedings) Act 2004</i>	<i>Royal Commissions Act 1902</i>
<i>National Transmission Network Sale Act 1998</i>	<i>Safety, Rehabilitation and Compensation Act 1988</i>
<i>Native Title Act 1993</i>	<i>Service and Execution of Process Act 1992</i>
<i>Navigation Act 1912</i>	<i>Shipping Registration Act 1981</i>
<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>	<i>Snowy Hydro Corporatisation Act 1997</i>
<i>Offshore Petroleum Act 2006</i>	<i>Space Activities Act 1998</i>
<i>Olympic Insignia Protection Act 1987</i>	<i>Spam Act 2003</i>
<i>Ombudsman Act 1976</i>	<i>Superannuation Contributions Tax (Assessment and Collection) Act 1997</i>
<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>	<i>Superannuation Industry (Supervision) Act 1993</i>
<i>Parliamentary Privileges Act 1987</i>	<i>Superannuation (Resolution of Complaints) Act 1993</i>
<i>Patents Act 1990</i>	<i>Surveillance Devices Act 2004</i>
<i>Payments Systems (Regulations) Act 1998</i>	<i>Sydney Airport Demand Management Act 1997</i>
<i>Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990</i>	<i>Taxation Administration Act 1953</i>
<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	<i>Telecommunications Act 1997</i>
<i>Petroleum Retail Marketing Franchise Act 1980</i>	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
<i>Petroleum Retail Marketing Sites Act 1980</i>	<i>Telecommunications (Interception and Access) Act 1979</i>
<i>Petroleum (Submerged Lands) Amendment Act 1991</i>	<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>
<i>Pig Industry Act 2001</i>	<i>Telstra Corporation Act 1991</i>
<i>Plant Breeder's Rights Act 1994</i>	<i>Termination Payments Tax (Assessment and Collection) Act 1997</i>
<i>Privacy Act 1988</i>	<i>Therapeutic Goods Act 1989</i>
<i>Private Health Insurance Act 2007</i>	<i>Trade Marks Act 1995</i>
<i>Private Health Insurance Incentives Act 1998</i>	<i>Trade Practices Act 1974</i>
<i>Proceeds of Crime Act 2002</i>	<i>Transport Safety Investigation Act 2003</i>
<i>Protection of the Sea (Harmful Anti-fouling Systems) Act 2006</i>	<i>Treasury Bills Act 1914</i>
<i>Protection of the Sea (Oil Pollution Compensation Fund) Act 1993</i>	<i>Veterans' Entitlements Act 1986</i>
<i>Qantas Sale Act 1992</i>	<i>Water Efficiency Labelling and Standards Act 2005</i>
<i>Radiocommunications Act 1992</i>	<i>Wool International Privatisation Act 1999</i>
<i>Referendum (Machinery Provisions) Act 1984</i>	<i>Wool Services Privatisation Act 2000</i>
<i>Removal of Prisoners (Territories) Act 1923</i>	<i>Workplace Relations Act 1996</i>
<i>Renewable Energy (Electricity) Act 2000</i>	
<i>Retirement Savings Account Act 1997</i>	

## APPENDIX 5 – 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, in this report, the figures reported may be marginally different 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 also records matters differently to the Court’s previous system, FEDCAMs, with the effect that the Court’s reports since 2004–05 have reported different figures for earlier years from those reported in those years. Casetrack records matters in the Court classified according to eleven main categories, described as ‘causes of action’ (COA).

It should also be noted that following publication of the 2005–06 Annual Report discrepancies were discovered in those charts in Appendix 5 relating to the age and number of current matters. While the total figures were correct, the figures for the individual years were incorrect. The error was caused because both financial and calendar year statistics were incorrectly used to generate this data.

**Table 5.1 – Summary of workload statistics**

Original and appellate jurisdiction

<b>Filings of major COAs including appeals and related actions</b>					
National totals by financial year					
<b>Year</b>	<b>2002–03</b>	<b>2003–04</b>	<b>2004–05</b>	<b>2005–06</b>	<b>2006–07</b>
<b>Cause of Action</b>					
<b>Total COAs (inc. Appeals &amp; Related Actions)</b>					
Filed	4846	6017	4494	6158	5063
Finalised	5255	6084	4496	6253	5338
Current	3651	3584	3582	3487	3212
<b>Corporations (inc. Appeals &amp; Related Actions)</b>					
Filed	468	645	1003	2912	1926
Finalised	439	558	792	2729	2083
Current	187	274	485	668	511
<b>Bankruptcy (inc. Appeals &amp; Related Actions)</b>					
Filed	540	495	417	392	281
Finalised	573	525	393	419	343
Current	223	193	217	190	128
<b>Native Title (inc. Appeals &amp; Related Actions)</b>					
Filed	71	78	61	68	66
Finalised	61	68	101	96	89
Current	675	685	645	617	596
<b>Total COAs (inc. Appeals &amp; Related Actions &amp; excluding Corporations, Bankruptcy &amp; Native Title)</b>					
Filed	3767	4799	3013	2786	2790
Finalised	4182	4933	3210	3009	2823
Current	2566	2432	2235	2012	1977

**Table 5.2 – Summary of workload statistics**

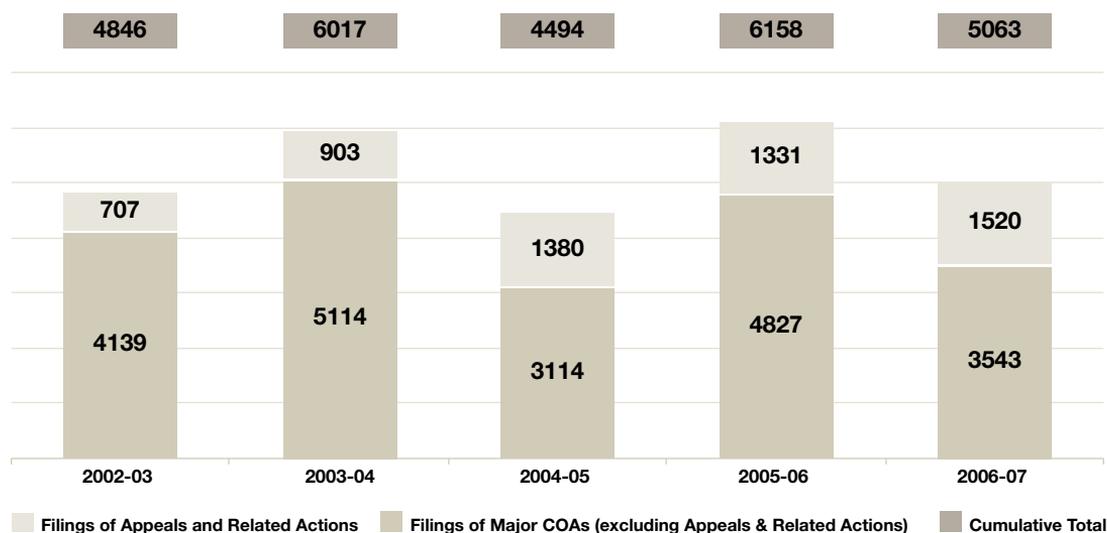
(excluding appeals and related actions)

<b>Filings of major COAs (excluding appeals &amp; related actions)</b>					
National totals by financial year					
<b>Year</b>	<b>2002–03</b>	<b>2003–04</b>	<b>2004–05</b>	<b>2005–06</b>	<b>2006–07</b>
<b>Cause of Action</b>					
<b>Total COAs (ex. Appeals &amp; Related Actions)</b>					
Filed	4139	5114	3114	4827	3543
Finalised	4560	5248	3255	4887	3808
Current	3278	3144	3003	2943	2678
<b>Corporations (ex. Appeals &amp; Related Actions)</b>					
Filed	466	635	984	2898	1903
Finalised	435	549	779	2719	2058
Current	179	265	470	649	494
<b>Bankruptcy (ex. Appeals &amp; Related Actions)</b>					
Filed	485	448	348	332	223
Finalised	525	470	333	354	289
Current	180	158	173	151	85
<b>Native Title (ex. Appeals &amp; Related Actions)</b>					
Filed	68	54	51	60	50
Finalised	58	61	79	81	76
Current	662	655	627	606	580
<b>Total COAs (ex. Appeals &amp; Related Actions &amp; excluding Corporations, Bankruptcy &amp; Native Title)</b>					
Filed	3120	3977	1731	1537	1367
Finalised	3542	4168	2064	1733	1408
Current	2257	2066	1733	1537	1519

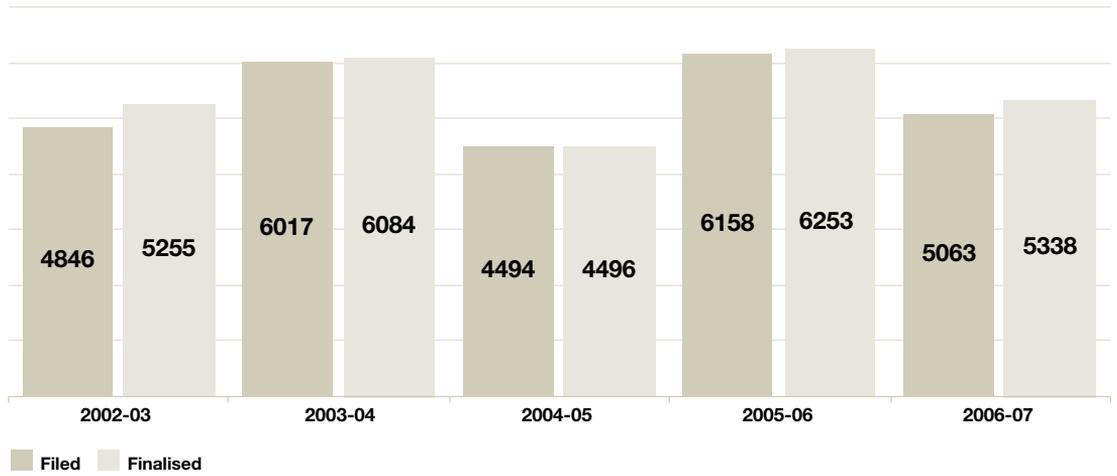
**Table 5.3 – Summary of workload statistics**

Appeals and related actions only

<b>Filings of appeals and relation actions</b>					
National totals by financial year					
<b>Year</b>	<b>2002–03</b>	<b>2003–04</b>	<b>2004–05</b>	<b>2005–06</b>	<b>2006–07</b>
<b>Cause of Action</b>					
<b>Total Appeals &amp; Related Actions</b>					
Filed	707	903	1380	1331	1520
Finalised	695	836	1241	1366	1530
Current	373	440	579	544	534
<b>Corporations Appeals &amp; Related Actions</b>					
Filed	2	10	19	14	37
Finalised	4	9	13	10	37
Current	6	7	13	17	17
<b>Migration Appeals &amp; Related Actions</b>					
Filed	201	375	971	1050	1092
Finalised	179	435	659	1051	1124
Current	112	52	364	363	331
<b>Native Title Appeals &amp; Related Actions</b>					
Filed	3	24	10	8	25
Finalised	3	7	22	15	20
Current	13	30	18	11	16
<b>Total Appeals &amp; Related Actions – excluding Corporations, Migration &amp; Native Title Appeals &amp; Related Actions</b>					
Filed	501	494	380	259	366
Finalised	509	385	547	290	349
Current	242	351	184	153	170

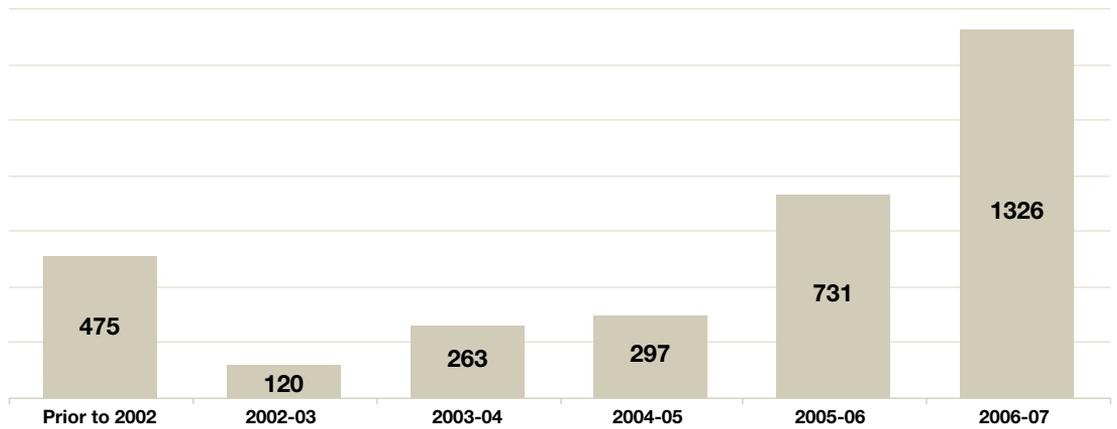
**Figure 5.1 – Matters filed 2002–03 to 2006–07**

**Figure 5.2 – Matters filed and finalised 2002–03 to 2006–07**



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

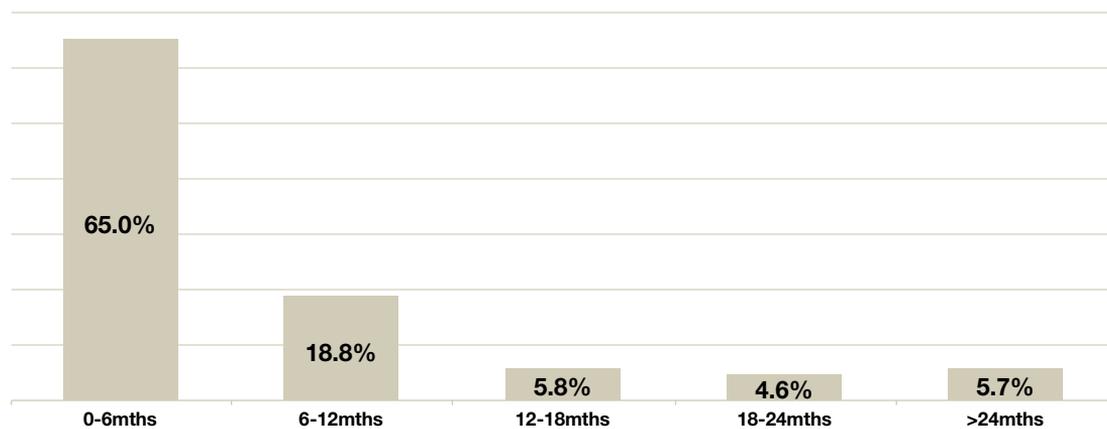
**Figure 5.3 – Age and number of current matters at 30 June 2007**



A total of 3,212 matters remain current at 30 June 2007. There were 475 applications still current relating to periods before those shown in the graph. Over 90% of cases prior to 2002 are native title matters.

