

CHAPTER 3

THE WORK OF THE COURT IN 2002-2003

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 well-being of all Australians.

This Chapter reports on the Court's performance against this objective. In particular, this Chapter 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 through changes to its practices and procedures and also through the increased use of technology within the Court. The Chapter also reports on the Court's work with overseas jurisdictions.

3.2 MANAGEMENT OF CASES AND DECIDING DISPUTES

Introduction

This part of the annual report examines the Court's jurisdiction, management of cases, workload and use of assisted dispute resolution.

The Court's jurisdiction

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

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 5.7 on page **Error!**

Bookmark not defined. for comparative statistics regarding Trade Practices Act matters.

Administrative law is an important area of jurisdiction. Many cases arise under the *Administrative Decisions (Judicial Review) 1977*. This Act provides for judicial review of most administrative decisions made under Commonwealth enactments on grounds relating to the legality, rather than the merits, of the decision. The Court also hears appeals on questions of law from the Administrative Appeals Tribunal under the Act. The Tribunal has power to review on the merits many Commonwealth administrative decisions. Appeals from the Tribunal are heard by the Court in its original jurisdiction.

The Court also has jurisdiction under the *Judiciary Act 1903* to hear applications for judicial review of decisions by officers of the Commonwealth. This jurisdiction includes the review of 'privative clause' and other decisions by the Migration Review Tribunal and the Refugee Review Tribunal under the *Migration Act 1958*. Most of the decisions for which review is sought are concerned with whether a person may reside in Australia permanently. The Court's migration jurisdiction is discussed on page 34.

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, trade marks 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. Since 30 September 1998, the Court has had 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 ('NNT Tribunal') and matters filed under the Administrative Decisions (Judicial Review) Act involving native title. The Court's native title jurisdiction is discussed on page 36.

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 nine arrests, with one vessel still under arrest as at 30 June 2003. One vessel, the 'MSC Sumatra', was sold in the reporting year pursuant to an order of the Court. See Figure 5.9 on page **Error! Bookmark not defined.** 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 5.6 on page **Error! Bookmark not defined.** for a comparison of corporations matters filed in the last five years.

The Court exercises jurisdiction under the Bankruptcy Act. 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.

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. On 14 October 2002 the Court's jurisdiction to hear and determine appeals from the Supreme Court of the Australian Capital Territory ('ACT') was transferred to the ACT Court of Appeal. The Court's appellate jurisdiction is discussed on page 33. Figure 5.10 on page **Error! Bookmark not defined.** shows the appeals filed in the Court since 1998-99. Figure 5.11 on page 134 shows the source of Full Court appeals.

This summary refers only to some of the principal sources of the Court's work. Other matters heard by the Court range from cases involving anti-dumping notices, tariff concession orders, to cases arising under Commonwealth anti-discrimination legislation. Statutes under which the Court exercises jurisdiction are listed in Appendix 4 on page **Error! Bookmark not defined.**

Changes to the Court's jurisdiction in 2002–03

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

- *Jurisdiction of Courts Legislation Amendment Act 2002*
- *Workplace Relations Amendment (Registration and Accountability of Organisations) Act 2002*
- *Copyright Amendment (Parallel Importation) Act 2003.*

Amendments to the Federal Court of Australia Act

On 14 October 2002, the *Jurisdiction of Courts Legislation Amendment Act 2002* made a number of amendments to the Federal Court of Australia Act. These included new provisions on the use of video and audio links to receive submissions and evidence, allowing the Chief Justice of the Federal Court to refer part of a matter to the Full Court, abolishing the office of judicial registrar, allowing a single judge in an appeal to order that an appeal be dismissed for want of prosecution or failure to comply with a direction of the Court, and allowing a writ, commission or process to be signed by affixing an electronic signature.

The Court is seeking further amendments to the Federal Court of Australia Act to make it clear that a single Judge may grant an interlocutory injunction to operate pending a determination of an appeal to a Full Court, enhance the power of a single Judge to exercise Full Court jurisdiction in relation to certain interlocutory matters, and provide that a person seeking leave to intervene in a proceeding has no right to appeal (by leave or otherwise) against an order refusing intervention or an order specifying the terms and conditions to which intervention will be subject.

Amendments to the Federal Court of Australia Regulations

During the reporting year, the Court provided detailed comments to the Attorney-General's Department in relation to a draft of the revised Federal Court of Australia Regulations. The new Regulations are being written using plain language and a simpler structure, and incorporate a number of amendments to address various administrative issues. As noted in previous annual reports, many of the suggested changes will support the Court's electronic filing facility.

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 drafted by the Court's Rules Committee with the assistance of

the Deputy Registrar. An officer from the Office of Legislative Drafting within the Attorney-General's Department assists with the form and publication of the new Rules.

The Rules are kept under review. New and amending rules are made when needed to ensure that the Court's procedures are up to date 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:

- revise the rules concerning, and introduce a new form of application for, applications under the Judiciary Act for the review of certain decisions under the Migration Act;
- make specific provision for the granting of leave, with or without conditions, to a person seeking to intervene in a proceeding or appeal;
- the rules dealing with proceedings under the Workplace Relations Act in light of major changes to that Act in relation to the regulation of registered organisations;
- allow the Court or a Judge to delegate to a registrar the power of the Court to issue a writ of execution; and
- omit the rules concerning the receipt of appearances, submissions and evidence by audio or video link as these were no longer necessary given amendments to the Federal Court of Australia Act on the use of audio and video links.

Other amendments were made in relation to the rules for default judgment, transfers to the Federal Magistrates Court, use of assisted dispute resolution, service of documents by the Court, and the scale of solicitors' costs. Minor amendments were made to a number of other rules.

The *Federal Court (Corporations) Rules 2000*, which sets out the rules for proceedings in the Court under the Corporations Act and the ASIC Act, was amended in June 2003 to replace references to the Corporations Law and ASIC Law with references to the Corporations Act and ASIC Act, update references to particular provisions of the Corporations and ASIC Acts that have been renumbered or otherwise altered, suggest possible wording for an application and affidavit in support in a proceeding for the winding up in insolvency on the ground that the company has failed to comply with a statutory demand, and require a liquidator or provisional liquidator to disclose the hourly rates to be charged for work done in that capacity.

Practice Notes supplement the procedures set out in the Rules of Court. During the reporting year, the Chief Justice issued a revised Practice Note No 7 on the listing of matters for hearing outside the Law Term. No new Practice Notes were issued.

Practice Notes are available without charge through District Registries and on the Court's Internet home page. They have been reproduced in looseleaf services by law publishers. 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 looseleaf legal services.

The Court also issues notices and guides on particular aspects of its practice and procedure. In December 2002, the Registrar issued the *National Guide to Counsel Fees 2002–03* for the purpose of assisting the Court’s taxing officers when determining the amount of Counsel fees that might be recovered pursuant to a costs order.

