

CHAPTER 2

THE YEAR IN REVIEW

2.1 INTRODUCTION

The year under review saw the Court continue to achieve its objective of promptly, courteously and effectively deciding disputes according to law so as 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 further recognition of its role as a world class civil court.

2.2 SIGNIFICANT ISSUES AND DEVELOPMENTS

During the reporting year the Court managed and, in most cases, successfully dealt with a number of significant issues and developments. These include the following.

Corporations Law and cross-vesting

The High Court's decision in *Re Wakim Ex parte McNally & Anor* in June 1999 effectively removed the Court's jurisdiction in Corporations Law matters. As the number of Corporations Law cases had already been declining prior to the decision, the loss of the jurisdiction did not, of itself, reduce the Court's workload. Any reduction that did occur was, in any event, completely consumed by the native title and other workload of the Court.

Native title matters

As a result of the amendments to the *Native Title Act 1993* which commenced on 30 September 1998, the Court continued to be responsible for managing native title matters. During the reporting year the Court implemented a number of initiatives in this jurisdiction, including:

- proposing a time goal of three years from commencement for the completion of pending and new native title claims;
- implementing a national case allocation system which enables the Court to use all its judicial resources across Australia for managing and hearing native title matters;
- introducing a range of practice and procedure changes designed, among other things, to reduce the size of claims (by combining applications) and to refine the range of issues in dispute between the parties (by case management conferences).

Details about these and other initiatives are set out in Chapter 3 of this report.

Human rights jurisdiction

In April 2000 the Court acquired jurisdiction to hear and determine complaints alleging unlawful discrimination under the *Race Discrimination Act 1974*, *Sex Discrimination Act 1984* and *Disability Discrimination Act 1992*. The Court adopted specific rules and 'user-friendly' forms for the new jurisdiction. It conducted briefing sessions in most State and Territories for the community and the legal profession, and published brochures, guides and information on its Internet home page. The information on the home page is available in eleven community languages. The Court has received very complimentary comments about the briefing sessions and its approach to the new jurisdiction.

Federal Magistrates Court

The Court worked extensively with the new Federal Magistrates Court to put in place arrangements for the provision of registry services and other assistance to the Federal Magistrates Court in its non-family law jurisdiction. The registrars of the Court have been appointed as registrars of the Federal Magistrates Court, and the staff of the Federal Court's registries provides customer services for the new Court.

New case management system

Considerable progress was made in developing the Court's new case management information technology system. The new system will assist judges in the management of their docket caseload, enhance the collection and analysis of information about the Court's work, and provide better access to case information for litigants, lawyers and the public. The design process has involved extensive input from judges and staff of the Court about the services the system must provide.

The design also provides for e-commerce involving parties to proceedings and their representatives. The Court continues to consult closely with the representatives of parties who have an interest in the development of the Court's proposed electronic filing system.

Establishment of the Strategic and Communication Services Unit and the Community Relations Program

In August 1999 the Court established a Strategic and Communication Services Unit within the Principal Registry to provide strategic management and communication advice, information, reports and specialist services to the Chief Justice, the Court's Committees and the Registrar. The Unit is also responsible for the Court's Community Relations Program. This Program aims to enhance public understanding and confidence in the Court by providing community information, and seeking comments from Court users and the community about their needs and the issues affecting them.

New judges' robes

Since the commencement of the 2000 Law Term on 7 February 2000, judges of the Court have worn two newly designed robes – one for hearing first instance matters and another for appellate cases. The design of the robes is intended to break some of the more traditional notions of judicial dress, by conveying an image of the Court as a contemporary and accessible institution and reflects the enduring symbolism of the importance of the independent judicial function.

The design is based on a square, with a series of seven vertical 'tucks', intended to provide both visual interest and to be symbolic of federal jurisdiction. The six States and the Territories are symbolised by seven elements, as they are in the seven points of the Federation Star. The spacing between each tuck varies to illustrate the differences in geographical and jurisdictional breadth of the Court's work across each State and Territory.

Appellate robes also include a series of seven equally-spaced vertical tucks running the full length of the front and back of the robe, to suggest equality and fairness. These tucks are in ribbon of a deep red, the Court's traditional colour and also the colour of the Senate.

2.3 THE COURT'S PERFORMANCE AND FINANCIAL RESULTS

Workload

During the year there were a number of changes to the Court's jurisdiction, as outlined in Chapter 3 of this report. These changes resulted in the Court losing some work and gaining other work. At the same time, the time and resources devoted to native title matters increased. This occurred as more cases were managed by the Court towards resolution or trial. At the same time, the Court's appellate workload increased – not simply in terms of the number of appeals, but also by the type and complexity of the issues in dispute. Native title matters on appeal before the Full Court of the Federal Court have taken up an extraordinary amount of the Court's judicial time. One appeal took three weeks to hear and many months afterwards to collate and consider the volumes of transcript and other documents. There is also an increase in the trend for persons 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.