**Figure 5.4 – Time span to complete**

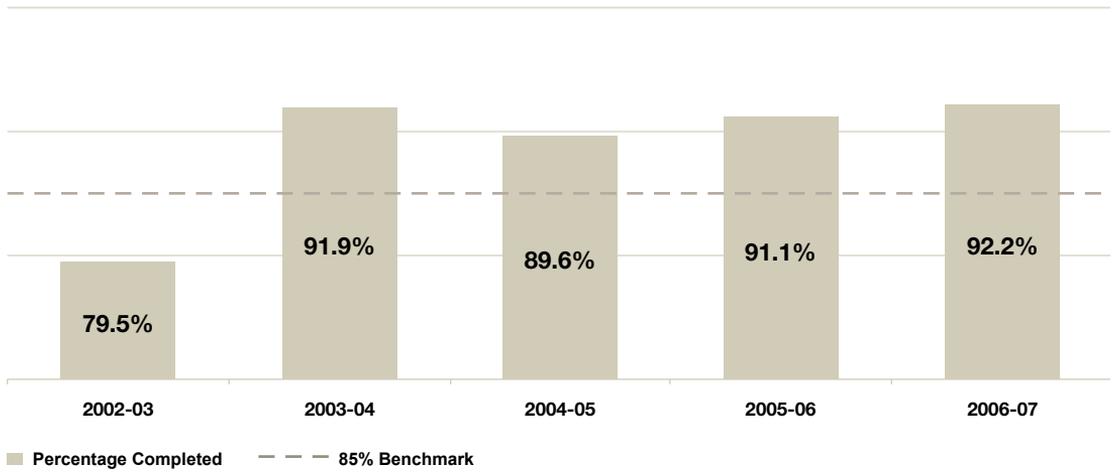
Matters completed in the period 1 July 2002 to 30 June 2007



A total of 27,011 matters were completed during the 5 year period ended 30 June 2007 excluding Native Title matters. The time span, from filing to disposition of these matters, is shown in the graph above.

**Figure 5.5 – Time span to complete benchmark**

2002–03 to 2006–07



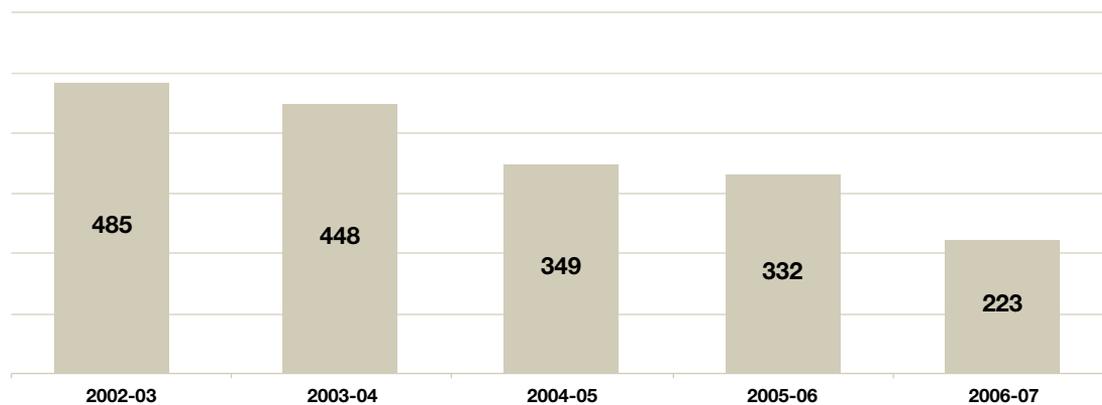
The total number of matters (including appeals but excluding Native Title) completed for each of the last five years and the time span for completion are shown below.

**Finalisations of major COAs including appeals and related actions excluding Native Title COAs**

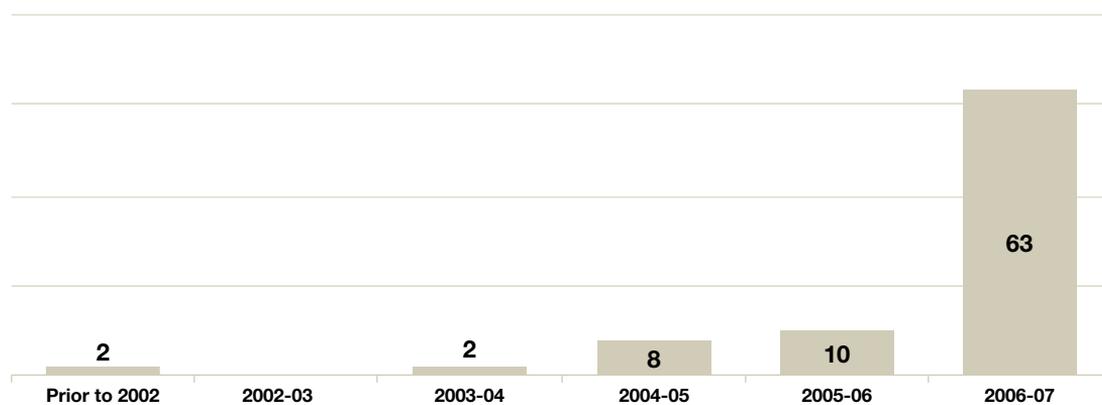
National totals by financial year

Year	2002–03	2003–04	2004–05	2005–06	2006–07
<b>Percentage Completed</b>					
85% Benchmark	85%	85%	85%	85%	85%
Under 18 Months	4131	5536	3956	5622	4851
% of Total	79.5%	91.9%	89.6%	91.1%	92.2%
Over 18 Months	1066	487	461	550	487
% of Total	20.5%	8.1%	10.4%	8.9%	9.3%
<b>Total COAs</b>	<b>5197</b>	<b>6023</b>	<b>4417</b>	<b>6172</b>	<b>5262</b>

Figure 5.6 – Bankruptcy Act matters filed 2002–03 to 2006–07

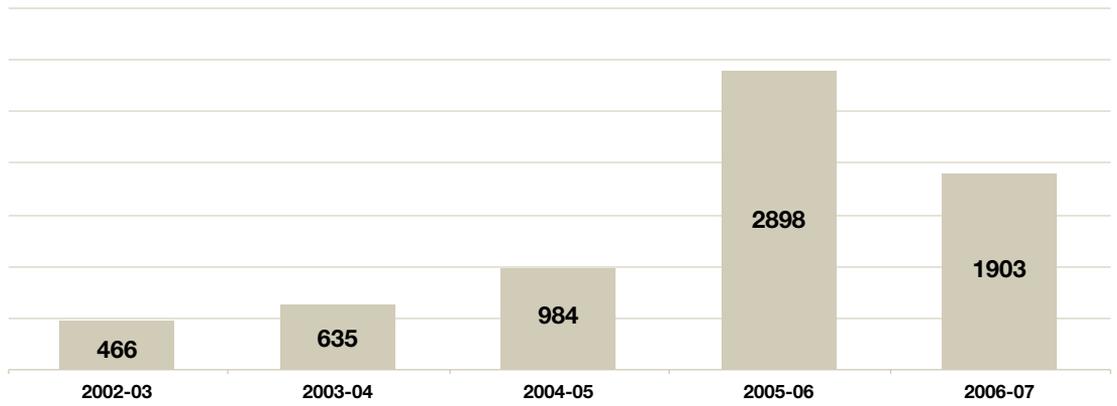


Age and number of current Bankruptcy Act matters at 30 June 2007

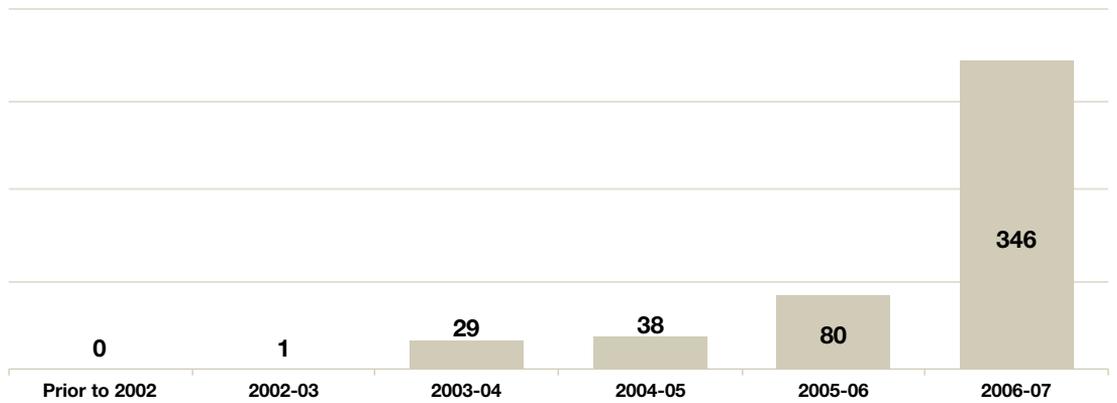


A total of 85 Bankruptcy Act matters remain current at 30 June 2007.

**Figure 5.7 – Corporations Act matters filed 2002–03 to 2006–07**

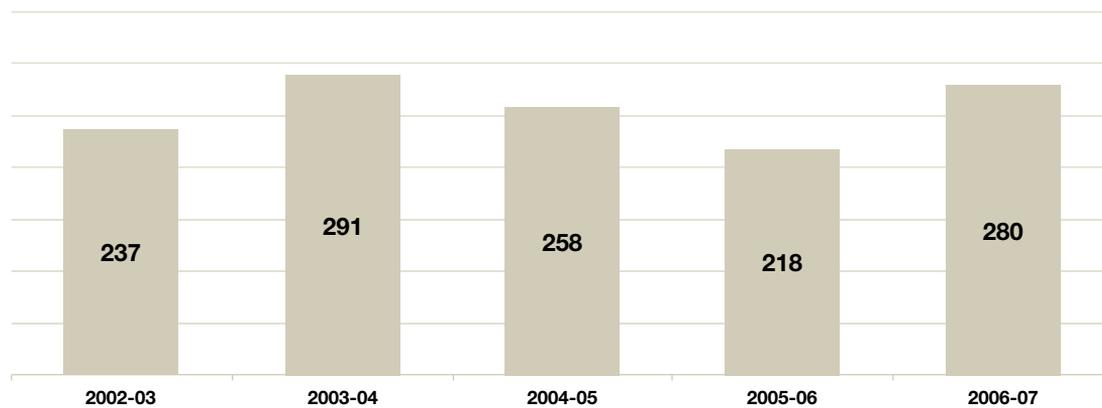


**Age and number of current Corporations Act matters at 30 June 2007**

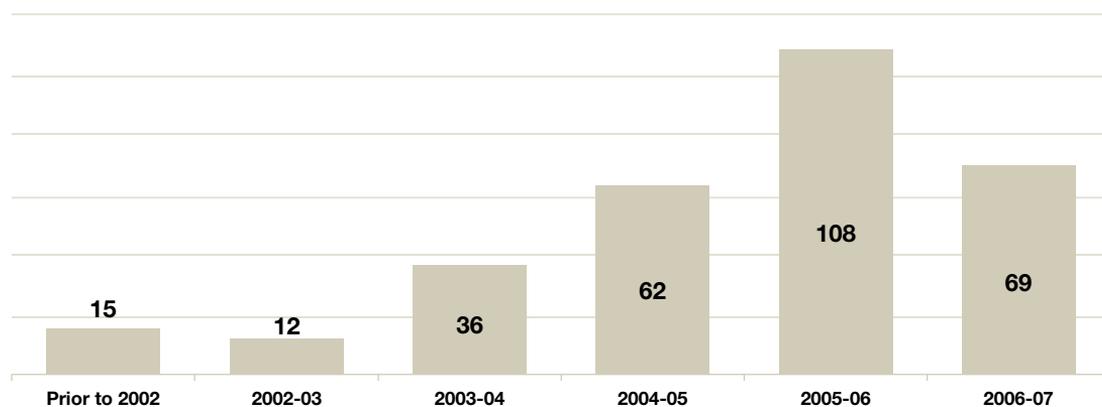


A total of 494 Corporations Act matters remain current at 30 June 2007.

Figure 5.8 – Trade Practices Act matters filed 2002–03 to 2006–07

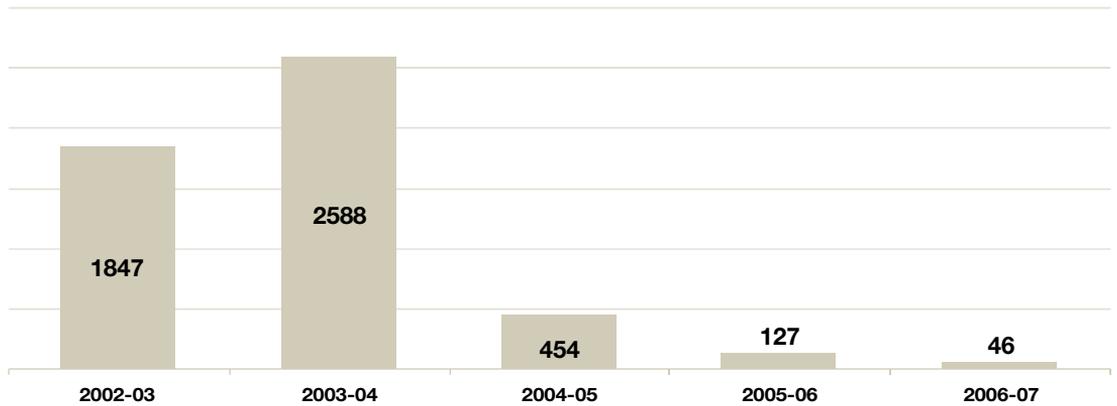


Age and number of Trade Practices Act matters current at 30 June 2007



A total of 302 Trade Practices Act matters remain current as at 30 June 2007.

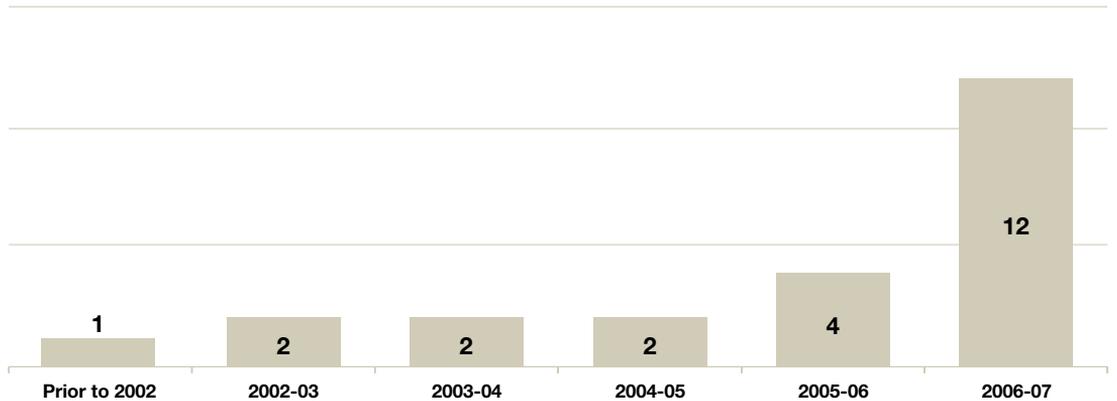
**Figure 5.9 – Migration Act matters filed 2002–03 to 2006–07**



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

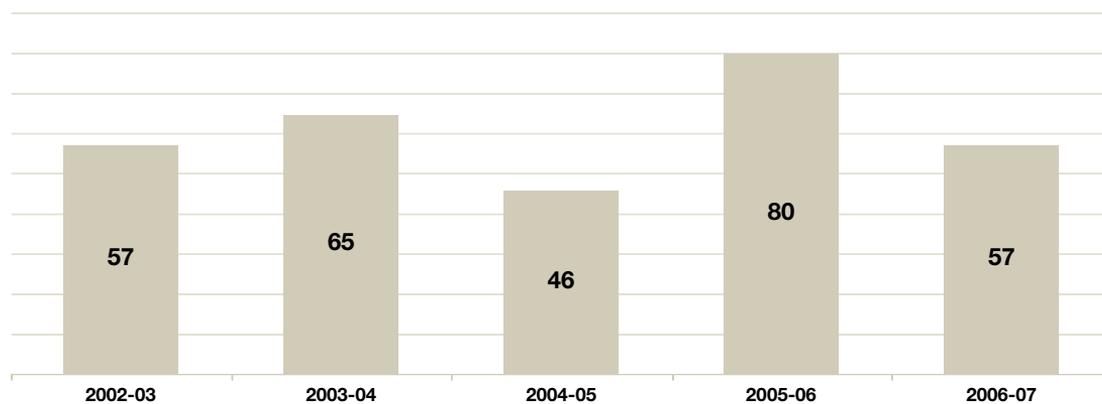
The increase shown for 2002–03 and 2003–04 is largely attributed to migration applications remitted from the High Court of Australia. A total of 637 were remitted in 2002–03 and 1,716 were remitted in 2003–04. Since 1 December 2005, when the Migration Litigation Reform Act commenced, almost all first instance migration cases have been filed in the Federal Magistrates Court.