Rules Revision Project

The project to revise the Court’s Rules is continuing. The project is being conducted by the Rules Revision Committee convened by Justice Lindgren, and is supported by a Deputy Registrar and an officer from the Office of Legislative Drafting. The goals of the project are for the Court’s Rules to:

- (a) facilitate access to justice;
- (b) promote efficiency in the administration of the law;
- (c) complement and reflect the Court’s case management philosophy and systems;
- (d) take into account current and future advances in information technology (eg facsimile filing and electronic filing);
- (e) are easily capable of being updated; and
- (f) are simple and clear.

The revised Rules will contain a preamble in the nature of a statement of overriding objectives, and where practicable, will not use legal jargon or Latin terms.

Federal Court Workload in the General Federal Law Jurisdiction

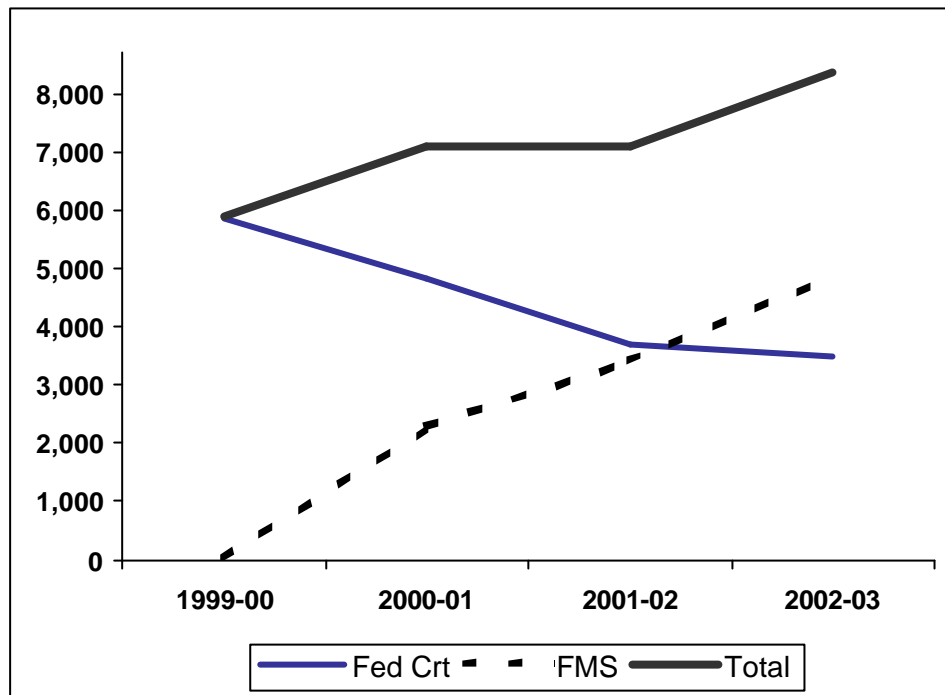
The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law, including bankruptcy, human rights and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general federal law jurisdiction.

As shown in Figure 3.1 below, the combined number of filings (excluding appeals) for the two courts has been increasing since the establishment of the Federal Magistrates Court in mid-2000. In 2002–03, a total of 8,388 first instance matters were filed in the two courts compared to a total of 5,885 in 1999–2000.

This increase has had a considerable impact on the Federal Court’s registries, which must process the documents filed in these matters, and provide the administrative support for each matter to be heard and determined by the relevant Court. The impact is even more significant when the following factors are also taken into account:

- each matter transferred from the Federal Court to the Federal Magistrates Court involves the registries opening and processing two files – in 2002–03 this occurred on 716 occasions; and
- in 2002–03 the registries had to deal with 622 appeals to the Federal Court (of which 227 were from decisions of the Federal Magistrates Court) compared to 407 in 1999–2000.

Figure 3.1
Filings to 30 June 2003 (excluding appeals)
Federal Court and Federal Magistrates Court



Caseflow management of the Court's jurisdiction

The Court has adopted as one of its key caseflow 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, leading to greater familiarity with and more efficient management of the proceeding.

Disposition of matters other than native title

In 1999–2000 the Court set a period of eighteen months from commencement as the goal within which it should dispose of at least 85 per cent of its cases (excluding native title cases). The time goal was set having regard to the growing number of long, complex and difficult cases, the impact of native title cases on the Court's workload, and a decrease in the number of less complex matters (such as winding up and related applications under the Corporations Law). It is reviewed regularly by the Court in the light of changes to the incoming workload and the resources available to dispose of that workload. The Court's ability to continue to meet its disposition targets is dependent upon the timely replacement of judges.

Notwithstanding the time goal, the Court expects that most cases will be disposed of well within the eighteen month period, with only particularly large and/or difficult legal and/or

factual cases requiring more time. Indeed, many cases are urgent and need to be disposed quickly after commencement. The Court's practice and procedure facilitates early disposition when necessary.

During the five year period from 1 July 1998 to 30 June 2003, 89.2 per cent of cases (excluding native title matters) were completed in less than eighteen months, 82 per cent in less than twelve months and 64.3 per cent in less than six months (see Figure 5.4 on page 127). Figure 5.5 on page 128 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2002–03, 80.2 per cent of cases were completed within eighteen months. This compares to 90.8 per cent in the previous reporting year.

The decrease in the proportion of cases completed within eighteen months reflects the continuing change in the mix of cases dealt with by the Court since 2000–01. In particular, the proportion of complex cases that make up the Court's workload continues to increase as simpler matters are commenced in, or transferred to, the Federal Magistrates Court. The longer time needed to resolve complex cases, coupled with the impact of the large number of native title matters, is affecting the Court's ability to meet its goal of disposing of 85 per cent of matters within 18 months. However, the change in the mix of cases has started to lead to a reduction in the time to complete complex cases as more judicial resources become available to deal with them.

Special issues arise in native title matters. Information on the disposition of these matters is discussed on pages 37 to 40.

Delivery of judgments

In the reporting period, 1,882 Full Court and single judge judgments were delivered. Of these judgments, 498 were delivered by the Full Court and 1,384 by single judges. 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.

The Court has set a goal for the delivery of judgments of three months from the date a judgment is reserved to the date when it should be delivered. The degree to which the Court is able to meet this goal depends on the complexity of each case in question and other issues, such as the pressure of the business upon the Court.

During the reporting period the median time between reserving and delivery of judgments was 35 days for Full Court appeals and 29 days for single judge matters. Almost 74 per cent of reserved judgments in Full Court appeals, and 76 per cent in single judge matters, were delivered within 3 months. It is important to note that these figures do not take into account the significant number of judgments in Full Court appeals and by single judges that are delivered on the day of the hearing. These calculations do not include the many decisions by registrars.

Decisions of interest

During the year the judges published over 1,880 decisions. As an illustration of the Court's varied jurisdiction, Appendix 7 on page 141 includes a summary of the following decisions.

