

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 the Court operates as an organisation, brought continuing recognition of its role as a world-class civil court.

2.2 SIGNIFICANT ISSUES AND DEVELOPMENTS

In addition to continuing to focus upon achieving performance goals for the Court's core work, the Court also focussed on the successful implementation of key strategic decisions, some of which had been the result of long term planning by the Court, through the development of major operational projects. For example, the implementation of the Casetrack software package to support and enhance the Court's case management procedures has been initiated during the reporting year. Similarly, the Court undertook an extensive internal review during the year, which was foreshadowed in the Court's Certified Agreement for 2002-2005 finalised last reporting year. More details on these projects and other major areas of strategic work for the Court during the year are outlined below.

Initiatives such as the implementation of Casetrack and the Self-represented Litigants Management Plan discussed below will be priority projects for 2003-04. The management of migration cases, also discussed below, will be another major area of work for the Court in 2003-04.

Casetrack

During the reporting year the Court decided to implement the Casetrack information system to support the Court's case management procedures. Casetrack is a complete court management system currently supporting the operations of the Family Court of Australia and the Federal Magistrates Court (in family law matters). The new system will integrate the complex functions involved in the Court's case management activities, including filing, listings, fee collection, reporting and document production (such as orders in the court room). Casetrack will also provide a foundation to support the further development of the Court's eCourt initiatives and will provide essential statistical, operational and other management information through its reporting facilities.

It is expected that Casetrack will be operational within the Court by late 2003, beginning with the smaller registries of the Court, culminating in all registries being online to Casetrack by June 2004.

The eCourt

In line with its commitment to ensuring that the Court is relevant and responsive to the needs of the Australian community in the 21st century, the Court has continued this year to build on its eCourt strategy. The eCourt strategy was introduced by the Court in 2001 and aims to improve access to the Court by applying new and emerging technology to its practices and procedures. The strategy builds on the Court's established reputation for pioneering the application of technology in its work. During the year the Court focussed on consolidating the eCourt initiatives introduced in previous years, including the Electronic Filing System, the eCourt online forum, the greater use of electronic appeals and enhancements to the Court's video-conferencing infrastructure. Work is also focussing on how the eCourt initiatives will configure with the new Casetrack system. More details on the eCourt are outlined in Chapter 3.

Native title matters

The Court continued to use a range of innovative strategies in its management of native title cases. In particular, the Court's approach to managing native title cases during the year focussed on the following strategies to progress cases for hearing by the Court:

- a high level of specificity was required in timetabling activities, such as mediation;
- greater use was made of regional case management conferences;
- identifying common regional issues within applications which would benefit from greater use of different case management strategies; and
- hearing 'early' evidence from applicants (either for the limited purpose of preserving the evidence of applicants who are elderly or unwell or to test the issue of connection); and
- the application of early neutral evaluation procedures, where appropriate.

The Court also convened a number of user group meetings during the reporting period, including a meeting of the National User Group in Melbourne in May 2003. The National User Group meeting focussed on the progress of cases and consequent resource demands on applicants and respondents. Meetings of local user groups in the states and territories were also well attended and a constructive forum for exchanging ideas about the management of cases at a local level.

During the year the Court's Native Title Coordinating Committee also gave careful consideration to the Court's time goal for the completion of native title cases to ensure its continued relevance. The goal was discussed extensively, including at the National User Group, and it was generally agreed that it is desirable for the Court to keep a national target, while noting that this may be varied at a regional level by local targets, determined on the basis of information provided by local native title user groups or at regional case conferences. The adoption of local timeframe targets has been applied successfully in number of regional case management conferences held during the year. More details on the Court's native title work are outlined in 3.2 of Chapter 3.

Organisational Review

During the year the Court undertook a major internal review of its administrative structures, which was overseen by a Steering Committee of judges, senior court staff and a union representative and chaired by Justice Sackville. The purpose of the review was to identify strategies for improving the Court's administrative efficiency and it was undertaken with extensive consultation with judges and staff of the Court. The review considered a broad range of issues including, the structure of the administration of the Court, the Court's governance and decision-making structures and its internal resource allocation processes. The Steering Committee's report on the review is now a significant issue for consideration by the Chief Justice and other judges of the Court and implementation of its recommendations will be a priority for 2003-04.