**Age and number Migration Act matters current at 30 June 2007**

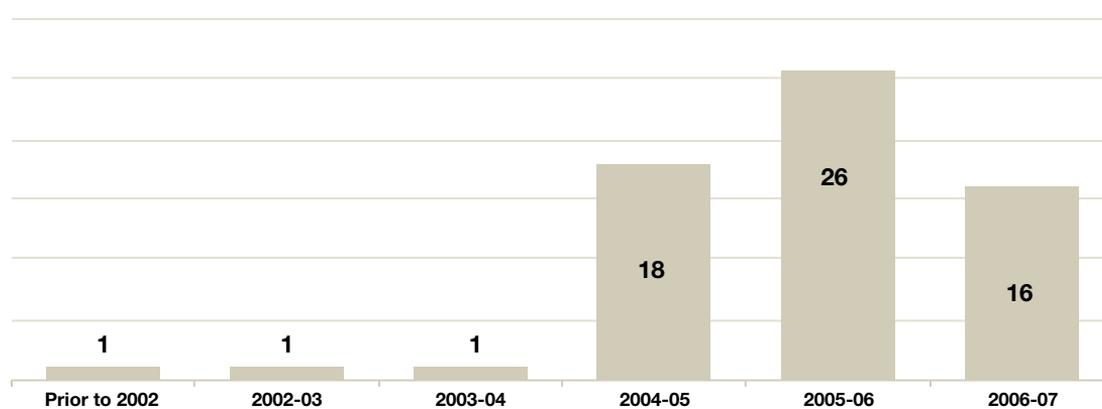


A total of 23 Migration Act matters remain current as at 30 June 2007.

Figure 5.10 – Admiralty Act matters filed 2002–03 to 2006–07

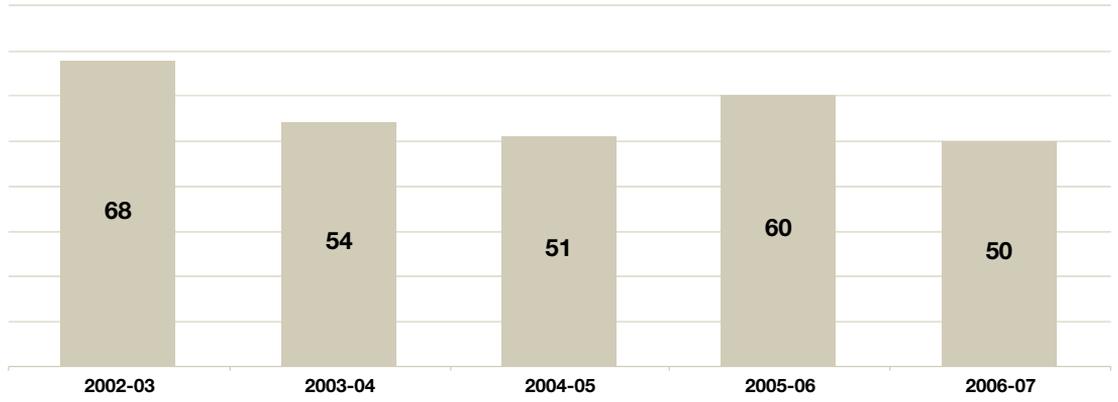


Age and number of Admiralty Act matters current at 30 June 2007

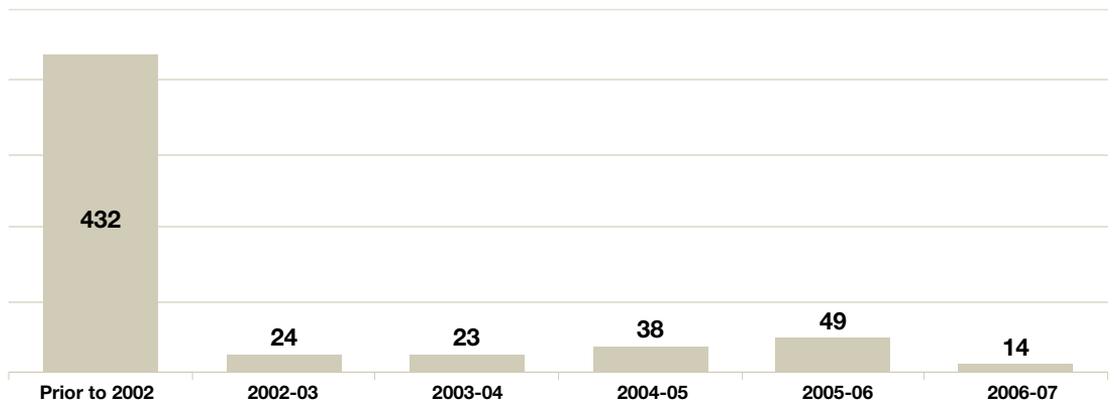


A total of 63 Admiralty Act matters remain current as at 30 June 2007.

**Figure 5.11 – Native Title Act matters filed 2002–03 to 2006–07**

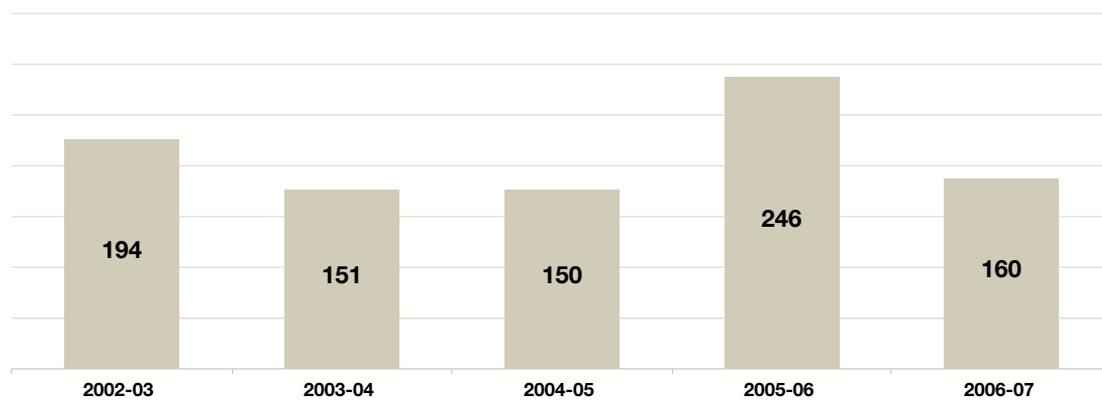


**Age and number of Native Title Act matters current at 30 June 2007**

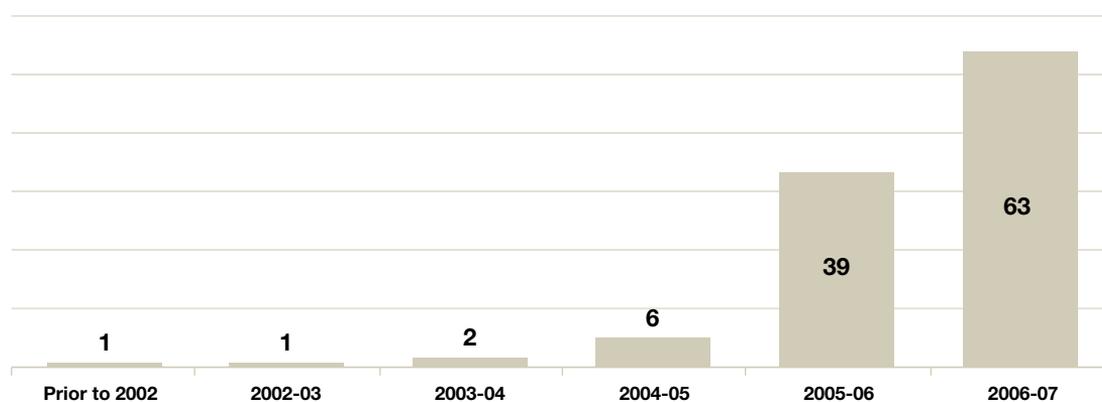


A total of 580 Native Title matters remain current as at 30 June 2007.

Figure 5.12 – Workplace relations matters filed 2002–03 to 2006–07

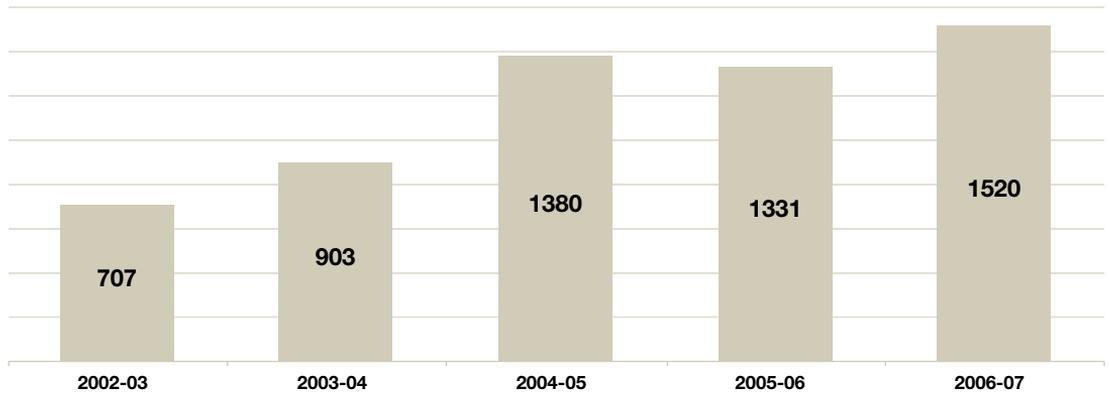


Age and number of current workplace relations matters at 30 June 2007

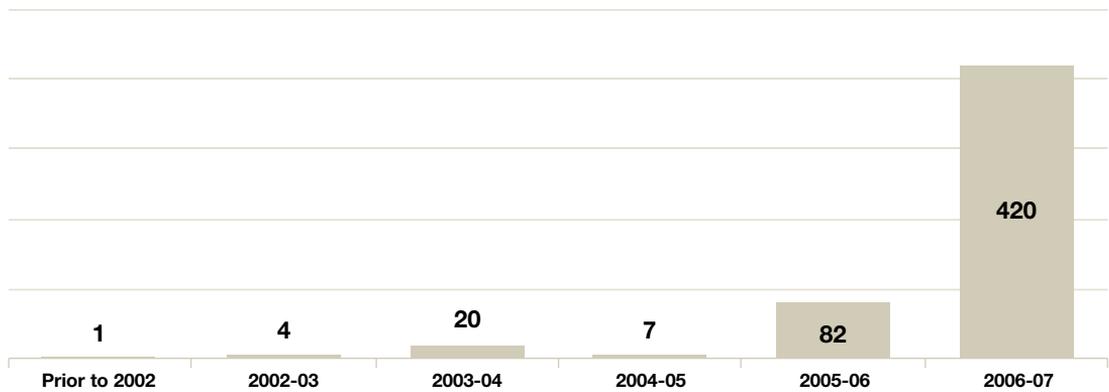


A total of 112 workplace relations cases remain current at 30 June 2007.

**Figure 5.13 – Appeals and related actions filed 2002–03 to 2006–07**

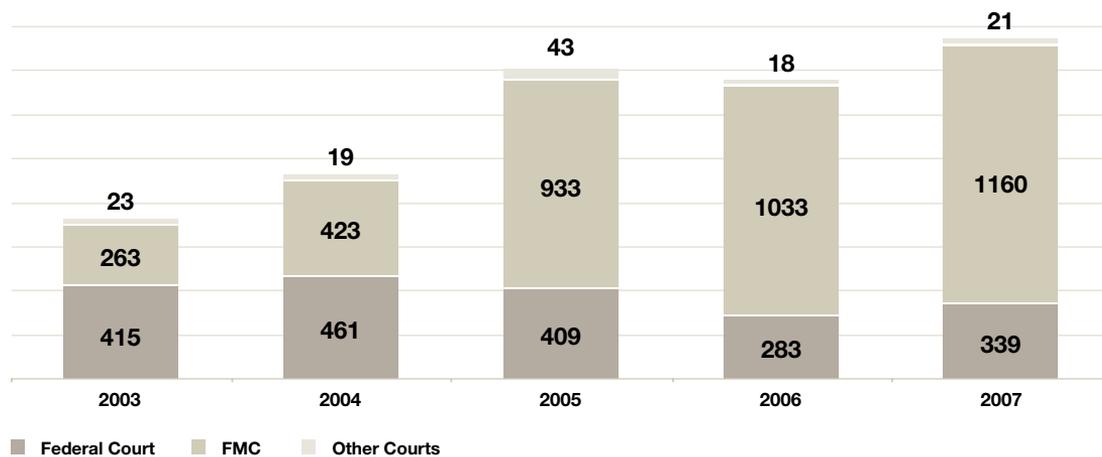


**Age and number of current appeals and related actions at 30 June 2007**



A total of 534 appeals remain current as at 30 June 2007.

Figure 5.14 – Source of appeals and related actions 2002–03 to 2006–07



### Appeals and related actions

Financial Year	2003	2004	2005	2006	2007
<b>Source</b>					
Federal Court	415	461	409	283	339
	46.0%	33.3%	30.7%	18.6%	22.3%
FMC	263	423	933	1033	1160
	29.1%	30.5%	69.9%	68.0%	76.3%
Other Courts	23	19	43	18	21
	2.5%	1.4%	3.2%	1.2%	1.4%
<b>Total by Period</b>	<b>701</b>	<b>903</b>	<b>1385</b>	<b>1334</b>	<b>1520</b>

#### Notes:

1. The Federal Magistrates Court commenced on 23 June 2000.
2. Appeals from Supreme Courts have declined following the establishment of the ACT Court of Appeal in 2002.

## APPENDIX 6 – 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. The Federal Police Disciplinary Tribunal ceased to exist during the year.

### Australian Competition Tribunal

#### Functions and powers

The Australian Competition Tribunal was established under the Trade Practices 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 Trade Practices Act for being anti-competitive;
- decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines; and
- determinations by the ACCC in relation to notices issued under section 93 of the Trade Practices Act in relation to exclusive dealing.

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

#### Practice and procedure

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

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

#### 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. Justice Goldberg is the full-time President of the Tribunal.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 84.

#### Activities

Three review proceedings were current at the start of the reporting year. During the year, four proceedings were commenced and six matters were finalised. One matter is 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 Medicines Australia Inc [2007] ACompT 4 (27 June 2007)
- Telstra Corporation Ltd (No 3) [2007] ACompT 3 (17 May 2007)
- Application by Vodafone Network Pty Ltd & Vodafone Australia Limited [2007] ACompT 1 (11 January 2007)
- Application by Optus Mobile Pty Limited & Optus Networks Pty Limited [2006] ACompT 8 (22 November 2006)

### Workload trends

There was no significant change in the Tribunal's workload. Three of the applications were to review telecommunications decisions under part XIC of the Act.

## 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; and
- to determine a wide range of issues in relation to the statutory licensing scheme in favor of government.