- Constitutional law – Parliamentary election – Petition challenging entirety of general election
Gunter v Hollingworth
(30 July 2002, Justice Cooper)
- Administrative Law – Judicial review of a decision to grant a licence to construct a nuclear reactor
Greenpeace Australia Pacific v Chief Executive Officer of the Australian Radiation Protection Authority & Nuclear Safety Agency
(13 September 2002, Justice Beaumont)
- Administrative law – Judicial Review of appointment of Chief Magistrate of Northern Territory
North Australian Aboriginal Legal Service Inc v Bradley
(27 September 2002, Chief Justice Black, Justices Drummond and Hely)
- Trade practices - Whether an advertising agency could be liable for misleading or deceptive representations as a principal rather than via accessorial liability.
Cassidy v NRMA Health
(3 October 2002, Justice Jacobson)
- Administrative Law – Royal Commissions – Role of the Court in reviewing the conduct of Royal Commission
Ferguson v Cole
(20 November 2002, Justice Branson)
- Native Title – Inconsistency between state legislation and the right to negotiate in the *Native Title Act 1993* (Cth)
Queensland v Central Queensland Land Council Aboriginal Corporation Attorney-General (Cth) v Central Queensland Land Council Aboriginal Corp
(27 November 2002, Justices Beaumont, Lee and Kiefel)
- Constitutional Law – Whether claims not justiciable or enforceable as requiring for their determination the adjudication of acts of State or the validity, meaning and effect of the transactions of foreign sovereign States
Petrotimor Companhia de Petroles S.A.R.L v Commonwealth of Australia
(3 February 2003, Chief Justice Black, Justices Beaumont and Hill)
- Trade Practices – Domain names and cybersquatting – Misleading and deceptive conduct
CSR Limited v Resource Capital Australia Pty Ltd
(4 April 2003, Justice Hill)

- Migration – Mandatory detention of unlawful non-citizen pending removal – whether continued detention is authorised when there is no real likelihood or prospect of removal in the reasonably foreseeable future
Minister for Immigration and Multicultural and Indigenous Affairs v Al Masri
(15 April 2003, Chief Justice Black, Justices Sundberg and Weinberg)
- Administrative law – Whether alleged denial of procedural fairness by Tribunal a question of law – Whether evidence admissible to establish denial of procedural fairness
Clements v Independent Indigenous Advisory Committee
(27 June 2003, Gray ACJ, Justices North and Gyles)
- Income tax – Whether an elite athlete was required to pay income tax on prize monies, grants, sponsorship and attendance fees
Stone v Commissioner of Taxation
(27 June 2003, Justices Heerey, Emmett and Hely)
- Trade Practices – Whether Safeway had taken advantage of its power in the wholesale bread market for the purpose of damaging competitors in the retail market or of preventing each of the bread manufacturers engaging in competitive conduct in contravention of the *Trade Practices Act 1974* (Cth)
Australian Competition & Consumer Commission v Australian Safeway Stores Pty Limited
(30 June 2003, Justices Heerey, Sackville and Emmett)

The workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 4,218 cases were commenced in the Court's original jurisdiction, an increase of 294 compared to 2001–02. The increase in filings between the two reporting years was due principally to an increase in the number of migration matters (455 more filings) and corporations cases (114 more filings). These increases were partly offset by a decrease in filings in other areas of the Court's jurisdiction, including bankruptcy (72 fewer filings) and native title cases (60 fewer filings).

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 2002–03, 667 matters were remitted or transferred to the Court:

641 from the High Court of Australia
0 from the Family Court of Australia
9 from the Federal Magistrates Court
17 from State or Territory Supreme Courts

Matters may be transferred from the Court under:

Federal Court of Australia 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 2002–03, 736 matters were transferred from the Court:

0 to the Family Court of Australia
695 to the Federal Magistrates Court
38 to State or Territory Supreme Courts
3 to State District or County Courts
0 to State or Territory Local or Magistrates Courts

Matters completed

Table 5.2 on page 122 shows a comparison of the number of matters commenced in the Court's original jurisdiction and the number completed. The number of matters (including bankruptcy matters) completed during the report year was 4,651, against 4,266 in the previous reporting year. The increase in the number of completed matters was primarily due to an increase in the number of matters transferred to the Federal Magistrates Court. If transferred matters are excluded, then the number of matters completed in 2002–03 is 3,935 compared to 3,941 in 2001–02.

Matters on hand

The total number of matters on hand in the Court's original jurisdiction at the end of the reporting year was 3,662 (see Table 5.2 on page 122), being 467 fewer than for the previous reporting year. This decrease is due to the increase in the number of matters transferred to the Federal Magistrates Court, and the consequential increase in the Court's capacity to complete the more complex matters which remain.

Age of pending workload

The comparative age of matters pending in the Court's original jurisdiction (other than native title matters) as at 30 June for the reporting year and the four previous reporting years is set out in Table 3.1 below.

Native title matters are not included in Table 3.1 because:

- they are subject to a special three year time goal;
- the majority of the 794 native title matters transferred to the Court on 30 September 1998, while deemed to have been filed in the Court on that day, continued to be substantively under the control of the NNT Tribunal for the purposes of mediation, completion of the registration test and other legislative requirements of the Native Title Act.

The age of pending native title matters is set out in Table 3.3 on page 39.

**Table 3.1 Current matters
(excluding Full Court appeals and native title matters)**

Age of matter	Current as at 30-Jun-99	Current as at 30-Jun-00	Current as at 30-Jun-01	Current as at 30-Jun-02	Current as at 30-Jun-03
under 6 month	1,859	1,709	1,894	998	1,403
6-12 months	809	896	676	656	459
12-18 months	278	355	324	846	207
Under 18 months	2,946	2,960	2,894	2,500	2,069
18-24 months	214	246	332	279	265
over 24 months	547	460	520	525	484
over 18 months	761	706	852	804	749
TOTAL	3,707	3,666	3,746	3,304	2,818

Table 3.1 shows the number of cases over 18 months old in the Court's original jurisdiction (excluding native title matters) has continued to decrease from the peak of 852 as at 30 June 2001. As at 30 June 2003 there were 749 cases over eighteen months old compared to 804 on the same day in 2002. This decrease confirms the positive impact that the Federal Magistrates Court is having on the Court's capacity to finalise more complex matters more quickly. The decrease is particularly significant given that 266 of the cases over eighteen months old are taxation matters which have been inactive pending the hearing and determination of a number of test cases.

Table 3.1 also shows that the number of matters aged 12-18 months has returned to a level consistent with that which existed prior to 30 June 2002 when the unusually high number of taxation matters filed in 2000-01 produced an anomaly. The increase in matters aged under six months reflects the large number of migration cases remitted by the High Court to the Court in early 2003.

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 112.

The Court's Appellate Jurisdiction

The 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.

