

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 of the jurisdiction of the Australian Industrial Court and of 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 140 statutes of the Parliament. A list of these Acts appears in Appendix 4 on page 122.

The Court exercises appellate jurisdiction over decisions of single judges of the Court, decisions of the Supreme Courts of the Australian Capital Territory and Norfolk Island, decisions of the Federal Magistrates Court and certain decisions of State Supreme Courts exercising federal jurisdiction. The Court's jurisdiction is more fully described 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

In October 1998, the Court adopted a new outcome and output structure, which was to replace the program structure under the new accrual budgeting arrangements for the 1999-2000 budget year.

Details of the outcome and output structure, and its relationship to the old program structure, are set out in Table 1.1 on page 2. A report on the resources to achieve the outcome is contained in Table 5.2 on page 127.

Table 1.1
Relationship between Old Program Structure and New Outcome Structure

PROGRAM MANAGEMENT STRUCTURE	OUTCOME STRUCTURE
The Federal Court of Australia is responsible for the administration of sub-programs 4.1 and 4.5 within Program 4 – Administration of Justice.	Outcome 1 Through its jurisdiction, the Court will apply and uphold the rule of law to deliver remedies and

	enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.
<p>Sub-Programs</p> <p>Sub-Program 4.1: Federal Court of Australia</p> <p>Sub-program 4.5: Other Tribunals</p>	<p>Output Groups</p> <p>Output Group 1.1: Management of cases and deciding disputes according to law – Federal Court.</p> <p>Output Group 1.2: Management of cases and deciding disputes according to law – Tribunals.</p> <p>Output Group 1.3: Service to Government.</p> <p>Output Group 1.4: Services provided to international jurisdictions.</p> <p>Output Group 1.5: Ensuring the quality of, and access to, the system of justice.</p>

1.5 THE COURT

Judges

The Federal Court of Australia Act provides that the Court consists of a Chief Justice and such other judges as are appointed. The Chief Justice is the senior judge of the Court and is responsible for ensuring the orderly and expeditious discharge of the business of the Court.

Judges of the Court are appointed by the Governor-General, by commission. Judges may not be removed except by the Governor-General on an address from both Houses of Parliament, in the same session, praying for the judge's removal on the ground of proved misbehaviour or incapacity. This requirement is contained in section 72 of the *Commonwealth of Australia Constitution Act 1901* and Part II of the Federal Court of Australia Act.

Until 1977 judges were appointed for life. As a consequence of the constitutional referendum in that year, all judges appointed after 1977 must retire at the age of 70.

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

As at 30 June 2000 there were 50 judges of the Court. They are listed on pages 3 to 6 in order of seniority. The list gives details about each judge and any other commissions or appointments held on courts or tribunals. Of the 50 judges, there were 7 whose work as members of other courts or tribunals occupied all or most of their time.

Judges of the Court (as at 30 June 2000)

Judge	Location	Other Commissions/Appointments
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Chief Justice

The Hon Michael Eric John BLACK AC	Melbourne
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Judge	Location	Other Commissions/Appointments
Judges		
The Hon John Foster GALLOP AM, RFD	Canberra	Supreme Court of the ACT – Judge Supreme Court of the NT – Judge Supreme Court of Christmas Island – Judge Administrative Appeals Tribunal – Presidential Member Defence Force Discipline Appeal Tribunal – President
The Hon Bryan Alan BEAUMONT	Sydney	Supreme Court of Norfolk Island – Chief Justice Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member Supreme Court of Vanuatu – Acting Judge Privy Councillor of Tonga Tongan Court of Appeal – Judge
The Hon Murray Rutledge WILCOX	Sydney	Industrial Relations Court of Australia – Chief Justice Supreme Court of the ACT – Additional Judge Supreme Court of Norfolk Island – Judge
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 James Charles Sholto BURCHETT	Sydney	Privy Councillor of Tonga Court of Appeal of Tonga – Judge Copyright Tribunal – President
The Hon Jeffrey Allan MILES AO	Canberra	Supreme Court of the ACT – Chief Justice
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	Supreme Court of the Cocos (Keeling) Islands – Judge Supreme Court of Christmas Island – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Marcus Richard EINFELD AO	Sydney	Supreme Court of the ACT – Additional Judge Eastern Caribbean Supreme Court – Judge High Court of Justice, Dominica – Judge
The Hon Alastair Bothwick NICHOLSON AO, RFD	Melbourne	Family Court of Australia – Chief Justice
The Hon Malcolm Cameron LEE	Perth	Industrial Relations Court of Australia – Judge Supreme Court of the Cocos (Keeling) Islands – Additional Judge
The Hon Howard William OLNEY	Melbourne	Supreme Court of the NT – Additional Judge Administrative Appeals Tribunal – Presidential Member Federal Police Disciplinary Tribunal – Deputy President Aboriginal Land Commissioner