The Copyright Amendment Act 2006, assented to on 11 December 2006, has given the Tribunal more jurisdiction, eg to hear disputes between collecting societies and its 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, within the discretion of the Tribunal. The *Copyright Tribunal (Procedure) Regulations 1969* sets out procedural requirements for the making and hearing of applications.

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

### Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. During 2006–07 there were the following changes to the membership:

- Justice Emmett was reappointed as a Deputy President
- Federal Magistrate Rolf Driver was appointed as a Deputy President
- Professor D Pearce AO was reappointed a member
- Dr R Smith was reappointed a member
- Dr Hugh Silby was appointed a member
- Justice Finkelstein was not reappointed as a Deputy President
- Angela Bowne SC was not reappointed as a member.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 3 on page 84.

### Activities

Six matters were current at the start of the reporting year. During the year, two matters were commenced, and three matters were finalised. Five 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/workload trends

There were no decisions of interest, nor significant workload to report for the year.

## Defence Force Discipline Appeal Tribunal

### Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1974* to hear and determine appeals by persons who have been:

- convicted of a service offence, or
- who have been acquitted of a service offence on the ground of unsoundness of mind (“a prescribed acquittal”)

by a court martial or a Defence Force Magistrate under the *Defence Force Discipline Act 1982*.

The Tribunal may dismiss or allow the appeal, substitute for a conviction a prescribed acquittal, or, if satisfied the appellant was unfit to stand trial, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.

### 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 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. During the reporting year, the President of the Tribunal was Justice Heerey.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 3 on page 84.

### Activities

No matters were current at the start of the reporting year. During the year, five matters were commenced and three 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

*Gooch V Chief of Air Force* [2007] ADFDAT 1.

### Workload trends

The *Defence Force Discipline Act 1982* (DFDA), as amended by the *Defence Legislation Amendment Act 2006*, has established an Australian Military Court, which is intended to replace the current system of trials by Courts Martial (CM) and Defence Force Magistrates (DFM) under the DFDA. As a result of the changes, there may be an increase in DFDAT workload as more matters may be brought before the Tribunal on the basis that there is an ability to appeal sentencing. The workload of the Tribunal remains unpredictable.

## **Federal Police Disciplinary Tribunal**

The Federal Police Disciplinary Tribunal was established under the *Complaints (Australian Federal Police) Act 1981* to deal with disciplinary offences under the Australian Federal Police (Discipline) Regulations.

The *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* commenced on 30 December 2006. This new Act repealed the *Complaints (Australian Federal Police) Act 1981* and the Tribunal ceased to exist.

## APPENDIX 7 – Decisions of interest

### **Discrimination Law – whether hearing impaired child was “able to comply” with “requirement or condition” or suffered “serious disadvantage” without Auslan assistance in school**

#### *Hurst v State of Queensland*

(28 July 2006, Justices Ryan, Finn and Weinberg)

This was an appeal from the judgment of the Court in *Hurst and Devlin v Education Queensland* which refused to make a declaration that the respondent education authority had committed unlawful discrimination under the *Disability Discrimination Act 1992* (Cth) against the first applicant, now the appellant, Tiahna Hurst.

Section 6 of the Disability Discrimination Act defines discrimination. It required four elements be satisfied for a claim of discrimination to succeed. First, that the discriminator has required the aggrieved person to comply with a requirement or condition. Second, that a substantially higher proportion of persons without the disability comply or are able to comply with the requirement or condition. Third, the requirement or condition is not reasonable having regard to the circumstances of the case. Fourth, the requirement or condition is one with which the aggrieved person has not complied or is unable to comply.

Tiahna is a “severely and profoundly” deaf child who had developed sign language skills in Auslan (a native Australian sign language) but was not able to utilise that language in school. It was Education Queensland’s requirement that she be taught in English (including signed English) without an Auslan teacher or interpreter. The primary Judge characterised this requirement as a “requirement or condition”. This was not challenged on appeal. The primary Judge also held that the second and third elements of discrimination were made out.

However, the primary Judge held that Tiahna was able to comply with the requirement that she be taught in English, including signed English, and thus the fourth element was not satisfied and her case failed. His Honour made particular reference to Tiahna’s ability to “cope” when addressing her ability to comply with the requirement and concluded that Tiahna could be educated in English, including signed English. The Full Court held that the fact that Tiahna could be educated in such a manner did not lead to the conclusion that she was able to comply.

The Full Court applying the reasoning in *Clarke v Catholic Education Office* held that whether or not Tiahna suffered “serious disadvantages” was the correct question, rather than whether Tiahna was not able to comply. One of the “serious disadvantages” that she would suffer was that she might ultimately be denied the opportunity to achieve her full potential.

The Full Court held the facts disclosed that the detriment which Tiahna sustained would plainly be regarded as “serious”. The appeal was allowed and it was declared that the respondent had contravened section 6.

### **Discrimination – alteration of Birth Register**

#### *AB v Registrar of Births, Deaths and Marriages*

(16 August 2006, Justice Heerey)

In this case the applicant was born as a male and married a woman. She later separated and commenced to live as a woman. She was issued with a new birth certificate which showed her new female given names but still recorded her sex as male.

After undergoing sex affirmation surgery she applied for the alteration of the record of her sex on the Victorian Register of Births, Deaths and Marriages. The Registrar refused the application. While the Victorian Act provided for alteration of the record of the sex of a person who has undergone sex affirmation surgery, the legislation expressly excluded alteration where the person was married.

The applicant claimed that the Registrar had unlawfully discriminated against her on the ground of her marital status, contrary to section 22(1) of the *Sex Discrimination Act 1984* (Cth).

However, the Sex Discrimination Act also provided that section 22 only had effect insofar as it gave effect to the international Convention on the Elimination of All Forms of Discrimination Against Women.

Justice Heerey analysed the terms of the Convention. His Honour held that it did not deal with discrimination against persons, whether men or women, because they are married or unmarried. Rather it dealt with discrimination against women because of, amongst other things, their marital status. The action of the Registrar had nothing to do with the applicant being a woman. If the applicant had been a man, the result of the application would have been the same.

His Honour held that if the Sex Discrimination Act had applied, making an alteration to the Register would have been a “service” and within section 22(1).

## **Corporations – Application by Regulator to wind up a publicly listed company on the just and equitable ground and other grounds**

### ***Australian Securities and Investments Commission v Green Pacific Energy Ltd & Anor*** (20 September 2006, Justice Greenwood)

Green Pacific Energy Ltd (GPEL) and its subsidiary GPEC were involved in the promotion and development of renewable energy power generation projects utilising green waste fuel and the development of a five megawatt power plant at Staplyton in Queensland. The Australian Securities and Investments Commission (ASIC) sought an order that GPEL be wound up in insolvency on the ground that GPEL had failed to discharge the onus of proving it was not insolvent having regard to the presumption arising by operation of section 459C(2)(a) of the *Corporations Act 2001* (the Act) arising out of GPEL’s failure to comply with a statutory demand served by a creditor.

ASIC also sought a winding up order on the ground that the principal director, Mr Wong, had acted in the affairs of the company in his own interests rather than the interests of members as a whole (section 461(1)(e)) and on the further ground that the court ought to be satisfied that it was just and equitable that the company be wound up (section 461(1)(k)). As to the insolvency question, GPEL contended that although the pilot plant had encountered technical difficulties thus impacting upon cash flows, GPEL was at all material times, supported by the foundation shareholders and entities related to GPEL that would provide debt finance. As to the just and equitable ground, ASIC contended that Mr Wong, without a resolution of the Board, authorised payments to two entities related to him of \$5m out of capital (\$6.3m) subscribed by JF Capital Partners (JFCP). That capital was subscribed to enable GPEL to secure debt finance from Investec Bank for the acquisition and construction of a major new plant. The use by Mr Wong of the JFCP capital to retire debt owed to entities related to Mr Wong was said to prefer the interests of Mr Wong to that of the members and creditors of GPEL generally. ASIC further relied upon Mr Wong causing an Information Memorandum to be developed and published notwithstanding a Board prohibition upon raising money from the public by the issue of promissory notes.

The Court found Mr Wong’s conduct of causing JFCP to subscribe for capital on a particular assumption and then apply that capital to discharge debts owed to related entities was improper, misleading and inconsistent with the express representations made to JFCP. It was no answer for Mr Wong to say that the use of the capital reduced the interest burden GPEL confronted by reason of the facilities. The Board was entitled to consider and if thought prudential, apply the subscribed capital in the way it considered to be in the best interests of the company, its members and creditors. The payment to entities related to Mr Wong was misconduct.

As to the promissory notes, the conduct of Mr Wong of causing the Information Memorandum to issue deprived the Board of an opportunity to make an informed judgment as to whether GPEL was in a position to raise money from the public in circumstances where any Information Memorandum properly reflected a full, accurate and truthful description of the circumstances of GPEL.

Having regard to the public interest of protecting the investing public in the light of the conduct of soliciting the JFCP subscription and the issuing of the Information Memorandum concerning the promissory notes, it was just and equitable (section 461(1)(k)) that GPEL and GPEC be wound up.

As to the payments by Mr Wong to related entities, Mr Wong acted in the affairs of the company in his own interests rather than those of the members as a whole and accordingly a winding up order ought to be made on that ground. As to insolvency, GPEL failed to adduce persuasive and compelling evidence of the capacity of proposed lenders to provide continuing support. The decision considers the role, in the test of insolvency, of recourse to an ‘inhouse’ lender. Although two creditors were willing to convert their debt to equity in GPEL, the promises could not be relied upon as the sworn commitment to effect the conversion only arose in the context of the ASIC proceedings.

A winding up order was made on all grounds.

## **Extradition – Criminal law and procedure**

### ***New Zealand v Moloney***

(5 October 2006, Chief Justice Black and Justices Branson, Weinberg, Bennett and Lander)

New Zealand sought the extradition of the respondents, members of a religious order, who were alleged to have committed sexual offences against young boys between 1971 and 1980. Extradition between Australia and New Zealand follows a simplified process, similar to that between the States and Territories of Australia. There is, however, an important difference. Under section 34(2) of the *Extradition Act 1988* (Cth), extradition to New Zealand must be refused and a person released if a magistrate, or on appeal a judge, is satisfied that for reasons that include delay, “or for any other reason”, it would be “unjust” to surrender the person to New Zealand.

The respondents claimed that it would be “unjust” to surrender them to New Zealand. This claim was rejected by the magistrate before whom their challenge to extradition first came. He ordered that they be taken into custody. They then sought review of the magistrate’s decision by a judge of the Federal Court. The judge accepted their claim that because of the lengthy period that had elapsed since the offences were allegedly committed it would be unjust to surrender them. He therefore set aside the magistrate’s orders and directed that the respondents be released.

The judge took particular account of differences between Australian and New Zealand law and especially the requirement of Australian law that on the trial of a person accused of sexual offences long after they were allegedly committed the jury must be given a special warning (known as a *Longman* warning after the case in which the High Court said it was required, *Longman v The Queen*). His Honour noted that the High Court of Australia has held that a *Longman* warning is necessary to ensure a fair trial but that the law of New Zealand does not accept that such a warning must be given in every case. It was primarily for this reason that the judge concluded that it would be “unjust” to surrender the respondents to New Zealand. His Honour considered that their trial in New Zealand might not be fair according to the standard set by the High Court for a comparable trial in Australia. The judge was also concerned about differences in the laws of the two countries concerning trials involving multiple offences alleged to have been committed against different victims.

New Zealand appealed against the primary judge’s decision and argued that an earlier decision of the Federal Court, which the primary judge had followed, should be overruled. Because that decision was made by a Full Court of three judges, a Full Court of five judges was constituted to hear the appeal. The Full Court unanimously decided that the earlier case should not be overruled but it also decided that the trial judge had not applied the earlier decision correctly and that his judgment, being based upon an erroneous view, should be set aside. It concluded that the differences between Australian and New Zealand law did not warrant the conclusion that it would be unjust to return the respondents to New Zealand. Having considered all the factors taken into account by the judge the Full Court concluded that, despite the long period that had elapsed since the offences for which extradition was sought were allegedly committed, it was not established that it would be unjust to surrender the respondents.

In reaching this conclusion the Full Court noted that the courts in both Australia and New Zealand are sensitive to the difficulties that can confront accused persons in the position of the respondents – and that while the ways in which the difficulties are addressed may differ in some respects, the courts in both countries are under a duty to ensure a fair trial. The Full Court allowed the appeal and confirmed the magistrate’s order that the respondents be surrendered to New Zealand.

## **Media Law – pecuniary penalties**

### ***ACMA v Clarity***<sup>1</sup>

(27 October 2006, Justice Nicholson)

This was the first proceeding in Australia brought under the *Spam Act 2003* (Cth) (Spam Act). The second respondent was the managing director of the first respondent corporation. The applicant claimed that the first respondent through the actions of the second respondent sent spam emails and harvested email addresses in contravention of sections 16 and 22 of the Spam Act. The volume of spam emails was on one calculation over 210 million emails.

In the first judgment the Court found that the corporation sent unsolicited commercial electronic messages (CEMs) and used harvested address lists to send CEMs. The Court also found that the managing director was liable as an accessory to the conduct of the corporation. None of the defences raised by the respondents were made out and the Court found the respondents to be liable for contraventions of sections 16 and 22 of the Spam Act.

In the second judgment the issue of the penalty to be imposed on the company and the individual were addressed. Each contravention by a company of section 16(1) of the Spam Act comes with a maximum penalty of \$11,000 that can be imposed by a Court. If a company has contravened section 16(1) of the Spam Act on two or more occasions on any given day the maximum penalty that can be imposed for that day is \$220,000.

The applicant submitted that even on a conservative estimate it could be said that the respondents had contravened the Spam Act at least 50 times on 300 separate days. This then equated to a maximum penalty of \$66,000,000 for the contravention of section 16 by the corporation. A contravention of section 22(3) for harvesting email addresses and using the same conservative estimate of the number of contraventions resulted in a maximum penalty of \$33,000,000 for the corporation.

Similarly, for the managing director the maximum penalty that could have been imposed was \$13,200,000 (section 16(9)) and \$6,600,000 (section 22(3)) for his involvement.

The applicant sought \$9,900,000 against the corporation and \$1,980,000 against the individual. The respondents proposed \$10,000 for the corporation and \$2,000 for the director. Having considered all the circumstances, the Court imposed a penalty of \$4,500,000 on the corporation and \$1,000,000 on the individual.

## **Intellectual property – copyright infringements – sound recordings downloaded via remote websites accessed via links on appellant’s website – conduct constituting authorization – power to prevent – nexus between conduct and Australia**

### ***Cooper v Universal Music Australia***

(18 December 2006, Justices French, Branson and Kenny)

One of the appellants was the originator, owner and operator of the ‘mp3s4free’ website, which did not contain any music files but was structured to allow access to music files on remote servers via hyperlinks. It was admitted that the majority of the music files were the subject of copyright. Another group of appellants conducted an internet service provider business which hosted the offending website. The director and one of the employees of the service provider, who assisted with the operation of the offending website, were also joined to the proceedings. A group of record companies that owned copyright in the relevant sound recordings, instituted proceedings seeking

declaratory, injunctive and other relief as against the website owner, the service providers and their director and an employee for infringements of the *Copyright Act 1968* (Cth). The primary judge granted declaratory and injunctive relief against all of the appellants on the basis that each had contravened section 101(1) of the *Copyright Act* by authorising the making of copies and communication of the sound recordings.