Appeals from the Federal Magistrates Court may be heard by a Full Court of the Federal Court or by a single Judge. 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 Full Court hearings adds to the workload of the Court and, as judges who sit on Full Courts have less time to devote to their own individual docket work, impacts on the Court's ability to dispose of first instance work. Any substantial increase in Full Court 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. It may be necessary, in the near future, to suggest legislative changes to help manage the Court's appellate workload, such as broadening the leave to appeal requirements.

Towards the end of each calendar year, the Court publishes its program of Full Court sittings for the following year. In the 2003 calendar year, four Full Court sittings have been programmed for Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, Hobart and Darwin. Once appeal books are prepared by the parties, an appeal 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, 27 special Full Court hearings (totalling 15 hearing days) were held to enable the early disposition of urgent appeals.

The appellate workload

In 2002–03, 622 appeals were filed in the Court (see Table 5.3 on page 123). This was 19 appeals, or 3.1 per cent, more than the number of appeals in 2001–02. The number of appeals is dependent on many factors including the number of first instance matters disposed of in a reporting year, the mixture and the types 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 as to the constitutionality of legislation.

The source of appeals has shifted significantly in the last twelve months. In 2001–02, there were 66 appeals from the Federal Magistrates Court, representing 10.9 per cent of the total

number of appeals filed. In 2002–03, 227 or 36.5 per cent of the total number of appeals to the Court were against decisions of the Federal Magistrates Court. This change is primarily due to a greater proportion of migration cases being heard at first instance by the Federal Magistrates Court, many of which are then the subject of an appeal to the Federal Court. Further information on the source of appeals is set out in Figure 5.12 on page 134.

Although it is difficult to predict future appellate workload, the Court expects that the number of appeals is likely to increase in the next reporting year as a result of the increase in the number of migration matters being dealt with at first instance by the Court and by the Federal Magistrates Court.

In the reporting year, 645 appeals were completed, against 520 in 2001–02. The higher number is due to almost 85 per cent of appeals from the Federal Magistrates Court being heard by a single Judge, and changes to the type and complexity of appeals being heard by the Full Court.

As at 30 June 2003 there were 331 pending appeals, which is 3 less than for the previous reporting year.

The comparative age of matters pending in the Court’s appellate jurisdiction (including native title appeals) as at 30 June for the reporting year and the four previous reporting years is set out in Table 3.2 below. The table shows that as at 30 June 2003 there were 21 appeals over 18 months old – a small increase from the 19 appeals over 18 months old as at 30 June 2002.

Table 3.2
Current Full Court appeals

Age of appeal	Current as at 30-Jun-99	Current as at 30-Jun-00	Current as at 30-Jun-01	Current as at 30-Jun-02	Current as at 30-Jun-03
under 6 months	173	139	163	233	219
6-12 months	59	33	47	67	73
12-18 months	14	26	10	15	18
under 18 months	246	198	220	315	310
18-24 months	10	6	3	8	6
over 24 months	23	17	22	11	15
over 18 months	33	23	25	19	21
TOTAL	279	221	245	334	331

The Court’s workload in particular areas of its jurisdiction

Migration matters

In October 2001 the Migration Act was amended by the substitution of new provisions which gave the Court jurisdiction under sections 39B and 44 of the Judiciary Act to review 'privative clause decisions' made by the Migration Review Tribunal and the Refugee Review Tribunal. The Act provides that a 'privative clause decision' is a decision of an administrative character under the Migration Act, or regulations or other instruments made under the Migration Act, and that such a decision is final and conclusive and not subject to judicial review.

In last year's annual report, the Court indicated that it expected that the number of migration matters commenced in the Court would decline once the effect of the privative clause has 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 an administrative decision involving jurisdictional error is not a privative clause decision, and that proceedings where the plaintiff asserts jurisdictional error may be commenced in the Federal Court and Federal Magistrates Court, and may be remitted by the High Court to the Federal Court. This decision led to:

- the High Court remitting 586 matters to the Federal Court that had been pending the decision in *Plaintiff S157/2000*; and
- an increase in applications to the Federal Court (and the Federal Magistrates Court) as litigants realised they are not subject to the privative clause if relief is sought on the basis of jurisdictional error.

The High Court has 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.

Prior to October 2001, most migration cases came to the Court pursuant to the scheme for judicial review provided by Part 8 (as it then was) of the Migration Act, and the Court's annual reports contained details of only these cases. Since October 2001, most applications are made under the Judiciary Act. To permit a meaningful analysis of the Court's migration workload for the period 1998–99 to 2002–03, in this annual report the migration workload for each year has been revised to include all applications for the review of decisions under the Migration Act, irrespective of the legislative basis for that review. The revised figures are set out in Figure 5.8 on page 131.

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 High Court remitting over 580 cases to the Court in February and March 2003. The number of migration cases would have been significantly greater but for the Federal Magistrates Court, in which 740 applications were commenced which would otherwise have been started in the Federal Court.

The Court has established specific procedures in New South Wales, Victoria and South Australia to deal with the large number of cases remitted to them by the High Court. In New South Wales and Victoria, matters are being listed before a single Judge to identify and dispose of any which will not be proceeding, transfer appropriate cases to the Federal Magistrates Court and allocate the remainder to the Judges' dockets. In South Australia,

where 365 matters were remitted, arrangements were made with the representatives of the parties for the management of the cases using standard orders for the filing and service of further documents followed by a directions hearing at which the Court may dispose of the matter, transfer it to the Federal Magistrates Court or set it down for hearing. It is proposed that matters proceeding to trial in South Australia will be listed for hearing at a rate of 10 per week every second week starting in July 2003.

To help manage its migration workload, the Court aims to complete migration matters at first instance within four months from the date of filing where the applicant was in migration detention, and within six months in other cases. In 2002–03, 68 per cent of cases involving an applicant in detention were completed within four months of filing, and 88 per cent of other migration cases were completed within six months of filing.

Migration Act matters also form a substantial and increasing proportion of the Court's appellate jurisdiction. In 1998–99, 22.7 per cent of appeals concerned decisions under the Migration Act. This can be contrasted with 2002–03, where 66.5 per cent of appeals involved a review of a decision under the Migration Act. There was an increase of 73 in the number of appeals filed in 2001–02 compared with the number filed in the previous year.

Native Title Matters

The native title jurisdiction

Since 30 September 1998 the Court has had responsibility for the management and determination of native title applications. The Court's jurisdiction is discussed on pages 21 to 23. To perform these functions the Court has a wide range of powers in relation to the management and resolution of native title applications.

Under the regime, applications are filed in the Court and not the NNT Tribunal. Applications that satisfy the Court's requirements are referred to the NNT Tribunal, which applies a registration test to determine whether the native title applicant has the right to negotiate. The NNT Tribunal will also mediate applications referred to it by the Court.