Judge	Location	Other Commissions/Appointments
The Hon John William von DOUSSA	Adelaide	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member Australian Competition Tribunal – President Australian Law Reform Commission – Commissioner Supreme Court of Vanuatu – Acting Judge Court of Appeal
The Hon Donald Graham HILL	Sydney	Administrative Appeals Tribunal – Presidential Member
The Hon Maurice Francis O'LOUGHLIN	Adelaide	
The Hon Deirdre Frances O'CONNOR	Sydney	Administrative Appeals Tribunal – President
The Hon Terence John HIGGINS	Canberra	Supreme Court of the ACT – Judge
The Hon Peter Cadden HEEREY	Melbourne	
The Hon Douglas Paton DRUMMOND	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Ellard COOPER	Brisbane	Supreme Court of the ACT – Additional Judge
The Hon Antony Philip WHITLAM	Sydney	Supreme Court of the ACT – Additional Judge Federal Police Disciplinary Tribunal – President
The Hon Christopher John Seymour Metford CARR	Perth	
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia – Judge
The Hon Catherine Margaret BRANSON	Sydney	
The Hon Jane Hamilton MATHEWS	Sydney	National Native Title Tribunal – Deputy President
The Hon Kevin Edmund LINDGREN	Sydney	
The Hon Brian John Michael TAMBERLIN	Sydney	
The Hon Ronald SACKVILLE	Sydney	
The Hon Susan Mary KIEFEL	Brisbane	

Judge	Location	Other Commissions/Appointments
The Hon Robert David NICHOLSON	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Paul Desmond FINN	Canberra	
The Hon Ross Alan SUNDBERG	Melbourne	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia – Judge
The Hon John Robert Felix LEHANE	Sydney	
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia – Judge
The Hon Rodney Neville MADGWICK	Sydney	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Ronald MERKEL	Melbourne	
The Hon John Ronald MANSFIELD	Adelaide	
The Hon Alan Henry GOLDBERG	Melbourne	Australian Competition Tribunal – Deputy President
The Hon Arthur Robert EMMETT	Sydney	
The Hon Raymond Antony FINKELSTEIN	Melbourne	Copyright Tribunal – Deputy President
The Hon Geoffrey Michael GIUDICE	Melbourne	Australian Industrial Relations Commission – President
The Hon Mark Samuel WEINBERG	Melbourne	Australian Law Reform Commission – Commissioner
The Hon John Alfred DOWSETT	Brisbane	
The Hon Leslie Sydney KATZ	Sydney	
The Hon Peter Graham HELY	Sydney	Australian Competition Tribunal – Deputy President
The Hon Susan Coralie KENNY	Melbourne	
The Hon Roger Vincent GYLES AO	Sydney	

In July 1999 the Chief Justice was absent from Australia. During his absence, Justice Spender acted as Chief Justice from 1 to 2 July, Justice Beaumont from 3 to 11 July, Justice Wilcox from 12 to 18 July, and Justice Gallop from 19 to 20 July.

The judges of the Court must devote an increasing proportion of their time to other courts and tribunals on which they hold commissions or appointments. In addition to the time spent hearing cases, time was necessarily devoted to other work related to those commissions or appointments, such as writing reserved judgments.

Some judges are identified as designated persons under various Acts, which means they may issue warrants authorising telephone interceptions and the use of listening devices. These functions add to their workload.

Members of the Court also spend a significant amount of time on other activities related to legal education and the justice system. More information about these activities is set out in Chapter 3.

Appointments and retirements

During the year no judges were appointed to, or retired from, the Court.

On 10 November 1999, Justice John von Doussa was appointed President, and Justice Peter Hely was appointed a Deputy President, of the Australian Competition Tribunal. Both appointments are for a term of five years.

On the Queen's Birthday 2000, Justice Roger Gyles was appointed an Officer in the Order of Australia.

1.6 JUDICIAL REGISTRARS

On 26 May 1997, the jurisdiction of the Industrial Relations Court of Australia was transferred to the Federal Court by the *Workplace Relations and Other Legislation Amendment Act 1996*. That Act appointed the judicial registrars of the Industrial Relations Court of Australia as judicial registrars of the Federal Court pursuant to section 18AA of the Federal Court of Australia Act. The appointments continued for the balance of the term of each judicial registrar's appointment as a judicial registrar of the Industrial Relations Court of Australia. The appointments were usually for periods of up to five years as either a full-time or part-time judicial registrar. As at 30 June 2000 there were no judicial registrars of the Court.

1.7 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.

There are District Registries in each State capital city, in Canberra and in Darwin.

The District Registries provide operational support for the Court as well as an information service to legal practitioners and members of the public. The registries also receive court and related documents, assist with the arrangement of court sittings and facilitate the enforcement of orders made by the Court.