The issue on appeal was the construction of section 101(1) so far as it related to copyright infringed by a person authorising the doing of an act comprised in the copyright. The appellants appealed against the finding by the primary judge that each of them had infringed the record companies' copyright in sound recordings by authorising the communication by operators of remote websites to the public of those sound recordings. The website owner argued that he did not have the power to prevent the doing of acts comprised in the copyright and therefore could not have authorised them. The service provider and its director submitted that in accordance with section 112E they had merely facilitated the connection of the website to the internet and so could not have authorised the infringing acts. The employee of the service provider argued that his conduct as an employee was not capable of constituting conduct authorising the infringement of copyright.

The Full Court found that pursuant to section 101(1) the website owner had infringed the record companies' copyrights in the sound recordings by authorising internet users to make copies and communicate them; he had the power to prevent the copying or communication as he was responsible for creating and maintaining the website. Pursuant to section 101(1) the service provider and the director as its controlling mind, infringed the record companies' copyrights by authorising the acts of infringement resulting from the use of the offending website. The protection of section 112E was held not to apply as they did more than simply provide the facilities for making the communications of the sound recordings. The findings against the employee of the service provider were overturned. It was held that there was insufficient evidence before the trial judge to establish infringement.

### **Migration – Administrative Law – consideration of whether an error of fact is a jurisdictional fact and thus a jurisdictional error**

#### ***SZIFI v Minister for Immigration & Multicultural & Indigenous Affairs***

(7 February 2007, Justice Greenwood)

The appellant, a citizen of Pakistan, arrived in Australia in September 2005 and applied for a protection visa asserting a well-founded fear of persecution due to his political opinions and membership of a pro-democracy movement in Pakistan and in particular the hostility of authorities due to his membership of the Pakistan Muslim League Nawas Group (the PML). The Minister's delegate refused the application as did the Refugee Review Tribunal (the Tribunal). The Tribunal was unable to accept certain contentions of the applicant.

In the 'Claims and Evidence' section of its decision, the Tribunal correctly noted that the appellant was a national of Pakistan. However, at the commencement of the 'Findings and Reasons' section of its decision record, the Tribunal stated that, 'The applicant has claimed, and I accept, that he is a national of *Indonesia*'. The Tribunal then made the following observation, 'Accordingly, the Tribunal is not satisfied on the evidence before it that the applicant faces a real chance of persecution should he return to the *PRC* ("Peoples of Republic of China") now or in the foreseeable future. The Tribunal is unable to be satisfied, on the evidence before it, that the applicant has a well-founded fear of persecution for a Convention reason'.

The Federal Magistrate concluded that although the two errors of misdescription were to be regretted, the analysis of the content of the claims revealed that the underlying substratum of fact said to establish a well-founded fear of persecution have been dealt with by the Tribunal and thus the errors of fact were errors *within* jurisdiction and not *jurisdictional errors* causing the exercise of the review to miscarry.

The Court concluded that these errors of fact were jurisdictional errors. The Tribunal is to exercise a jurisdiction to review a decision of the Minister's delegate in a way which secures the objective of providing a 'fair' review under the *Migration Act 1958*; accommodates the 'substantial justice and merits' of the case; and conforms with the natural justice hearing rule (section 422B(1)).

The Court concluded that central to the exercise of the jurisdiction is an analytical process that focuses upon a fair, just, economical, informal and quick assessment of the facts and contentions. Errors which misdescribe an applicant as an Indonesian and reach conclusionary observations concerning a well-founded fear of persecution should the applicant return to a country other than the country of nationality suggest that the deliberative process going to the merits of the case was infused with notions which were erroneous and thus irrelevant to the applicant's circumstances. Thus, a potential loss of immediacy of focus and deliberation concerning the specific claims of the applicant occurred.

The decision reviews the principles going to jurisdictional error derived from *Craig v South Australia*; the notion of 'degrees' of error on the part of an administrative tribunal; the notion of 'manifest' defect or an 'obvious' or 'incontrovertibly' plain error (*SDAV v MIMIA*; *Plaintiff S157/2002 v The Commonwealth*; *MIMIA v Yusuf*); and the notion that jurisdictional error involves 'identifying a wrong issue, asking the wrong question, ignoring relevant material or relying on irrelevant material in a way that affects the exercise of power thus ... an error of law' (*MIMIA v Yusuf*).

The Court concluded the errors of fact constituted jurisdictional errors.

**Aborigines – effect of fee simple grants to land trust in inter-tidal zones – whether exclusive possession as against NT Director of Fisheries power to grant licences – Native Title – whether non-recognition of exclusive rights at sovereignty of inter-tidal zone form of extinguishment – whether amenable to operation of s 47A of Native Title Act 1993 (Cth)**

***Gumana v Northern Territory of Australia***

(2 March 2007, Justices French, Finn and Sundberg)

In 1980, fee simple grants in land were made under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (Land Rights Act) to a Land Trust on behalf of the Yolngu people in north-east Arnhem Land. In order to assert rights and interests in the inter-tidal areas of Blue Mud Bay proceedings were instituted seeking declarations that the rights of traditional owners to enter and occupy the land and waters covered by the grants were exclusive, that the recipient Land Trust was entitled to prevent persons entering relevant areas of land and waters. They sought a declaration that the *Fisheries Act 1988* (NT) was invalid insofar as it related to waters seaward of and adjoining, and within two kilometres of, the boundaries of the grants. An application for a native title determination in the waters and adjacent land was also made on behalf of the Yolngu people.

The trial judge found that the Land Rights Act grants gave the Land Trust an estate in fee simple to the low water mark, but did not confer any right to exclude persons exercising public rights to fish or navigate in the inter-tidal zone. Such grants operated subject to public rights to fish and the Fisheries Act was capable of operating concurrently with the Land Rights Act to authorise the grant of fishing licences within two kilometres of the low water mark. The trial judge also held that native title rights and interests were possessed under traditional laws and customs acknowledged and observed by the traditional owners on land above the high water mark. However, his Honour found that the traditional owners' exclusive rights to occupy the area seaward of the low water mark and in the inter-tidal zone were inconsistent with public rights to fish and navigate. Section 47A of the *Native Title Act 1993* (Cth) enabled the Court to disregard the extinguishing effects of the land grants, but did not permit the Court to disregard the inconsistency of public rights to fish and navigate with traditional owners' exclusive rights to occupy the inter-tidal zone.

The Land Trust appealed against the decision in relation to the Land Rights Act grants and asserted that by virtue of the grants the recipient Land Trust had exclusive possession of all areas subject to the grant including the inter-tidal zone. The Commonwealth and the Territory both filed notices of contention seeking to affirm the trial judge's decision on other grounds. In the native title proceedings the traditional owners appealed against the findings about the effect of section 47A on the claim to exclusive rights in the inter-tidal zone.

The Full Court held that the grant of an estate in fee simple to the Land Trust under the Land Rights Act conferred a right of exclusive possession to the inter-tidal zone and that as far as it was inconsistent with these rights the Fisheries Act did not authorise the granting of licences to fish in the relevant inter-tidal zone. On the native title appeal the Full Court held that the section 47A does not apply to mandate disregard of the omission of the common law to recognise, at the point at which sovereignty was asserted native title rights and interests conferring exclusive possession in the inter-tidal zone. The Court also held that the right to control access to the inter-tidal zone by other Aboriginal people was to be removed from the determination.

## **Constitutional and Administrative Law – habeas corpus in relation to citizen detained in United States of America – judicial review**

### ***Hicks v Ruddock & Ors***

(8 March 2007, Justice Tamberlin)

This case was a very high profile case concerning an application brought by David Hicks against the Australian government and two of its ministers for their failure to request his repatriation to Australia.

Mr Hicks, an Australian citizen who had been confined at Guantanamo Bay Naval Base in Cuba by the United States of America for more than five years without any valid charges being brought against him, sought judicial review of the respondents' decision not to request his release and return to Australia and an order for habeas corpus. It was said that the respondents took into account two irrelevant considerations in deciding not to request Mr Hicks' release, being the inability to prosecute him under Australian law and a premise that he should remain in Guantanamo Bay and be the subject of proceedings in a United States military commission that failed to observe mandatory trial standards.

The respondents sought summary judgment striking out Mr Hicks' statement of claim on the basis that it disclosed no reasonable prospect of success. They maintained that the orders sought in Mr Hicks' application were contrary to the Act of State doctrine, which requires a court of one nation to abstain from hearing proceedings which might require it to pass judgment on the legality of acts of a foreign sovereign government. The respondents also argued that the Court lacked jurisdiction on the basis that the proceedings related to Australia's foreign relations and thus gave rise to non-justiciable questions such that there was no "matter" on which the Court could adjudicate. The respondents further contended that habeas corpus was unavailable because Mr Hicks was not in the custody or control of the respondents. These contentions raised several issues for determination, including: (i) whether the Act of State doctrine applied and whether the applicant's claims were justiciable; (ii) whether the Court could issue an order in the nature of habeas corpus; and (iii) whether the respondents' refusal to request Mr Hicks' repatriation was a decision that could be set aside on the ground of irrelevant considerations.

Justice Tamberlin held that neither the Act of State doctrine nor the principle of non-justiciability justified summary judgment at such an early stage of the proceedings. The submissions for Mr Hicks pertaining to irrelevant considerations were sufficient to defeat a summary judgment on the judicial review application. Although, as a consequence of Justice Tamberlin's decision, the proceedings should have gone to a hearing on the availability of the writ of habeas corpus, the matter was later discontinued by consent due the fact that Mr Hicks was repatriated before the hearing date.

## Taxation – Income Tax – Tax effective investment schemes

### *Iddles v Commissioner of Taxation*

(23 March 2007, Justice Besanko)

This was an appeal under section 44(1) of the *Administrative Appeals Tribunal Act 1975* (Cth) against a decision made by the Administrative Appeals Tribunal. The taxpayer claimed as deductions certain losses or outgoings incurred in the financial years ended 30 June 1997, 1998 and 1999. The Commissioner disallowed the deductions. On an application for review of the Commissioner's decisions to disallow the taxpayer's objections, the Tribunal held that the losses or outgoings were deductions within section 51(1) of the *Income Tax Assessment Act 1936* (Cth) (the Act) in relation to the 1997 financial year and section 8–1 of the *Income Tax Assessment Act 1997* (Cth) in relation to the 1998 and 1999 financial years. However, the Tribunal held that the deductions were tax benefits obtained in connection with a scheme within the provisions of Part IVA of the Act and that, having regard to the matters identified in section 177D(b), the conclusion should be drawn that the taxpayer entered into or carried out the scheme for the dominant purpose of enabling him to obtain a tax benefit. The decisions of the Commissioner were upheld by the Tribunal save that it held that that part of the deductions represented by actual cash outlays should be allowed.

On appeal to the Federal Court, the applicant argued that the Tribunal had erred in law in concluding that, having regard to the matters in section 177D(b), the dominant purpose of the taxpayer in entering into or carrying out the scheme was to obtain a tax benefit.

Broadly speaking, the scheme involved the taxpayer obtaining an interest in a vineyard project involving the growing and cultivation of vines, and the harvesting and sale of grapes. The scheme involved the taxpayer entering into agreements with the promoters who were a number of companies which were related to each other.

The taxpayer entered into a licence agreement whereby he was given a licence over two vineplots to enter onto the vineplots to cultivate, tend, manage and maintain the grapes and the vines and carry out the defined services, and to harvest and sell the grapes. The taxpayer agreed to appoint the licensor as the manager to manage the taxpayer's business. The term of the licence and management agreement was a period of 15 years commencing in June 1997. The taxpayer also entered into a loan agreement with a company related to the licensor and manager and under the loan agreement he borrowed the licence and management fees. His obligation to repay was limited to the payment of a fixed amount called a primary instalment. The taxpayer also entered into a grape sales agreement whereby he agreed to sell the grapes harvested from his vineplots to a company related to the management company and lender.

The taxpayer claimed as deductions the licence fees, management fees and pre-paid interest he paid under the various agreements. The deductions claimed were well in excess of his cash outlays in the 1997 and 1998 financial years and slightly in excess of his cash outlay in the 1999 financial year.

On appeal, Justice Besanko referred to the authorities and said that the taxpayer's purpose was to be determined by reference to the matters in section 177D(b) of the Act and those matters alone, and that the test of purpose under the section was an objective one. Furthermore, a taxpayer may have more than one purpose and he will be within the section if his dominant purpose is to obtain a tax benefit even if he also has a purpose of obtaining a commercial benefit. All eight matters listed in section 177D(b) must be considered even though the significance and weight to be placed on particular matters may vary from case to case.

The Judge considered the Tribunal's approach to each of the eight matters in section 177D(b) and concluded that it had not erred in law in its approach to each matter. Particular matters discussed by the Judge include the significance of the timing of the taxpayer's claim for tax refunds, the fact that the making of the loan and the payment of the management fees were effected by a "round robin" of cheques, the significance of the particular form of the transaction, the significance of the fact that the project was commercially viable and whether it was erroneous to consider the certainty of tax benefits as against the certainty or uncertainty of commercial benefits.

The Judge said that each of the Tribunal's conclusions was reasonably open to it and he dismissed the appeal.

## Corporations law – Administrative law

### *Tristar Steering & Suspension Ltd v Industrial Relations Commission of New South Wales and New South Wales Minister for Industrial Relations*

(13 April 2007, Justices Kiefel, Gyles and Buchanan)

This case concerned the validity of an inquiry by the Industrial Relations Commission of NSW ('the Commission'). The second respondent, the State Minister, directed the Commission to undertake an inquiry relating to the availability or continuing availability of work and redundancy or termination pay at Tristar Steering and Suspension Ltd (a constitutional corporation). The applicant sought an order restraining the first respondent from continuing the inquiry on the basis that it lacked jurisdiction.

The court examined whether an inconsistency existed between the *Industrial Relations Act 1996* (NSW) (the State Act) and the *Workplace Relations Act 1996* (Cth) (the Commonwealth Act) within the meaning of section 109 of the *Constitution*. It was contended that section 109 rendered invalid section 146(1)(d) of the State Act which would otherwise grant jurisdiction and power to the Commission to conduct the inquiry, due to the provisions in the Commonwealth Act.

Section 16(1)(a) of the Commonwealth Act provides for the application of the Act to the exclusion of a *state or territory industrial law* so far as it would otherwise apply in relation to an *employee or employer*, subject to limited exclusions. The State Act was held to be such a law and 'apply in relation to' was said to refer to a description of the field of operation of the Act.

The Court considered what field was occupied by the Act as the subject of the Commonwealth's exclusive law. The Minister submitted that the field was only regulation of 'rights and obligations' arising out of employment relationships and that the State Act did not purport to affect or alter those rights and obligations.

The Court concluded however that section 16 declared an intent that the Act occupy, to the exclusion of the State Act the whole field of legislative activity 'in relation to an employee or employer' and may be concerned to create, regulate and adjust industrial rights and obligations of constitutional corporations and their employees. The Court examined the objects of both Acts and concluded that section 146(1)(d) of the State Act invaded the field of the Commonwealth Act as it concerned the relationship between employers and employees of a constitutional corporation and purported to affect or alter rights and obligations of such.

Accordingly the Court held that there was a conclusive test of inconsistency and that the State Act was held to be invalid to the extent that the State Act operated as a grant of jurisdiction or power in relation to Tristar or any of its employees or any other constitutional corporations or any of their employees.

The Court held that the IRC (NSW) did not have jurisdiction or power under the State Act to inquire into and report on matters referred to it by the NSW Minister and was restrained from doing so.

## Racial Discrimination

### *Bropho v WA*

(13 April 2007, Justice Nicholson)

The claims were in respect of alleged racial discrimination. The claims were brought by the applicant on behalf of former Aboriginal inhabitants of a Reserve in respect of the enactment of the *Reserves (Reserve 43131) Act 2003* (WA) (the Reserves Act) and actions taken under it.