Strategic Management of Native Title Cases

Native title is widely recognised as a complex area of law with a developing jurisprudence. In addition to the legal complexity, native title litigation is frequently time consuming and resource intensive, involving a range of parties (including indigenous people, governments and industry) and various evidential issues (including the need to hear evidence in remote locations, and to take evidence from elders and other witnesses who may not be living by the time a matter comes to trial).

The Court is committed to ensuring that these complexities do not prevent the determination of claims within a reasonable timeframe. To this end, the Court has adopted an active approach to the effective and efficient management of native title cases, which aims to create and support a culture of activity and progress. The Court's approach recognises the special and complex character of native title litigation and the need to adopt a strategic approach to the management these cases without compromising the independence of the Court in its decision-making. The Court uses a range of innovative strategies to assist the management of native title cases.

The features of this approach include:

- Native Title Coordination Committee
- The National Allocation Protocol
- The Native Title User Groups
- The Native Title Time Goal
- Other strategies, including Case Management Conferences and Early Neutral Evaluation

The Native Title Coordination Committee

The Native Title Coordination Committee consists of senior judges and staff of the Court. The Committee meets regularly and provides national planning advice to the Chief Justice and judges on the management of the native title workload.

The national allocation protocol

The Court has a national allocation protocol for the case management and listing of native title matters. Under the protocol each case is allocated provisionally to a judge (“the Provisional Docket Judge”) who, with the assistance of a Deputy Registrar, is responsible for the initial management of the case. The provisional allocation usually continues while the matter is being considered for registration by the Native Title Registrar and, where relevant, while it is in active mediation with the National Native Title Tribunal. When the matter requires substantive action (such as the hearing of a contentious interlocutory application), or is ready for a main hearing, the matter is referred to the Court’s Native Title Unit for substantive allocation to a trial judge.

As at 30 June 2003, 321 native title matters had been substantively allocated, of which 199 were still active, and managed by judges of the Court.

The native title user groups

User groups have been established nationally and in each State and Territory, and at a national level, to facilitate regular consultation on the Court’s native title work. Each group includes representatives of native title claimants, industry groups, pastoralists, mining, fishing and other interests, and the governments of the Commonwealth and the relevant State or Territory. The user group meetings provide an important opportunity for parties and interest holders to help judges and staff of the Court to plan and improve the management and listing of native title claims. Importantly, these meetings focus on the need for practical and timely outcomes in current cases.

A number of user group meetings were convened during the reporting period, including a meeting of the National User Group in Melbourne in May 2003. The National User Group meeting focussed on an exchange of information on the progress of native title cases and consequent resource demands on applicants and respondents. The meeting also provided an opportunity for the judges of the Native Title Committee and attendees to discuss ways in which the Court could improve its case management of native title cases to support the realisation of its revised time goal.

The State and Territory user group meetings in 2002- 03 were well attended and involved discussions of the Court's approach to its native title work. These meetings contributed significantly to the strategic management of native title cases as members of the user groups generally recognise that the meetings are an avenue for parties to set priorities so that their resources can be deployed in the most advantageous and efficient way.

Native Title Time goal

The Court originally set a time goal of three years from October 1999 or the date of filing (whichever was the later date) for the disposition of native title cases. To ensure its continued relevance as a performance measure, the time goal has been discussed extensively, including by the Native Title Coordination Committee and at the National User Group meetings the Court has convened.

It has been generally agreed within the Court that it is desirable to keep a national target, while noting that this may be varied at a regional level in light of information provided by relevant native title user groups or regional case conferences. The adoption of local timeframe targets was seen as consistent with views expressed at the National User Group meeting, and has been applied successfully in number of regional case management conferences held subsequently.

In August 2002, an amended time goal was agreed at a meeting of all judges of the Court. The revised time goal is:

That the three-year time goal for disposition of native title matters be treated as a desirable objective for the time elapsed between substantive allocation and final determination, subject to factors beyond the control of the Court including resource limitations of the parties and related to that the need to establish regional priorities for mediation and litigation of applications.

Other Strategies

Regional Case Conferences

The Regional Case Conferences initiatives allow the judge or judges (sometimes sitting together) to explore the development of priorities and timeframes for mediation, negotiation and litigation on a regional basis and in so doing to consider regional priorities, interrelated claims and resource considerations. The regional case management conferences allow parties to inform the Court of their priorities on a regional, rather than on a case-by-case basis.

The timing of a Court ordered case conference is often crucial. One example during the year involved a very successful conference convened by the Court before referral of the case to mediation by the Tribunal. With the cooperation of the parties and the Tribunal, the Court used the conference to develop timeframes to progress the mediation of the claim. The purpose of the conference was to prepare the case for mediation (by refining the issues), to assist in the speedy, orderly and efficient progress of the mediation, and to establish the clear supervisory role of the Court in the process.

Mediation

The Court has been practising what has been described as “court – annexed mediation” since the late 1980’s. A practice has emerged in the Court where a Judge may refer an aspect of a native title case to a Registrar for a case management conference or mediation under the *Federal Court Act* and *Federal Court Rules*. To date this practice has been working favourably for the parties. Issues have been resolved without the need to resort to a contested Court hearing. Registrars of the Court will continue mediating some discrete issues in native title proceedings.

Early Neutral Evaluation

Judges are also increasingly seeking informal procedures to encourage the parties to grapple with the issues with a view to assisting settlement. On occasions the Court itself may direct the use of early neutral evaluation (ENE) as an aid to mediation. In summary, ENE involves an informal and confidential process where an evaluator is selected by the parties (if there is no agreement the Court will nominate a person). The evaluator will consider the available evidence. Oral presentations may be made at an ENE and perhaps may be made by native title claimants themselves. The evaluator will offer an assessment in the form of a provisional non binding opinion on the strengths and weaknesses of the respective cases. All written and oral communications made in, or in connection with the ENE, are confidential.

Together with the mechanisms outlined above, the Court’s approach to managing native title cases, does, and will continue to involve the following general strategies:

- requiring a high level of specificity in the timetabling of mediation and the enhanced use of the measures available to the Court and the NNT under the Native Title Act;
- improved use of regional case management conferences;
- identifying activities within applications at a regional level which may benefit from greater use of different case management strategies;
- hearing of ‘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);
- the use of early neutral evaluation as an alternative dispute resolution mechanism;
- the management of some cases via the Court’s eCourt forum; and
- exploring ways to reduce the costs incurred by the parties and the Court in the conduct of a native title hearing.

The native title workload

**Table 3.3
Current Native Title Matters (including appeals)**

Age of matter	Current as at 30-Jun-99	Current as at 30-Jun-00	Current as at 30-Jun-01	Current as at 30-Jun-02	Current as at 30-Jun-03
under 6 month	56	25	78	55	18
6-12 months	757	57	51	66	42
12-18 months	22	35	21	68	47
under 18 months	835	117	150	189	107
18-24 months	8	630	41	44	62
over 24 months	11	36	617	598	686

over 18 months	19	666	658	642	748
TOTAL	854	783	808	831	855

It is important to note that the figures set out in Table 3.3 are based on all applications under the Native Title Act that have been filed in the Court and which remain open on the Court's data base FEDCAMs. However, in approximately 160 cases the individual case is effectively closed because it has been combined or consolidated with one or more cases and the matter is proceeding with a lead case. For these cases, the individual file has not been closed and remains 'open' for the purpose of the Court's database. The consolidation and streamlining of native 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 2003, there were, in practical terms, 611 active native title claimant applications.