Legal staff of the registries perform statutory functions assigned to them by the Federal Court of Australia Act and Federal Court Rules. These include issuing process, taxing costs and settling appeal indexes. They also conduct examinations of bankrupt individuals and associated persons under the *Bankruptcy Act 1966*, and examinations of company officers and others under the Corporations Law. The power to conduct examinations under the Bankruptcy Act and the Corporations Law is delegated by judges. Senior legal staff exercise additional

powers delegated by judges. These include the power to make sequestration (bankruptcy) orders, orders for the winding up of companies and the setting aside of statutory demands.

Most District Registries are also registries for the following federal tribunals: the Australian Competition Tribunal, the Defence Force Discipline Appeal Tribunal and the Federal Police Disciplinary Tribunal. The Tasmania District Registry is a joint registry 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 of the Court.

The registries of the Federal Court are also registries for the Industrial Relations Court of Australia until the work of that Court is completed, and for the Federal Magistrates Court in relation to non-family law matters.

The Northern Territory District Registry is administered by the Family Court of Australia which provides registry services to the Federal Court, the Administrative Appeals Tribunal and the National Native Title Tribunal under service contracts.

Officers of the Court

Officers of the Court are appointed by the Registrar under section 18N of the Federal Court of Australia Act. The officers of the Court 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 Registrar, District Registrars, Deputy Registrars and Deputy District Registrars must take an oath or make an affirmation of office before undertaking the duties of registrar (section 18Y of the Federal Court of Australia Act). A schedule of registrars appears in Appendix 3 on page 119 and a list of District Registrars appears in Table 1.2 below.

Table 1.2
District Registrars
(as at 30 June 2000)

Registry	District Registrar
Australian Capital Territory	John Mathieson
New South Wales	John Mathieson
Northern Territory	Vacant*
Queensland	Graham Ramsey
South Australia	Greg Fisher
Tasmania	Alan Parrott
Victoria	Peter Seccombe
Western Australia	Martin Jan PSM

* The South Australia District Registrar has delegations which allow for the performance of statutory and judge directed functions for the Northern Territory when required.

Staff of the Court

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs) are appointed or employed under the Public Service Act. On 30 June 2000 there were 349 persons employed Australia-wide as registry staff or as judges' personal staff. Generally, judges have two personal staff members. Details of staffing are set out in Tables 4.1 to 4.3 in Chapter 4 on pages 80 to 82.

1.8 MANAGEMENT OF THE COURT

The Chief Justice is responsible for managing the administrative affairs of the Court. He is assisted by the Registrar (Part IIA sections 18A-18Y of the Federal Court of Australia Act).

The Chief Justice may delegate any of his administrative powers to judges. The Registrar may assist the Chief Justice by exercising powers on his behalf in relation to the Court's administrative affairs. The Chief Justice may give directions to the Registrar about the exercise of these powers.

The management structure of the Court is set out in Appendix 2 on page 118.

Judges' Committees

There are 16 standing committees which assist in the administration of the Court:

Admiralty	Corporations
Assisted Dispute Resolution	Equality and the Law
Audit	Federal Court Reports
Bankruptcy	Finance
Information Technology	Remuneration
Library	Rules
Native Title Coordination	Security
Practice and Procedure	Transcript

An ad hoc Enterprise Bargaining Steering Committee was convened during the reporting year to assist in the development of the Court's second Workplace Agreement under the *Workplace Relations Act 1996*. This Agreement was being developed as at 30 June 2000.

Each committee is supported by staff of the Court and its role is defined by its terms of reference.

Judges' Meetings

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

Principal Registry

The Principal Registry, headed by the Registrar, has overall responsibility for the management of the Court's registries. The Principal Registry also provides various services to the Court including strategic and communication services, personnel services, financial management, computing support, library services, property management and support to the Judges' Committees.

In August 1999 a Strategic and Communication Services Unit was established within the Principal Registry to provide professional services in the area of research and analysis, planning and development, corporate planning, critical issue management and communication. The Unit is the focal point for the identification and management of strategic issues as well as the provision of strategic advice, information, reports and specialist services to the Registrar, the Chief Justice and the Judge's Committees. It is also responsible for identifying best practice measurement models and monitoring the Court's operational performance against those measures. Importantly, the Unit also has carriage of the Community Relations Program for the Court. The work of this Program is discussed in Chapter 3 on page 70.

Critical strategic issues which are managed by the Unit include the oversight of the Court's annual strategic planning process, the provision of advice in relation to management of emerging issues, and corporate projects.

District Registries

To facilitate access to the Court and to enable the Court to exercise its jurisdiction nationally, there is a District Registry in each of the States and mainland Territories of Australia. These are managed by a District Registrar supported by legal and administrative staff.

District Registrars and Deputy District Registrars also perform important legal functions including the exercise of judge-delegated functions and statutory functions under the Federal Court of Australia Act and Rules and the Bankruptcy Act. District Registrars and their staff are a first point of contact for the community and the legal profession in seeking advice on Court procedures and in the processing of documents for those using the Court.