The Reserves Act purported to do the following:

- (1) revoke a 2002 Management Order which placed the care, control and management of the Reserve with an Aboriginal corporation (the SVC) (section 4);
- (2) place the care, control and management of the Reserve with the Aboriginal Affairs Planning Authority (section 5);

- (3) provide for an administrator to have powers in relation to the care, control and management of the Reserve (section 7) (the Administrator). These included powers to direct a person to leave or not to enter the Reserve and to make such directions orally or in writing;
- (4) exclude the rules of natural justice in relation to any direction by the Administrator under sections 7(3)(a) or (b) (section 8);
- (5) grant immunity from judicial supervision by way of prerogative, declaratory or injunctive relief in respect of any decision made or purporting to be made by the Administrator under section 7 (section 11); and
- (6) provide protection from liability for acts done in performance of a function under the Reserves Act (section 12).

Pursuant to the power in section 7 of the Reserves Act, the Administrator made directions on 13 June 2003 to all persons (other than persons in categories listed as assisting the Administrator in the performance of his obligations) forbidding entry to the Reserve without the express authority of the Administrator.

The essential foundation of the case was that the Reserves Act was invalid as a consequence of its inconsistency with sections 9 and 10 of the *Racial Discrimination Act 1975* (Cth) (RDA). Section 10(2) provides that a reference to a right includes a reference to a right of a kind referred to in Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention).

The applicant contended for four sources of property rights which all relied upon statutory frameworks/grants of rights in relation to the Reserve. The Court concluded that the applicant did not establish any human right to claim property, particularly as the applicants' rights derived from a statutory source in relation to which they were unable to establish any element of ownership.

The Court also concluded that the enactment of the Reserves Act had not itself deprived the applicants of the right of freedom of movement. Likewise that the exercise of the power by the Administrator to exclude persons from the Reserve and to require some of them to leave it had been exercised on a non-discriminatory basis so that no inconsistency with section 9(1) was created.

With regard to the right to equal treatment before the courts, the Court found that section 11 of the Reserves Act (providing immunity to the Administrator from judicial supervision) was prima facie indirectly discriminatory against the Aboriginal inhabitants.

The claim that a right to participate in public affairs was affected was not made out on the applicant's case.

The applicant's claim for deprivation of possession was not made out because she had failed to establish property rights of exclusive possession required to make out this tort. A contrary view of the law expressed in the Court of Appeal in England was found not to state the law in Australia.

In relation to the alleged contravention of section 12(1)(d) of the RDA by the Administrator, it was not made out because it was not 'by reason of' the race of the applicants in that all persons were excluded (unless approved for entry) and both non-Aboriginal and Aboriginal persons were ordered to leave the Reserve. There was no foundation in the wording of the section or decided authority to allow consideration of indirect discrimination on this paragraph.

In proceeding to consider other arguments put by the applicant, the Court concluded that the applicant was unable to make out a case of arbitrary deprivation even if deprivation of human rights had been established. The Court found that the Reserves Act was reasonable, proportional and legitimate in the circumstances. The alternatives such as a memorandum of understanding or utilisation of the criminal law, had been proven to be impracticable. Further, it was not for the Court to remake the decision of Parliament and the Government where there was evidence providing a foundation for the policy choice which had been made. The Reserves Act was also found to be in the public interest.

Additionally, and importantly, the Court reached the view that the Reserves Act was a special measure so no inconsistency with sections 9 or 10 of the RDA could be established. In reaching this view the Court found that the Reserves Act had been created for the sole purpose of securing adequate advancement of Aboriginal individuals (women and children) requiring such protection as may be necessary to ensure their equal enjoyment or exercise of human rights and fundamental freedoms.

## Corporations – conflict of interest

### *Australian Securities and Investments Commission v Citigroup Global Markets Australia Pty Ltd ACN 113 114 832*

(28 June 2007, Justice Jacobson)

Citigroup Global Markets Australia Pty Limited (Citigroup) is the Australian arm of Citigroup Inc, a global financial services company. Citigroup's business in Australia is conducted through various divisions and business segments. They include investment banking and equities trading.

Citigroup has established 'Chinese walls' to restrict the flow of information between different departments. Employees who work in areas such as the Investment Banking Division and who are exposed to confidential, market sensitive information, are known as private side employees. Those who work in areas such as Equities and who are not so exposed, are known as public side employees.

These proceedings arose out of the purchase by a public side employee of Citigroup of over 1 million shares in Patrick Corporation Limited (Patrick) at a time when private side employees working in the Investment Banking Division were acting for Citigroup's client, Toll Holdings Ltd (Toll) on a proposed takeover bid for Patrick. The shares were purchased by the proprietary trader for Citigroup's own account on the last trading day before Toll announced its bid for Patrick.

The Australian Securities and Investments Commission (ASIC) did not allege that the proprietary trader was in possession of inside information when he purchased the shares. However, when private side employees became aware of the proprietary trader's purchase of the shares, steps were taken from within the private side that resulted in an instruction to the trader to stop buying any more shares in Patrick. The trader did not buy more shares but in the half hour before the close of trading, he sold nearly 200,000 of the parcel of Patrick shares that he had purchased earlier that day.

ASIC contended that Citigroup, as an adviser to Toll, occupied a relationship that was in critical respects, fiduciary. ASIC also contended that in purchasing the shares in Patrick, Citigroup placed itself in a position where its duty of loyalty to Toll conflicted with its interests arising from the purchase of the shares in Patrick. The gravamen of the claim was that Citigroup contravened its obligations under section 912A(1)(aa) of the *Corporations Act* to have in place adequate arrangements for the management of conflicts of interest.

All of the claims of conflict of interest and duty and breach of section 912A(1)(aa) depended upon the existence of a fiduciary relationship between Citigroup and Toll. However, the claims failed at the outset because the letter of engagement under which Toll retained Citigroup as its adviser specifically excluded the existence of such a relationship. The Court held that the law does not prevent an investment bank from contracting out of a fiduciary capacity; whether it should be able to do so is a matter for the legislature, not the courts.

ASIC relied on a number of propositions of law to overcome the effect of the engagement letter and sought to impose on Citigroup a duty to obtain Toll's express consent to proprietary trading in Patrick shares. The Court held that the propositions relied on by ASIC had no application in the present case.

ASIC claimed in the alternative that Citigroup breached the provisions of section 1043H of the *Corporations Act* and section 12DA of the *ASIC Act* which prohibit misleading and deceptive conduct. However, those claims also depended upon the existence of a fiduciary relationship between Citigroup and Toll. Accordingly, both of those claims failed for the reasons above. So too did a further alternative claim for unconscionable conduct under section 12CA of the *ASIC Act*.

ASIC also made two claims against Citigroup of contravention of the insider trading provisions contained in section 1043A of the *Corporations Act*. The first claim covered the trader's sale of Patrick shares late in the afternoon, after he was given instructions not to buy those shares. ASIC alleged that, as a result of what was said to him, he made a supposition that Citigroup was acting for Toll in the proposed takeover of Patrick. This was said to constitute "information" within the meaning of section 1042A of the *Corporations Act* and the sale was alleged to constitute insider trading by Citigroup.

This claim failed because the trader was not an "officer" of Citigroup within the meaning of section 9 of the *Corporations Act*. His knowledge was therefore not attributable to Citigroup for the purposes of the insider trading provisions: see section 1042G(1)(a) of the *Corporations Act*. In any event, the Court held that the trader did not make the supposition alleged by ASIC.

The second insider trading claim covers all of the trading undertaken by the trader on the day in question. ASIC alleged that senior officers of the Corporate Investment Banking division of Citigroup knew that there was a substantial likelihood that Toll would launch its takeover bid on the next working day after the shares were purchased. Thus it was said that even though those officers did not know of Citigroup's trading, their knowledge was attributable to Citigroup so as to make it liable for insider trading.

The second insider trading claim failed because at the time when Citigroup traded in the shares, it had arrangements that could reasonably be expected to ensure that the information was not communicated to the trader. That is to say, Citigroup had in place, *inter alia*, Chinese walls which insulated the trader from the information so as to satisfy the requirements of section 1043F of the *Corporations Act*.

Although the defence in section 1043F of the *Corporations Act* was upheld, the Court endorsed warnings given in an earlier authority about the risk of leakage of information through the structural barriers commonly known as Chinese walls.

## APPENDIX 8 – Judges’ participation in legal reform activities and international committees and conferences in 2006–07

On 20 July 2006 the Chief Justice hosted, in Melbourne, a luncheon discussion meeting for the guest speakers at the Melbourne University Fulbright Symposium, *Legislatures and the Protection of Human Rights*. That evening, he attended the Miegunyah Public Lecture by Professor David Feldman of Cambridge University, entitled *The Roles of Parliaments in Protecting Human Rights: A view from the United Kingdom*.

The Chief Justice also attended, in Sydney in August, the John Lehane Memorial Lecture delivered by the Rt Hon Dame Mary Arden on the topic *Meeting the Challenges of Terrorism: The Experience of English and other Courts*.

On 28 August 2006, in Melbourne, the Chief Justice presided at a public lecture by Professor Feldman. The lecture was hosted jointly by the Federal Court and the Melbourne University Law School. The topic was *Constitutional change in the United Kingdom: Reforming the courts, judicial appointments, and much more*.

On 5 September, the Chief Justice delivered a public lecture entitled *The Courts and the Public Revisited* at Queensland University of Technology.

On 6 September, he chaired the Richard Cooper Memorial Lecture, delivered by the Hon Justice James Allsop entitled *Australian Admiralty and Maritime Law – Origins and Future Directions*.

On 7 September, in Melbourne, the Chief Justice delivered a speech at the inauguration of the Victorian Branch of the Anglo–Australasian Lawyers Society.

The Chief Justice attended the Magna Carta Lecture, delivered by the Rt Hon Lord Falconer of Thornton on the topic *The Role of Judges in a Modern Democracy* on 13 September.

On 15 September, the Chief Justice attended the AJA Appellate Judges’ Conference, held in the Federal Court in Adelaide. He chaired the session given by Justice Sandra Day O’Connor.

On 1 November, the Chief Justice and Chief Justice Diana Bryant addressed a dinner held by the United Nations Development Fund for Women (UNIFEM) in support of its Peace Scholarship Program of which they are jointly patrons.

In January 2007 the Chief Justice attended the Annual Supreme and Federal Court Judges’ Conference in Perth, and hosted a luncheon for the delegates at the Federal Court.

On 8 February, the Chief Justice delivered a speech at the Sir Nigel Bowen Commonwealth Law Courts in Canberra at a reception to mark the 30<sup>th</sup> Anniversary of the Court’s presence in the ACT.

On 24 March, in Sydney, the Chief Justice attended the 35<sup>th</sup> Australian Legal Convention and chaired a session by Chief Justice Myron Steele of the Supreme Court of Delaware and by Mr John Denton.

On 12 and 13 April, following a meeting of the Council of Chief Justices in Hobart, the Chief Justice attended a seminar on judicial leadership organised by the National Judicial College of Australia and attended by heads of jurisdiction from Australia and New Zealand.

In May, the Chief Justice attended the 7<sup>th</sup> Worldwide Common Law Judiciary Conference held in the Middle Temple, London. He presented a paper entitled *New Technology Developments in the Courts: Usages, Trends and Recent Developments in Australia*. He later delivered a lecture entitled *Human Rights without a Bill of Rights?* at the Lauterpacht Centre for International Law at the University of Cambridge.

On 28 June, the Chief Justice delivered the second Brad Selway Memorial Lecture at the University of Adelaide. The lecture was entitled *An Integrated Judicial System for Australia: Cross-vesting and co-operation after re Wakim*.

During the year, the Chief Justice met with office holders of various organisations, including the Queensland Bar Association, the Queensland Law Society, the New South Wales Law Society, the Law Council of Australia, the Victorian Bar, and the Law Institute of Victoria.

During the year, he attended ceremonies in Tasmania, New South Wales and Victoria to recognise the achievements of Federal Court staff on the completion of the Federal Court National Training Program. He attended, in Sydney and Hobart, services and other events to mark the opening of the 2007 Law Term.

Justice FRENCH is a member of the Advisory Board of the Faculty of Law at the University of Western Australia; a member of the Advisory Board of the Faculty of Law at the University of Notre Dame in Sydney; a member of the Indigenous Cultural Awareness Committee of the Australian Institute of Judicial Administration; convenor of the Indigenous Justice Issues Committee of the National Judicial College of Australia and a member of the Western Australian Genetics Council. His Honour is a Presidential Member of the Australian Competition Tribunal and a part-time Commissioner of the Australian Law Reform Commission. During the reporting period his Honour has undertaken the following activities:

- **6 July 2006** – Law and Science Fiction – An Unbounded but Finite Universe, a DVD presentation to the Law and Literature Symposium in Perth
- **9–12 July 2006** – Member – Delegation of Australian Judges to Japan to discuss court procedures and expert evidence with Japanese judges
- **26 July 2006** – Speech – Making Your Own Fun in Intellectual Property Law – Intellectual Property Society of Australia and New Zealand (WA Chapter) Annual Dinner
- **5 August 2006** – Justice Brad Selway – An Ongoing Dialogue, a paper presented at the Australian Association of Constitutional Law National Conference, Adelaide
- **20–21 October 2006** – Authorisation and Public Benefit – Playing with Categories of Meaningless Reference? a paper presented to the University of South Australia Trade Practices Workshop
- **19 April 2007** – Marine Pollution and International Law, Breakfast talk to Admiralty Law Practitioners
- **5 May 2007** – Horizontal Arrangements – Competition Law and Cooperative Federalism, a paper given at the Competition Law Conference in Sydney
- **24 May 2007** – Stopping the Train after the Wreck – Corporate Group Collapse and Protective Orders under s 1323, a paper presented at a seminar conducted by the Law Society of the Northern Territory for Continuing Legal Education
- **8 June 2007** – Plus ca change, plus c'est la meme chose? – The 2007 Amendments to the Native Title Act, paper to the Native Title Representative Bodies Conference Cairns.

Justice HEEREY is Chair of the Advisory Board for the Graduate Program in Intellectual Property Law at the University of Melbourne and a Board Member and Vice President of the Arts Law Centre of Australia. In March 2007 his Honour arranged a launch of the Centre in Tasmania. In April and May 2007 his Honour taught a course in Patents, Trade Marks and Unfair Competition at Monash University in Prato, Italy.

In August 2006, Justice MOORE sat on the Court of Appeal in Tonga for a fortnight. Since 2003 his Honour has been involved in a project of the Supreme People's Court of Vietnam to develop a benchbook for the Vietnamese Judiciary. In July 2006 the project concluded with the publication of the benchbook (both in hard copy and on the internet: [www.sotaythamphan.gov.vn](http://www.sotaythamphan.gov.vn)) which was distributed to almost five and a half thousand Vietnamese judges. In September 2006 his Honour travelled to China to a future programme of judicial exchange between the Federal Court and the Supreme Peoples Court of China. His Honour returned to China this year with a delegation of Federal Court judges as part of a program focussing on the areas of maritime, competition and labour law. In February 2007 his Honour travelled to Indonesia to do work on a backlog reduction program with the Indonesian Supreme Court.