Active judicial case management of native title cases since 1998 has led to a substantial number of native title applications being amended, combined, withdrawn or discontinued. At 30 June 2003, of the 611 active claimant applications before the Court, the NNT was mediating 332. There were also 22 compensation claims.

Of the 611 active claimant applications before the Court, 528 have been notified. Under the Native Title Act, the Native Title Registrar must notify the public about native title applications, compensation applications, non-claimant applications or applications to register an indigenous land use agreement. Applications are notified to ensure that relevant people and organisations have the opportunity to apply to the Federal Court to become a party to the application and to participate in mediation. Once the notification process has been completed, the application may proceed.

During the reporting year, the Court made two determinations that native title exists. One determination that native title does not exist was made after a contested hearing, and another determination was made by consent after extensive mediation.

Notwithstanding that the Court heard evidence in 14 native title native title hearings comprising 24 claimant applications, the number of determinations was less than that in 2001–02.

As at 30 June 2003 there were a significant number of cases under substantive allocation, which were not progressing because of a range of factors, including the ability and preparedness of State and Territory Governments to commit resources to the resolution of native title, the level of funding available to the Native Title Representative Bodies, as well as the general resource implications of conducting native title cases.

The Court is keenly aware of the need to reduce the costs involved in bringing a matter to closure and, at times has adopted a number of initiatives to achieve this. For example, where appropriate some judges have made orders requiring that evidence be video taped and then viewed by the Court and the parties at a venue determined by the Court, rather than hearing the evidence of some witnesses in the actual area under claim.

In the reporting period the Court has also commenced a process to evaluate the efficiency and effectiveness of its conduct of remote hearings. The Native Title Coordination Committee recognised that it is desirable for the Court to review the approach taken to conducting hearings “on country” and initiated an evaluation. Consultants with expertise in matters relevant to native title hearings were invited to evaluate the practice of conducting hearings, including the following:

- the methods used to take evidence in native title cases;
- the causes of excessive costs and delay;
- the options to reduce costs and delays;
- the procedures and case management initiatives used by the Court to manage the conduct of native title hearings; and,
- the options for gathering evidence, including the taking of early evidence and the video taping of evidence.

The review will be completed during 2003-2004.

Native Title Decisions of Interest

During the reporting year, a number of decisions of the Court have given important consideration to provisions of the Native Title Act, and clarified the following:

- whether the authorisation of those named as the applicant in the particular native title claimant application had been revoked and what evidence the Court requires in order to be satisfied that the requirements of section 66B of the Native Title Act have been met. (See *Lawson v Minister for Land and Water Conservation for New South Wales* [2002] FCA 1517 per Stone J, 9 December 2002, *Holborow v Western Australia* [2002] FCA 1428 per French J, 20 November 2002, *Ward v Northern Territory of Australia* [2002] FCA 1477 per Mansfield J, 2 December 2002);
- the proper role of the National Native Title Tribunal in all phases of the mediation of a claimant application and the approach the Court might take to ensure a more systematic and focussed approach to the progression of native title claims than has occurred to date (*Frazer & Ors v Western Australia* [2003] FCA 351 per French J, 17 April 2003);
- the factors relevant to the Court’s consideration of an application to amend a native title claimant application made under section 64 of the Native Title Act (*Harrington-Smith v Western Australia* (No 5) [2003] FCA 218 per Lindgren J, 14 February 2003 and 19 March 2003);
- the factors relevant to the Court’s consideration of an application brought pursuant to s. 84(5) of the NTA by a person or group of persons seeking to become a party to a claimant application. (See *Kulkalgal People v Queensland* [2003] FCA 163 per Drummond J, 28 February 2003, *Birra Gubba (Cape Upstart claim) v Queensland* [2003] FCA 276 per Drummond J, 28 March 2003, *Bidjara People 2 v Queensland* [2003] FCA 324 per Ryan J, 7 April 2003, *Wilson on behalf of the Bandjalang People v Dept of Land & Water Conservation* [2003] FCA 307 per Hely J, 9 April 2003).

Assisted Dispute Resolution

The Court's program of Assisted Dispute Resolution ("ADR"), which commenced in 1987, is of the type described as a court-annexed mediation program. The only matters dealt with in the program arise out of proceedings in the Court. Mediations are normally conducted by the Court's registrars who have been trained as mediators. However, when parties wish to use the services of appropriately qualified external mediators, the Court facilitates their doing so. Figure 3.2 on page 43 below sets out the number of matters referred to mediators during the period 1998–99 to 2002–03. The program has proved popular, with a total of 3,114 matters referred to mediation since its commencement in 1987. Of that total, 1,495 were referred in the period 1998–99 to 2002–03, or an average of 299 referrals per reporting year.

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, native title, taxation, workplace relations, bankruptcy and admiralty.

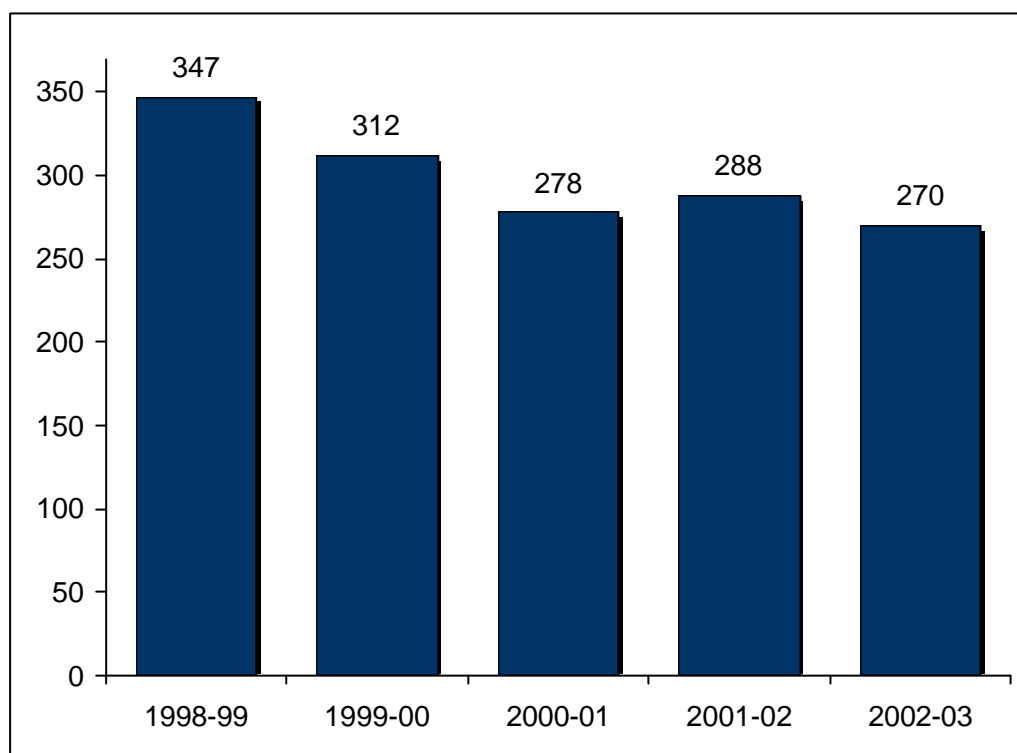
Prior to 17 April 1997, the program was based upon parties consenting to mediation. However, from that date, section 53A of the Federal Court of Australia Act was amended to provide for non-consensual mediation.