Maintaining a lead in Practice and Procedure

In 2001-02, the Court reported that it would focus on a number of priority projects to enhance the practice and procedures of the Court. The following outlines the progress of these projects.

Review of Individual Docket System

Last year the Court reported that during 2002-03 it would undertake an internal review of its Individual Docket System (IDS) following external reviews by the Law and Justice Foundation of New South Wales and the Law Council of Australia.

The internal review of the Individual Docket System was completed during the reporting year, with the judges of the Court agreeing that the Court should maintain the IDS, noting that its inherent flexibility (which allows some variation in its administration across the Court) should be an accepted part of the system and, at this stage, no rules should be introduced to limit this flexibility. It was also agreed that the operation of the IDS in each registry should be reviewed annually, including in light of feedback from the Law Council of Australia and local practitioners.

Review of Guidelines for Expert Witnesses

The Court also completed its review of the Practice Direction on Guidelines for Expert Witnesses, which was introduced by the Court in September 1998. A revised Practice Direction was prepared in light of the feedback received from professions across Australia, including the Council of the Professions and the Law Council of Australia and was issued on 4 September 2003.

Self Represented Litigants

During 2002-03, a committee of the Court comprising judges and court staff gave detailed consideration to the issues raised by the increasing number of self represented litigants in the Court and the impact on the time and resources needed to resolve the matters in which such litigants are involved. In 2002-03 about 38 percent of matters in the Court involved at least one party who was not represented at some stage in the proceeding.

The committee's work resulted in the development of a Self Represented Litigants Management Plan, which was adopted in August 2002 to enable the Court to implement better management practices to address the needs of self represented litigants. Strategies in the Management Plan include: improving the collection of information on self represented litigants; reviewing the Court's rules, forms and brochures and improving staff training on appropriate assistance for self represented litigants. More details on this work are outlined in 3.3 of Chapter 3.

Engagement with Asia-Pacific Jurisdictions

During the year the Court continued its high level of involvement in activities providing assistance to judiciaries in Asia and the South Pacific. In particular, the Court continued its major judicial training program with the Supreme Court of Indonesia, which was funded by the Australia Agency for International Development (AusAID). The Court will conduct a further program in 2003-04, which will be the fifth program conducted since 1999.

The Court also continues its involvement in other activities, which include the provision of library assistance to courts in the South Pacific and hosting and arranging visits to the Court by many delegations of judges and court officials. The Court's commitment to these activities continues to provide a challenge in terms of managing the resources devoted to this important work. However, judges of the Court are enthusiastic about their role in these activities and their involvement is usually undertaken in addition to their normal judicial workload. More details on this work are outlined in 3.4 of Chapter 3.

2.3 THE COURT'S PERFORMANCE AND FINANCIAL RESULTS

Workload

During the year there were several significant trends in the Court's workload. One of these was the growing workload in the general federal law jurisdiction. Since 2000, when the Federal Magistrates Court was established, the total number of cases in the federal law jurisdiction (ie filings in the Federal Court and the Federal Magistrates Court) has increased by more than 2,500 cases per annum. There has been a significant resource impact for Federal Court registries arising from this additional workload, as the registries provide support for both courts through processing documents and supporting the listing and hearing of each matter, including the significant number of matters which are transferred from the Federal Court to the Federal Magistrates Court.

The Court's appellate workload also increased during the year and more than one third of appeals (227 appeals) were against decisions of the Federal Magistrates Court. The trend also continued for more people to appear without legal representation in appeals before the Full Court. Parties appearing without representation often take more time to present their appeal than those who are represented.