In July 2006 Justice BRANSON attended the Sixth Insolvency Trustee Service Australia (ITSA) Bankruptcy Congress in Brisbane and presented a paper on Part VI Division 4A of the Bankruptcy Act. In September 2006 her Honour attended the Inaugural Australian Women Lawyers Conference and presented a paper on Expert Evidence. In October Justice Branson attended the Judicial

Conference of Australia Colloquium 2006. In October 2006 her Honour was invited by Freehills and the University of NSW Faculty of Law to give the keynote address at the UNSW Law Society Women's Mentoring Program 2006. Her Honour was invited to participate in the Human Rights Nexus Working Party of the International Association of Refugee Law Judges (IARLJ) and in November 2006 attended IARLJ's Conference in Mexico City where the working party's paper, of which she was co-author, was presented. In February 2007 Justice Branson attended the Constitutional Law Conference. In March 2007 Justice Branson attended the International Development Law Organisation's Annual Board meeting in Rome at the conclusion of her Honour's second and final three year term as a Board Member of the organisation. In May 2007 her Honour was invited by the Northern Territory Registry to give a talk to Northern Territory practitioners on Jurisdiction of the Federal Court.

Justice LINDGREN continues to chair various committees of the Council of Chief Justices concerned with the harmonisation of rules of court in the superior courts of Australia and New Zealand. The committees are concerned with court rules in such areas as corporations, freezing and search orders, and service outside the jurisdiction. His Honour is a member of the College of Law Commercial Litigation Practice Advisory Committee and the Law Executive Council of the Faculty of Law, University of Technology, Sydney. During the year, Justice Lindgren delivered two keynote addresses: on 10 July 2006, at the launch of *Arts Law Week*, and on 21 November 2006, at the Clayton Utz/ University of Technology Sydney Conference on "Securities Class Actions". His Honour spoke on the following topics throughout the year: "Discovering Challenging Encounters in Insolvency Practice – Perspectives from the Bench" at a *Recent Developments in Insolvency Practice* seminar (28 July 2006); "A Snapshot of Federal Court Practice and Procedure" at the College of Law (30 August 2006); bankruptcy aspects of the jurisdiction of the Family Court of Australia at a conference of the Judges of that Court (14 October 2006); "Presenting Legal Argument" at the NSW Bar Association (13 November 2006 and 19 June 2007); practical issues relating to litigation in the Federal Court of Australia at an seminar of Australian Government lawyers (15 February 2007); address to external students studying law at the University of New England (17 February 2007); "Update on Intellectual Property Litigation in the Federal Court" for the Young Lawyers Section of the Law Society of New South Wales (6 March 2007). On 18 October 2006, Justice Lindgren presided at a Sydney University Law Moot and on 10 May 2007, presided at one of the "mock trials" conducted as part of the NSW Bar Association's Bar Practice Course. On 16 March 2007, his Honour presented a paper entitled "Is the Australian Law Journal an Australian law journal?" at the *Judges' Review Conference 2007: Past, Present and Future Perspectives on the Law* held to celebrate the first 80 years of the *Australian Law Journal*. On 2 May 2007, together with Justice Branson, Justice Lindgren spoke at the launch of *Federal Civil Litigation Precedents*, a looseleaf publication of which they are the Advisory Editors. On 24 May 2007, his Honour presented a paper on "The Jurisdiction of the Copyright Tribunal of Australia: the 2006 Amendments" at a seminar held by The Copyright Society of Australia. The paper is in the course of being published in *The Copyright Reporter*.

In February 2007, Justice TAMBERLIN was part of a group of judges who received a delegation from the Supreme Administrative Court of Thailand. In late April, Justice Tamberlin reciprocated the visit and travelled to Bangkok, where his Honour delivered a paper to the Thai judges on techniques of judgment writing. Subsequently, his Honour drafted a memorandum summarising his paper and forwarded it to the Thai Court. On 4 April 2007, Justice Tamberlin accompanied a group of judges, registrars and other members of the Court on a visit to the Sydney Ports Authority as part of the Admiralty Marshals training program. Justice Tamberlin also continued his previous commitments in connection with Sydney University mooting, adjudicating an administrative law moot court on 31 May 2007. In early June 2007, Justice Tamberlin was one of a number of judges who received a visit from Judge Yang Honglei, a judge of the Supreme People's Court of China. Judge Yang sat with his Honour for part of a case concerning allegations of counterfeit trademarks. On 12 June 2007, Justice Tamberlin gave a presentation to senior members of the legal profession concerning the Court's "eCourt" facilities. In particular, his Honour promoted the use of online facilities which allowed directions and some interlocutory hearings to be conducted without the parties attending court.

Justice SACKVILLE concluded his two year term as Chair of the Judicial Conference of Australia, the representative body for Australian judicial officers, on 8 October 2006. He chaired sessions at the Annual Colloquium of the JCA held in Canberra on 6–8 October 2006. In July 2007, Justice

Sackville completed a visit to the United Kingdom to study judicial appointments procedures and the processes for dealing with complaints against judicial officers. His visit included meetings with the Judicial Appointments Commission, the Office of Judicial Complaints, the Judicial Studies Board, the Directorate of Judicial Offices for England and Wales and the Judicial Appointments and Conduct Commission. On 27 October 2006, Justice Sackville gave a paper to *A Judicial Appointments Forum*, entitled 'The Judicial Appointments Process in Australia: Towards Independence and Accountability' (published 2007 16 *JJA* 125–138). Justice Sackville presented a paper on 'Law and Social Change' on 27 October 2006 to the Sixth Annual Members' Conference of the Administrative Decisions Tribunal. On 17 November 2006 he gave a presentation to the Post-Graduate Legal Research Students Conference on 'Writing to Make a Difference: The Impact of Academic Legal Scholarship in Judgments'. Justice Sackville gave a presentation to Sydney Judges of the Family Court of Australia on 23 March 2007. He also participated in the Judicial Orientation Program on 10 October 2006 and 15 May 2007, contributing to sessions on expert evidence. On 25 February 2007 Justice Sackville participated in a ceremony to mark the opening of the Civil and Commercial Court of Qatar, of which he has been appointed a member.

Justice KIEFEL delivered a paper entitled "The Role of Policy in the Law of Obligations" at the International Obligations Law Conference organised by the University of Queensland and held in July 2006. The conference papers will be published by Cambridge University Press. Her Honour provided a commentary on papers on Judicial Ethics at the Colloquium of the Judicial Conference of Australia held in October 2006. Her Honour also gave the after dinner speech at a dinner at Bond University held in honour of Justice McPherson of the Court of Appeal of the Supreme Court of Queensland. Her Honour chaired the session on Mergers and Acquisitions at the Competition Law Conference in Sydney in May 2007.

On 11 July 2006 Justice NICHOLSON met with Dr Marco Fabri, Senior Researcher of the Institute for the Study of Comparative Judicial Systems (IRSIG) at Bologna University for an informal seminar on research issues in Australia and Italy. On 9–11 February 2007 Justice Nicholson attended the 'Confidence in Courts' Conference held in Canberra, hosted by the National Judicial College of Australia in conjunction with the ANU College of Law and the ANU National Institute of Social Sciences and Law. On 11 February 2007 he chaired Session 2 'Does the public have confidence in the Courts?' On 16 February 2007 Justice Nicholson attended 'The Constitutional Law Conference' held in Sydney and hosted by the Gilbert-Tobin Centre of Public Law of The University of New South Wales and supported by The Australian Association of Constitutional Law. On 23 February 2007 he attended a workshop with Professor Hathaway entitled 'Protection Elsewhere: International Law and the Off Shore Processing and Protection of Refugees' held at the Melbourne University Law School. On 29 March 2007 as part of the Federal Court Judges' Judicial Workshop held in Melbourne Justice Nicholson chaired the session 'Cultural Difference and Judicial Understanding'. On 10 May 2007 Justice Nicholson participated in Law Week 2007 as Master of Ceremonies at the annual Sir Ronald Wilson Lecture given by the Hon Ron Merkel QC. In May 2007 Justice Nicholson was asked to make a contribution to the University of Melbourne Law Review, 50<sup>th</sup> Anniversary edition celebrating the life of Sir Ronald Wilson, due to be published in the August 2007 edition. On 4 June 2007 Justice Nicholson led one of three discussion groups on the topic of 'How to provide training for chief court administrators' as part of a presentation given by The Hon Clifford Wallace, Chief Judge Emeritus, Ninth Circuit Court of Appeals, USA to the 12<sup>th</sup> Conference of Chief Justices of Asia and the Pacific held in Hong Kong. On 5 June 2007, Justice Nicholson presented a paper to the 12<sup>th</sup> Conference of Chief Justices of Asia and the Pacific Conference in Hong Kong entitled 'Continuing Issues in Judicial Ethics'. Justice Nicholson is a Foundation Fellow of the newly established Australian Academy of Law established by the Australian Law Reform Commission. Justice Nicholson also continues to be a member of both the Board and Council of the Australian Institute of Judicial Administration and Chair of the Projects and Research Committee of the AIJA. His Honour is also Secretary of the LAWASIA Judicial Section and he is Deputy Convenor of the Trustees of the Francis Burt Education Centre. Justice Nicholson continues to be a member of the Advisory Board to the Center for International Accountability of Organizations and Chair of the Foreign Advisory Board to the International Judicial Academy in Washington DC. He is also President of the International Commission of Jurists, Western Australian Branch.

Justice FINN is a member of the Third Working Group on UNIDROIT's Principles on International Commercial Contract. During the year he also presented a session to Flinders University on "Federal Court Jurisdiction and Practice". He also presented to a seminar to the South Australian legal profession on the "Federal Jurisdiction". He participated in the University of South Australia's annual Trade Practices Workshop presenting a paper on "Unconscionable Conduct". Justice Finn also contributed a chapter to the festschrift in honour of Justice B H McPherson CBE entitled "The Fringes of the Law: Public or Private Functions" in Aladin Rahemtula (Ed) *Justice According to Law*, 2006. He also delivered a paper on "Government in Commerce or Commerce in Government" to the Commercial Law Association's 2006 Leading Edge Seminar Series in Sydney.

In July 2006, Justice MARSHALL delivered a paper at the monthly meeting of the United Nations Association of Australia entitled "Justice or Appeasement – Human Rights in East Timor". In August 2006, Justice Marshall delivered a paper at a meeting of the Industrial Relations Society of Tasmania entitled "Workchoices and the Federal Court." Also in August 2006 Justice Marshall was the guest speaker at the Australian Capital Territory Bar Association's Bench and Bar Dinner. He addressed the dinner on the topic of the East Timor judicial system. In September 2006, Justice Marshall participated with two judges of the Court of Appeal of the Supreme Court of Victoria (Maxwell P and Redlich JA) in judging the senior grand final of the Victorian Council of Law Students' Societies' Moot. Also in September 2006, Justice Marshall judged one of the preliminary moots in the Sir Henry Gibbs Moot at Victoria University. In October 2006, Justice Marshall participated as a final judge in the 28<sup>th</sup> Media Peace Awards for the United Nations Association of Australia. In April 2007 Justice Marshall adjudicated the Grand Final of the Monash Law Students' Society Mooting Competition (with Middleton J). In May 2007, Justice Marshall addressed the Queensland branch of the International Commission of Jurists on the topic of "the challenges facing the judiciary in Timor Leste". On 10 May 2007, Justice Marshall hosted a moot court session for the Victorian Bar Readers.

Justice NORTH is a member of the Monash University Workplace and Employment Law Advisory Panel. On 5 September 2006 Justice North gave a lecture at the University of Melbourne to law students on the subject of assisted dispute resolution. In September 2006 Justice North attended the Federal Court of Canada education seminar on immigration law and addressed the seminar on "International Protection". On 22 September 2006 Justice North attended the meeting of judges of the Federal Court of Canada as an observer. On 26 and 27 September 2006 Justice North launched the Africa Chapter of the International Association of Refugee Law judges in Pretoria and chaired a workshop on refugee law for African judges. On 31 January 2007, Justice North presented the keynote address entitled "My Court Car is a Helicopter" to the conference entitled "Inside the administration of justice: Toward a new model of Court administration" organised by the Canadian Judicial Council and held in Victoria, British Columbia. On 5 February 2007, Justice North sat on the Court of Appeal in London at the invitation of Lord Justice Sedley. In February 2007 Justice North attended meetings in Geneva at the office of the United Nations High Commissioner for Refugees in relation to the activities of the International Association of Refugee Law Judges. Also in February Justice North visited Pretoria and Cape Town, South Africa, and held meetings in relation to the organisation of the world conference of the International Association of Refugee Law Judges to be held in November 2008. On 23 March 2007, Justice North gave a presentation to the registrars of the Federal Court in Melbourne on the place of assisted dispute resolution within the Federal Court. On 20 April 2007, Justice North hosted a visit to Melbourne of the President and Deputy President of the Municipal Court of Budapest. On 12 April 2007, Justice North gave an address to the Institute of Arbitrators and Mediators entitled "The Court With Many Doors" concerning assisted dispute resolution. On 17 April 2007, Justice North hosted a visit of Japanese judges concerned with refugee law. On 20 June 2007, to mark World Refugee Day Justice North addressed a group of lawyers who had performed pro bono work in refugee cases.

Justice North is a member of the International Humanitarian Law Advisory Committee of the Victorian Branch of the Red Cross.

Justice MANSFIELD is Chair of the Graduate Diploma and Legal Practice Course Committee of the Law Society of South Australia as well as Chair of the SA Bar Association CPD Committee. He attended the Law Council of Australia Trade Practices Conference in Canberra on 21–23 July 2006. On 12 September 2006 he presented *Affidavits and Witness Statements* for the Bar Readers Course in Adelaide. Justice Mansfield also attended the Third AIJA Appellate Judges' Conference 14–15

September 2006. Justice Mansfield opened the UniSA Trade Practices Workshop 20–21 October 2006 and also presented two lectures to the Northern Territory Law Society entitled *Enforcement under the ACC Act – Are the edges that hard?* and *High Court 2005/2006 – What should we learn?* Justice Mansfield was the Visiting Judicial Fellow at the Flinders University Law School during the period 16–20 October 2006. He delivered a public lecture *How Balanced are the Scales of Justice: The Rule of Law in Australia* and a lecture on Advocacy, as well as attending and participating in staff seminars, lectures and tutorials. Justice Mansfield is also a member of the University of South Australia Law School Advisory Board. He also served on the University of South Australia Division of Business EQUIS Accreditation panel in March 2007.

Justice EMMETT is the Challis Lecturer in Roman Law at the University of Sydney and is currently a Deputy President of the Copyright Tribunal. Justice Emmett is also Consultant Editor and Contributor to Butterworths Australian Legal Dictionary and is on the Editorial Board of the Journal of Banking and Finance Law and Practice produced by Thomson Lawbook Co. Justice Emmett chaired a session dealing with superannuation at the Colloquium of the Judicial Conference of Australia, held from 6 to 10 October 2006. On 15 March 2007 Justice Emmett provided opening commentary to the Continuing Legal Education seminar on Developments in Directors' Duties conducted by the University of New South Wales. Justice Emmett participated in the Rhetoric Series organised by the New South Wales Bar Association, part of their Continuing Professional Development Program. He was also invited to chair a seminar in the series on 12 June 2007 and provided the opening commentary for the topic "Cicero's *De Oratore* and the *Philippics*".

In January 2007 Justice WEINBERG presented a paper entitled "Australia's Anti-Terrorism Legislation – Is there a *Boilermakers* Spanner in the Works?" to the Supreme and Federal Court Judges' Conference in Perth. Justice Weinberg attended the International Conference on the Administration of Justice and National Security in Democracies in Ottawa in June 2007. Justice Weinberg has been an Adjunct Professor in the Faculty of Business and Law, Deakin University since March 2005. Justice Weinberg has been a Board Member of Monash University Faculty of Law since 1998.