With the introduction of the Court's Individual Docket System greater emphasis has been put on the early identification of cases suitable for ADR. In the reporting year 270 matters were referred to ADR.

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) 1998-99 to 2002-03
(matters referred for mediation)**



External Mediations

Seventy-six matters were referred to external mediators in 1998-99, 56 in 1999-00, 49 in 2000-01, 45 in 2001-02 and 39 in the reporting year. These figures are included in Figure 3.2.

Parties will often refer their case to external mediators without involving the Court. The Court does not keep a record of these mediations as they often occur without its knowledge.

Management of Cases and Deciding Disputes by Tribunals

The Court provides operational support to the Australian Competition Tribunal, Copyright Tribunal, Defence Force Discipline Appeal Tribunal and Federal Police Disciplinary Tribunal. This support includes the provision of registry services to accept and process documents for tribunal proceedings, collect tribunal fees (where payable), 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. A summary of the function of the tribunals and the work undertaken during the reporting year is outlined in Appendix 6 on page 136.

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 through 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 through 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, (formerly known as the Practice and Procedure Committee), is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee continued to work on the following key projects.

Review of Individual Docket System

The internal review of the Individual Docket System was completed, with the judges of the Court agreeing that:

- the Court should maintain the Individual Docket System;
- flexibility in the administration of the Individual Docket System across the Court should be an accepted part of the system and, at this stage, no rules should be introduced to limit this flexibility;
- the operation of the Individual Docket System in each registry should be reviewed annually, on a comparative basis, by the Judges in light of local reports provided by District Registrars and feedback from the Law Council of Australia and local practitioners; and
- information about the Individual Docket System on the Court's website should be reviewed to emphasise that any questions about the management of a case should be raised by the parties with the docket judge in the first instance.

Review of Guidelines for Expert Witnesses

The Committee also completed its review of the Practice Direction on Guidelines for Expert Witnesses 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. The revised Practice Direction, which includes an explanatory memorandum, was issued on 4 September 2003.

In addition to these key projects, the Committee considered a number of other issues including the following.

Costs in migration cases

The Committee considered whether there is any merit in the implementation of a short form bill of costs regime for standard migration cases. After considering the potential savings for parties and the Court, the Committee agreed in principle that a short form bill of costs be adopted as an option in standard migration matters which proceed to a hearing.

Consultation with Department of Immigration and Multicultural and Indigenous Affairs and the Law Council of Australia will be undertaken prior to any final recommendation being made.

Migration workload

The Practice Committee continues to monitor the migration caseload of each registry and any related procedural issues that may require change. In particular, the Committee has given careful consideration to the practice issues raised by the large number of cases remitted to the Court by the High Court following the High Court's decisions in *Re Minister for Immigration and Multicultural and Indigenous Affairs*; *Ex parte Applicants S134/2002*, *Plaintiff S157/2002 v Commonwealth of Australia* and *Muin v Refugee Review Tribunal* and *Lie v Refugee Review Tribunal*. The migration workload of the Court is discussed on page 34.

Private recording of court proceedings

This issue was put before the Committee as a result of the unauthorised recording of telephone directions hearings by self represented litigants in a proceeding in the Western Australian registry of the Court. The Committee has recommended that the Rules of Court be amended to provide that a private recording of a proceeding may only be made with the consent of the Court or a judge. Such consent may be subject to conditions. The proposed rule will also deal with the use of communication devices, such as two-way radios and mobile phones in a proceeding.

Liability of legal practitioners for costs

The Committee has recommended that the Rules be amended to, in effect, allow the Court or a judge to order a legal practitioner who is responsible for costs incurred improperly or without reasonable cause, or wasted by undue delay or by any other misconduct or default, to be liable for those costs. The amendment does not limit the broad discretion of the Court under section 43 of the Federal Court of Australia Act to make costs orders against non parties.

Other issues

Other issues considered by the Committee included:

- a new Practice Note concerning Lists of Authorities and Legislation and a revised version of Practice Note No 1 on appeals;
- access by non parties to court documents;
- taking overseas evidence by video link;
- legislative immunity for court appointed experts;
- security for costs of taxation;

- directions hearing and docket judge evaluation of the subject matter of the proceedings;
- discovery by category;
- reference of matters to external referees;
- interlocutory injunctions and the timeliness of final trial;
- forum shopping;
- use at trial by one party of statements filed by another pursuant to a pre-trial order;
- ‘novel’ directions and orders absent of proof in intellectual property cases;
- the need for a leave to appeal requirement for migration appeals;
- assisted dispute resolution and the use of court facilities; and
- issues arising from Court statistics and procedures in migration, human rights and corporations matters and transfers to, and appeals from, the Federal Magistrates Court.

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:

- event based fee scales;
- experts;
- costs and the revised approach in the United Kingdom to awarding them;
- the operation of the Individual Docket System;
- filing of documents;
- native title; and
- the Court’s scheme for the referral of litigants for legal assistance.

Assistance for Self represented Litigants

In recent years the growing number of self represented litigants has presented a range of problems for the Court. The complexity of the substantive law in a developed society, and statutory and judicial elaboration of procedural fairness and efficiency, make it difficult for many kinds of litigation to proceed in the most efficient way for all parties and the Court without the parties being legally represented.

In 2002–03, about 38 per cent of matters in the Court involved at least one party who was not represented at some stage in the proceeding. This is particularly common in migration cases (where about 40 per cent of cases involve a self represented litigant) and bankruptcy (about 20 per cent). Further information is set out in Figure 3.3 and Table 3.4 below.

In August 2002 the Court adopted a Self Represented Litigants Management Plan which identifies a number actions as to how some of the problems raised in respect to self represented litigants may be addressed. These actions include:

- improving the collection by the Court of information on self represented litigants and their needs;
- reviewing the Court’s rules, forms, brochures and guides to ensure they are written in clear language and are simple to use;

- providing further staff training on providing appropriate advice assistance to self represented litigants, and on handling difficult situations involving self represented litigants; and
- improving the rules and practices for dealing with self represented litigants who are considered to be vexatious, frivolous or of a repeat kind with clearly hopeless cases.