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

Migration matters

Migration Act cases continue to form a large part of the Court's work. Since the 1995-96 reporting year the number of Migration Act cases has increased by more than 150 per cent (from 331 cases in 1995-96 to 829 cases in 1999-2000). Many migration cases proceed to appeal, and now make up 36 per cent of the Court's appellate workload (compared to 8 per cent in 1995-96).

Appeals

The appellate work of the Court continues to increase. Almost the same number of appeals were filed in 1999-2000 as in 1998-99, representing an increase of almost 150 per cent in the Court's appellate workload since 1995-96. As previously mentioned, many of the appeals arise from native title matters which, given their complexity and the long hearing time at first instance, usually take a long time to hear on appeal. This will be a substantial issue for the Court to manage in the next few years as the number of native title matters finalised at first instance increases. The Chief Justice has established an Appeals Management Taskforce within the Court to identify critical issues and propose solutions to those issues.

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.

85 per cent of cases completed within 18 months of commencement

The Court has previously reported that it had set a time goal of 98 per cent of cases to be disposed within eighteen months from commencement. In the light of the large number of long cases, particularly native title matters, coming before it, the Court decided to reduce that percentage to 85 per cent for the time being. This percentage is regularly reviewed by the Court.

Notwithstanding the revised time goal, in 1999-2000 the Court completed 90.8 per cent of cases within eighteen months – a small increase in the percentage of completed cases for 1998-99. Further details about the completion of cases is 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 1999-2000 the Court handed down some 1,150 reserved judgments, with almost 75 per cent of them delivered in less than three months from the date of being reserved.

External review by the Australian Law Reform Commission

In January 2000 the Australian Law Reform Commission completed its review of the federal civil justice system when it published its final report, *Managing Justice – A review of the federal justice system* (ALRC 89). The Commission, in its report and the preceding discussion and background papers, generally praised the operations of the Court. In *Managing Justice*, it notes that in “consultations and submissions, the Commission heard consistent high praise about the quality judging and effective management of the Federal Court” – comments which the report later describes as a “significant accolade” of the Court.

Financial results

As a result of careful management, the Court achieved a surplus for the reporting year. The surplus mainly comprises unexpended native title funding which is likely to be used in the next financial year and 2001-02 as more native title matters come before the Court for intensive case management and determination.

2.4 THE OUTLOOK FOR 2000-01

Changes to jurisdiction and the mix of cases before the Court

The Court expects the proportion of complex cases coming before it will increase as a result of changes to its jurisdiction and the availability to parties of the Federal Magistrates Court for simpler matters. During 2000-01 the Court will continue to develop and implement practices and procedures for ensuring complex cases are dealt with efficiently. At the same time, the Court will free resources for complex cases by transferring simpler matters to the Federal Magistrates Court.

Restoration of Corporations Law matters

The Court expects that its Corporations Law jurisdiction will be restored during 2000-01. Given its existing workload, the Court will be giving careful consideration as to how the return of this jurisdiction can be handled most effectively.

Native title matters

The management of native title matters is likely to become increasingly complex and resource intensive for the Court as more cases complete the case management and mediation stages and, if not resolved by agreement, proceed to trial. To meet its three year time goal, the Court will continue to develop and implement innovative procedures for the management and resolution of native title matters.

The new case management system and electronic filing project

Development of the Court’s new case management system will continue in the next year. Work will also continue on developing strategies for the implementation of the system, including the need for ‘re-engineering’ various work processes, and for providing training and support to judges and Court staff.

The next year will also see the Court continue the implementation of its electronic filing project. Over the next twelve months the Court will introduce the rules and technology for documents to be both filed and served electronically.

Community relations

A major project of the Court’s Community Relations Program for the next year will be to contribute to the community’s civic knowledge during the Centenary of Federation by developing educational materials which will form part of the national civics curriculum for schools. As part of the project, the Court will host a national art competition and two awards will be given in each State and Territory for art produced by school students in lower secondary to year 10. The key objective of this project is to promote a greater understanding of the legal

system and the role of the Federal Court in delivering justice. The Court will undertake this initiative with Curriculum Corporation, a national non-profit organisation which has developed the national civic education program *Discovering Democracy*.

Remaining a world class civil court

The Court will continue to attempt to maintain its reputation as a world class civil court through pursuing all the initiatives and targets mentioned above.