There was a significant reduction in the number of matters commenced in the Court, due primarily to the large number of applications under the *Bankruptcy Act 1966* made to the Federal Magistrates Court that would otherwise have been made to the Federal Court. In addition, a number of matters concerning the review of decisions under the *Migration Act 1958* were transferred to the Federal Magistrates Court. The movement of these less complex cases to the Federal Magistrates Court is yet to have a significant impact on the workload of

the judges as almost all Bankruptcy Act matters were dealt with by the Court's registrars. However, it is increasing the Court's capacity to focus on the more complex cases that come before it.

Notwithstanding the challenges presented by these changes, the Court maintained its performance by disposing of 80.2 per cent of cases in less than 18 months from the date of filing.

Detailed information about the Court's workload can be found in Chapter 3.

Migration matters

In its annual report for 2001-02, the Court indicated that it expected that the number of migration matters commenced in the Court would decline once the effect of the changes to the Migration Act, which were made in October 2001 and intended to restrict the jurisdiction of the Court, had been determined and understood by those who advise migration applicants, and as a result of the Federal Magistrates Court exercising first instance jurisdiction in this area.

However, in February 2003 the High Court in *Plaintiff S157/2002 v Commonwealth of Australia* found that proceedings where the plaintiff asserts jurisdictional error may still be commenced in the Federal Court and Federal Magistrates Court, and may be remitted by the High Court to the Federal Court. In particular, this decision led to the High Court remitting 586 matters to the Federal Court that had been pending the decision in *Plaintiff S157/2002*. The High Court also ordered the remittal of a large number of cases that have been pending its decisions in *Muin v Refugee Review Tribunal* and *Lie v Refugee Review Tribunal*. The number of cases that may be remitted pursuant to this order is expected to be in excess of 1,500. This will have a considerable impact on the workload of the Federal Court.

The number of matters concerning decisions under the Migration Act filed in, or remitted to, the Court's original jurisdiction was 1,836 in 2002-03, compared to 1,381 in 2001-02. This increase was primarily due to the cases remitted by the High Court. Migration Act matters also form a substantial proportion of the Court's appellate jurisdiction - 66.5 per cent of appeals in 2002-03.

The Court has put in place specific procedures to deal with the large number of cases being remitted by the High Court and to manage the appellate workload. These are discussed in more detail under 3.2 in Chapter 3.

Appeals

The appellate work of the Court continues to be substantial. In 2002-03, 622 appeals were filed in the Court – 3.1 per cent more than the number filed in 2001-02. The matters brought to the Court in its appellate jurisdiction range from long and complex native title claims through to the high volume Migration Act cases noted above. The Court's Management of Appeals Committee continues to identify, propose and implement solutions to the management issues related to the Court's heavy appellate workload. More detailed discussion of the Court's appellate workload is included in Chapter 3.

Performance against time standards

The Court has two key standards, referred to as time goals. The first concerns the time cases should take from filing to completion. The second concerns the time within which reserved judgments are delivered. The time goals are established to help achieve performance. They do not determine the time all cases take, as some long and complex cases will necessarily take longer than 18 months. As well, many cases need to be dealt with promptly (in a few months) and the Court identifies these matters and attempts to resolve them quickly. The Court's Individual Docket System, (where a case is allocated to a judge when it is commenced and is managed by that judge), helps the priority-setting process.

85 per cent of cases completed within 18 months of commencement

The Court has set a time goal of 85 per cent of cases (excluding native title matters) to be disposed within eighteen months from commencement. The goal is regularly reviewed by the Court.

In 2002-03 the Court completed 80.2 per cent of cases in its original and appellate jurisdictions within eighteen months. Further details about the completion of cases are set out in Chapter 3.

Judgments to be delivered within three months

The Court has set the period of three months as the goal within which reserved judgments will be delivered. The degree to which the Court will meet this goal is dependent upon the complexity of the case and the pressure of other business upon the Court. During 2002-03 the Court handed down 1,145 reserved judgments, with almost 76 per cent of them delivered in less than three months from the date of being reserved.

Financial results

As a result of careful management the Court achieved a surplus for the reporting year. The Court initiated a range of savings strategies during the reporting year which contributed to this positive outcome. Possible savings initiatives arising from the Organisation Review will also a priority for implementation in 2003-04.