Justice KENNY has been a part-time Commissioner, Australian Law Reform Commission since May 2003. In that capacity she has been a Member of the Division constituted under the *Australian Law Reform Commission Act 1996* (Cth) for the purposes of the references on "Review of Privacy" and "Client Legal Privilege and Federal Investigatory Bodies". On February 6, 2007 she attended a public forum held by the Australian Law Reform Commission entitled "Consumers and Privacy – Have Your Say" at the State Library in Melbourne. Justice Kenny is a member of the Centre for International and Public Law Advisory Board, The Australian National University. For some years now, her Honour has also been a Board Member of the Monash University Faculty of Law. She is a member of the Board of Governors of the International Organization for Judicial Training (IOJT), the Australian Secretariat for the Asia Pacific Judicial Reform Forum and an alternate member of the Council of the National Judicial College of Australia. In October 2006, she participated in the deliberations of the Australian selection committee for awarding Menzies Scholarships in Law for the 2007 academic year. Also in October 2006, Justice Kenny was invited to speak at the "Global Forum on Liberty and Prosperity – The Experience of Judicial Educators" in Manila.

Justice GYLES visited the Canadian Federal Court and the Canadian Tax Court in Vancouver for a week in September 2006 observing the work of those Courts, consulting with the Justices who were present and also making contact with the British Columbia Supreme Court. In October 2006 he spoke at the Third Annual University of South Australia Trade Practices Workshop. In February 2007 Justice Gyles gave the opening address at a Law Society Young Lawyers Employment and Industrial Law Committee Continuing Legal Education Seminar in Sydney.

In July 2006 Justice STONE attended a seminar on "Justice and Society" held at the Aspen Institute in Colorado, USA. On 2 November her Honour delivered the Keynote Address "*The GST – A Practical Business Tax?*" at the Taxation Institute of Australia's Conference on the Goods and Services Tax, entitled "Taking the Reins" held in Melbourne. On 22 February Justice Stone delivered the Libby Slater Memorial Address entitled "*The Superannuation Trustee as a Fiduciary*" at the "Superannuation 2007" Conference held in Adelaide. In May the *Journal of Equity* published a paper by Justice Stone entitled "*The superannuation trustee: Are fiduciary obligations and standards appropriate?*" On 27 June Justice Stone was appointed a Member of the Governing Council of the Judicial College of Australia.

Justice ALLSOP was invited to present papers at conferences on Admiralty and maritime law, commercial arbitration, maritime arbitration and international trade law to organisations both in Australia and overseas. Justice Allsop also attended workshops and conferences on trade practices, maritime law, transport, pilotage and ports and the Federal Court Admiralty Education and Training Day for NSW Judges and Admiralty Marshals. His Honour attended the Asia–Pacific Regional Meeting on the work of the Hague Conference on Private International Law. Justice Allsop also participated as a judge at the International Maritime Law Arbitration Moot Competition held in Melbourne. His Honour visited China as a member of the working party from the Federal Court of Australia as part of the China Australia Governance Programme. Justice Allsop holds a position as a Governor of the World Maritime University being a university under the auspices of the International Maritime Organisation, a United Nations body.

Justice BENNETT attended the Judgment Writing program conducted by the Judicial College for the Federal Court at Lillianfels 31 May to 2 June 2006. On 23 August 2006 Justice Bennett was invited to address an IPSANZ meeting in Adelaide on *Different Perspectives on Intellectual Property Litigation*. Her Honour was also invited to speak in the Section on Intellectual Property at the International Bar Association Conference in Chicago during September 2006 in a panel with Judges from the USA and Germany on Specialisation of Judges in the context of Intellectual Property. As a member of the Law Academic Advisory Committee for the School of Law of The Chinese University of Hong Kong, Justice Bennett addressed academics and the profession in Hong Kong on *The Role of Alternative Dispute Resolution* in November 2006 and attended the formal opening of the School of Law. Her Honour spoke to the Women Lawyers Association of the ACT in Canberra on 15 December 2006 and, in January 2007, attended the Supreme and Federal Court Judges' Conference in Perth. Justice Bennett attended and delivered a paper at the APEC IP Symposium held in Sydney 28 to 31 January 2007 *Trading Ideas – The Future of IP in Asia Pacific* on the topic of "Resolving Intellectual Property Disputes – Issues for the Court". In June 2007, Justice Bennett, together with other Federal Court Judges, met with Judges of the Supreme People's Court of the People's Republic of China in Beijing where Justice Bennett presented a joint paper with Justice Mansfield on Jurisdiction and Structure of the Federal Court of Australia, and also discussed Intellectual Property issues. Justice Bennett and Justice Allsop made a joint presentation to the Judges' College of the Supreme People's Court on Administrative Law. Justice Bennett was a member of the Reference Group for the APEC Women Leaders' Network Meeting in Port Douglas from 24 to 27 June 2007. The theme was *Strengthening the Capacity of Business to Meet the Challenges of Global Change*. Justice Bennett was responsible for and Chair and rapporteur for the sessions on Strengthening Capacity. Her Honour also chaired the *Drafting Committee for the Recommendations* arising from the WLN meeting. Justice Bennett continues to be involved in a number of other judicial and extra-judicial commitments including Presidential Member of the Administrative Appeals Tribunal, Pro-Chancellor of the Australian National University, Director of the Sydney Children's Hospital Foundation, member of the Board of the Centennial Park & Moore Park Trust, member of Chief Executive Women and past President of the Australian Academy of Forensic Sciences. Her Honour was also a member of the judging panel for the Australian Veve Clicquot Award for Business Woman of the Year.

Justice EDMONDS presented a paper entitled *Statutory Interpretation – Judicial Perspectives on the Interpretation of Australia's Income Tax Legislation* at a Conference organised by the Australian Tax Research Foundation on Thursday, 19 October 2006 entitled: *Executing Australia's Income Tax – There Must be a Better Way*; his Honour presented a paper entitled *Recourse to Foreign Authority in Deciding Australian Tax Cases* at the 19<sup>th</sup> Annual Conference of the Australasian Tax Teachers' Association (University of Queensland), 22–24 January 2007, an edited version of which was subsequently published in the Australian Tax Review; his Honour presided at a mock trial organised by the Taxation Institute of Australia at its National Conference in Hobart from 14 to 17 March 2007; on Tuesday, 3 April 2007 his Honour participated in a "hypotheticals" programme presided over by Mr Geoffrey Robertson QC in conjunction with the Commissioner of Taxation and other participants.

On 27 July 2006 Justice GRAHAM presented a paper on 'Recent Developments in Insolvency Practice'. His Honour also participated in the Bar Reading Programme organised by the New South Wales Bar Association.

On 20 August 2006, Justice GREENWOOD delivered an address on the topic of 'Management of IP Cases in the Federal Court' at the Judges' session of the 20<sup>th</sup> Annual Intellectual Property Society

of Australia and New Zealand Inc Conference held in Queensland. On 17 March 2007, his Honour gave the keynote address on the topic 'Intellectual Property Issues: Comments from the Bench' to the Annual Conference of the Licensing Executives Society of Australia and New Zealand, in Queensland. On 11 October 2006, his Honour chaired and addressed a conference convened by the Bar Association of Queensland concerning recent developments in administrative law and aspects of practice and procedure in appeals to the Federal Court from the AAT. His Honour is a member of the Key Centre for Ethics, Law, Justice and Governance at Griffith University. His Honour is a member of the Scholarship Endowment Fund Committee of the TC Beirne School of Law at the University of Queensland. His Honour participated in the adjudication of moots in connection with the Jessup Competition. His Honour is a member of the Library Acquisitions Sub-committee of the Supreme Court of Queensland and the Supreme Court History Sub-committee. Justice Greenwood attended the Annual Conference of the Trade Practices Committee of the Law Council of Australia.

On 26 October 2006, Justice RARES presented a paper on defamation and the Uniform Code to a Media Law Conference at the Marriott Hotel, Sydney. On 24 February 2007 he gave a paper, 'Some Lessons from Pan's Odyssey', to the third biennial conference of the New South Wales branch of the Maritime Law Association of Australia and New Zealand. On 23 May 2007 he acted as one of the judges in the University of Sydney International Law moot final. In the same month, he also participated in the NSW Bar Association's reader's course.

On 11 September 2006 Justice COWDROY addressed the Legal Panel of the Royal Australian Navy at Maritime Headquarters Sydney concerning the impact of Commonwealth environmental law on maritime operations. On 20 November 2006 Justice Cowdroy was guest speaker at the Defence Legal National Conference on the topic of the Impact of Environmental Law on the Defence Forces. On 8 June 2007 Justice Cowdroy addressed the Maritime Security Co-operation Conference of the Asia Pacific Centre for Military Law and US Naval War College, International Law Department, on aspects of Australian law affecting joint defence operations.

## APPENDIX 9 – Equal Employment Opportunity statistics

**Table 9.1 – Representation of EEO Groups within occupational groups**

Occupational Group	Total staff	Women	NESB1	NESB2	ATSI	PWD
SES	9	4	1	1		
FCS and related	372	241	22	27	2	4
Professional	25	15	1			
<b>TOTAL</b>	<b>406</b>	<b>260</b>	<b>24</b>	<b>28</b>	<b>2</b>	<b>4</b>

**Table 9.2 – Representation of EEO Groups within salary levels**

Salary	Total staff	Women	NESB1	NESB2	ATSI	PWD
\$32,584 – 36,010 FCS1	1					
\$36,876 – 40,891 FCS2	60	35	3	3		
\$42,001 – 45,331 FCS3	49	36	5	7	1	2
\$46,814 – 50,828 FCS4	27	20	2	3		1
\$52,213 – 55,366 FCS5	115	69	9	9	1	
\$56,393 – 64,780 FCS6	71	59	1	3		
\$47,157 – 91,672 FCM1/FCL1	31	18	2	2		1
\$83,211 – 110,361 FCM2/FCL2	43	19	1			
SES	9	4	1	1		
<b>TOTAL</b>	<b>406</b>	<b>260</b>	<b>24</b>	<b>28</b>	<b>2</b>	<b>4</b>

**Note:** EEO target groups are not mutually exclusive. Any individual officer may be included in more than one group. Salary groupings are based on maximum salary for a classification.

- Key:**
- NESB1 – People of non-English speaking background, first generation
  - NESB2 – People of non-English speaking background, second generation
  - ATSI – Aboriginals and Torres Strait Islanders
  - PWD – People with disabilities
  - FCS – Federal Court Staff
  - FCM – Federal Court Manager
  - FCL – Federal Court Legal
  - SES – Senior Executive Service

## APPENDIX 10 – Expenditure on consultants

(at 30 June 2007)

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 (January 2005) and including associated Finance Circulars and guidance documentation published by the Department of Finance and Administration.

The main function for which consultants were engaged related to the delivery of specialist and expert services, primarily in connection with the Court's information technology (IT) infrastructure, finance and business elements of the Court's corporate services delivery. Table 10.1 below lists all consultancy contracts let during 2006–07 to the value of \$10,000 or more, including GST, and provides details for each individual consultancy including the total value over the life of the contract.

**Table 10.1 – Consultancy services let during 2006–07**

Consultant Name	Description	Contract Price (incl GST) \$'000	Selection Process (1)	Justification (2)
Azure Innovations	eLodgment System Development Services.	\$158.4	Direct Source	(A)
Azure Innovations	eCourtroom System Development Services.	\$115.5	Direct Source	(A)
Ernst and Young	IT Operational Management and Incident Response Process.	\$34.1	Direct Source	(A)
Ernst and Young	Internal Audit services.	\$61.2	Direct Source	(B)
Margaret O'Donnell	Analysis of Strategy and Process for managing Indigenous Conflict.	\$41.2	Select Tender	(C)
Enterprising IT	eLodgment/eCourtroom Assessment of System Application Architecture.	\$35.2	Direct Source	(C)
Ernst and Young	Probity Advice on Tender Processes.	\$29.7	Direct Source	(B)
Facilitech	eMail Training Program Design.	\$27.7	Select Tender	(B)
Azure Innovations	eTrial Strategy and Software Application Analysis.	\$16.9	Direct Source	(C)
Stratsec	eLodgment/eCourtroom Assessment of System Security Architecture.	\$12.6	Direct Source	(C)
<b>TOTAL</b>		<b>\$532.5</b>		

(1) Explanation of selection process terms referred to above is drawn from the *Commonwealth Procurement Guidelines (January 2005)*:

**Select Tender** – A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

**Direct Sourcing** – A form of restricted tendering available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply goods and/or services sought.

(2) Justification for decision to use consultancy:

(A) Skills currently unavailable within the agency.

(B) Need for specialised or professional skills.

(C) Need for independent research or assessment.

## APPENDIX 11 – Statement under Section 8 of the Freedom of Information ACT 1982

Information on the establishment, organisation, functions and powers of the Court is contained throughout this report. Information on the Court's arrangements for consultation with users of the Court about the Court's operations is also included in Chapter 3 of the report. The following lists the categories of documents maintained by the Court, the Court's facilities for public access and the Court's FOI procedures and relevant contacts for inquiries.

### Categories of documents

The Federal Court Registries maintain the following categories of documents:

- documents relating to matters heard by, or applications or appeals lodged with, the Court including applications, notices of appeal, affidavits, pleadings, transcripts and copies of judgments;
- registers and indexes in bound volumes of matters coming to the Court (documents dealing with matters coming to the Court are also generated by computer);
- statistical information;
- documents concerning staff matters;
- documents concerning the administrative and financial aspects of the Court's operations;
- internal working documents and correspondence; and
- registry manuals.

The District Registries also maintain a computer database containing details of matters commenced in the Court since 1 January 1984.

The following categories of documents are open to public access according to an enactment (other than the *Freedom of Information Act 1982*) where the access is subject to a fee or other charge:

- documents filed in a proceeding or purported proceeding (available upon application, subject to the Rules of Court and upon payment of the fees set out in the Federal Court Regulations).

The following categories of documents are available for purchase by the public in accordance with arrangements referred to below:

- transcripts of proceedings (inquiries may be made at the relevant District Registry to ascertain the service provider for the relevant State or Territory);
- copies of documents filed in the Registry (available upon application, subject to the Rules of Court, and upon payment of the fees set out in the Federal Court of Australia Regulations); and
- reasons for judgment (available upon application and payment of the fees set out in the Federal Court of Australia Regulations).

The following categories of documents are open to public access according to an enactment (other than the Freedom of Information Act) free of charge on request:

- Registers of proceedings in the Court.

The following documents are available free of charge upon request:

- procedural guides to:
  - commencing an action in the Federal Court of Australia (for litigants in person);
  - appearing in Court in relation to a creditor's petition (for unrepresented debtors);
  - completing certain forms prescribed by the Rules of Court;
  - filing documents in the Court by facsimile transmission.
- a list of Full Court sittings (published yearly);
- Court lists (published daily);
- various practice notes made by the Chief Justice; and
- Video-conferencing Protocol.

### **Facilities for access**

Facilities to examine documents and to obtain copies are available at the Court's registries as initial contact points. Registers open to public inspection are available at all initial contact points. Transcript is available from the relevant reporting service provider.

### **FOI procedures and initial contact points**

FOI contact officers will assist applicants to identify the particular documents they seek. The only officer authorised to deny access to documents is the Registrar of the Court.

The availability of some documents under the Freedom of Information Act will be affected by section 5 of that Act, which states that the Act does not apply to any request for access to a document of the Court unless the document relates to matters of an administrative nature.

Inquiries concerning access to documents or other matters relating to freedom of information should be directed to the District Registrar of the relevant District Registry or, in the case of the Principal Registry, to the Registrar. The addresses are listed at the front of this report.

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## Glossary

<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 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>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 for the hearing. Generally it involves setting 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>Hearing</b>	That part of a proceeding where the parties present evidence and submissions to the Court.
<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 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>Notice of Motion</b>	The document filed by a party to an existing proceeding which asks the Court to make orders that were not included in the original application.
<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>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>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.