The Court is also enhancing the content and location of information on its web site to provide greater assistance to self represented litigants, including details of possible sources of legal advice and assistance.

Figure 3.3
Yearly filings 1998–99 to 2002–03
in which at least one party was a Self Represented Litigant

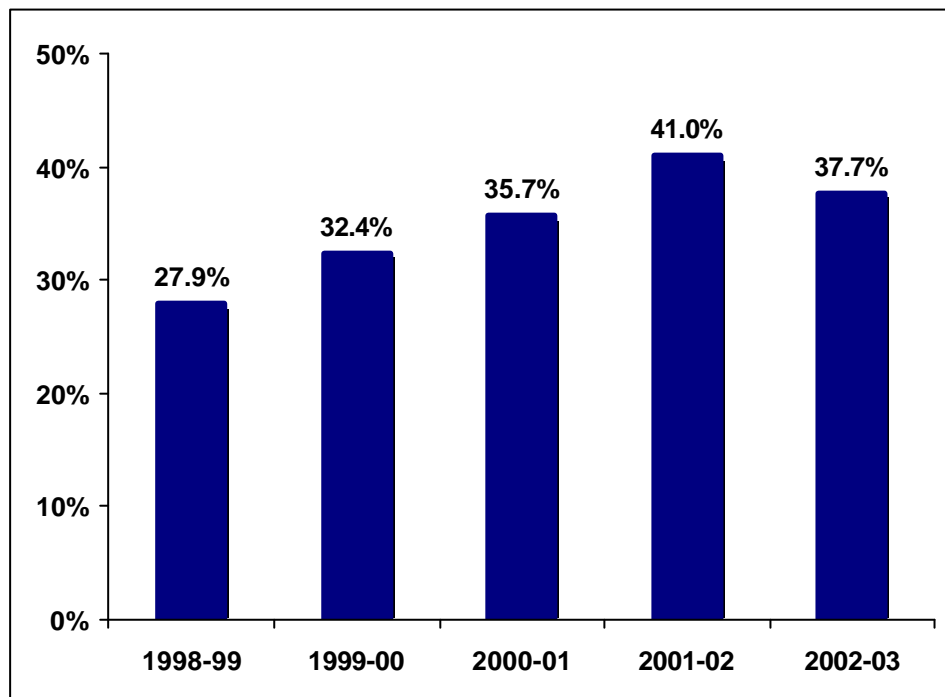


Table 3.4
Filings in which at least one party was a Self Represented Litigant

Year	Total Cases	Cases involving Self Represented Litigants		
		Yes	No	Unknown
1998-99	8,046	2,246 27.9%	1,895 23.6%	3,905 48.5%
1999-00	6,280	2,035 32.4%	1,672 26.6%	2,573 41.0%
2000-01	5,395	1,927 35.7%	2,257 41.8%	1,211 22.5%
2001-02	4,528	1,858 41.0%	1,819 40.2%	851 18.8%
2002-03	4,840	1,827 37.7%	2,158 44.6%	855 17.7%

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 for providing 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 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 were increased on 1 July 2002 in accordance with regulation 2AC, which provides a formula for increasing specific court fees every two years from 1 July 1996.

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 health benefit card, a pensioner concession card, or a Commonwealth seniors health card; or
- is the holder of any other card issued by the Department of Social Security 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 an AUSTUDY allowance; or
- is in receipt of an ABSTUDY allowance.

Registrars also have a discretion to waive or remit a fee where a 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. In August 2001 the Tribunal set aside a registrar's decision to refuse an application to waive a filing fee, and in substitution decided that filing fees payable by the applicant be waived. There were other 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 105.

Gender Issues

Since 1993 there has been a standing committee of judges of the Court which considers and advises the Chief Justice and other judges of the Court on a wide range of issues related to gender, including gender issues within the administration and practice and procedure of the Court. The Equality and the Law Committee also provides advice on judicial studies on gender issues. During the reporting year, the Committee was chaired by Justice Madgwick.

The Committee oversaw a number of activities related to gender issues, including active engagement with Bar Councils and the continued practice of meeting with women practitioners. This liaison is important to assist the Court to identify and address difficulties which women practitioners may experience in their contact with the Court.

In terms of the Court's internal operations, the Committee has continued to give close consideration to the Court's efforts to ensure greater representation of women in senior positions in the Court and to ensure that the Court's employment conditions accommodate the needs, circumstances and family commitments of its staff as far as practicable. The Court's achievements in this area were recognised during the year with a high commendation in the Work and Family Awards, sponsored by the Australian Chamber of Commerce and Industry.

Disability, race and sex discrimination

The Equality and the Law Committee's terms of reference include oversight of the Court's practice and procedure and general administration to ensure that in all of the Court's operations, persons who have contact with the Court are treated fairly and equitably and, where necessary, appropriate additional assistance is provided to people who may face particular disadvantage in their access to the Court. The Committee also considers disability, race and sex discrimination issues as they may affect staff of the Court.

The Committee undertook a range of activities in this area during the reporting year, including:

- monitoring issues arising from the Court's human rights jurisdiction and, particularly, issues related to the capacity of the Court's practice and procedure to respond to the particular needs of parties in human rights cases;
- overseeing the work of a subcommittee considering the Court's management of cases involving self represented litigants;

- overseeing the development, finalisation and implementation of the Court's workplace harassment policy, including training provided to registry staff;
- overseeing the management of the Court's pro bono legal assistance scheme – this scheme facilitates the provision of assistance to unrepresented litigants in appropriate cases many of whom are involved in migration matters. The judges refer such litigants to legal practitioners who are prepared to give legal advice and assistance for no, or a reduced, fee;
- overseeing strategies to improve employment opportunities in the Court for women, and for Aboriginal people and Torres Strait Islanders. In terms of the latter, the Committee has overseen the continuation of a scheme to employ indigenous research associates in the Court, and;
- investigating options to ensure that counsel, witnesses and staff have access to suitable child care arrangements, as a result of which details of child care centres within near proximity of the Court in each capital city have been placed on the Court's web site.

eCourt Strategy

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.

The *eCourt* Strategy comprises the following major initiatives which have been enhanced during 2002-03.

The eCourt Forum

eCourt is a web-based courtroom that assists in the management of pre-trial matters by allowing directions and other orders to be made on-line. Using *eCourt*, the Court may receive submissions and affidavit evidence and make orders as if the parties were in a normal courtroom.

eCourt can be accessed via the Court's homepage at www.fedcourt.gov.au and selecting the *eCourt* prompt. It includes an on-line Tutorial and a Public Transcript facility. The Tutorial prompt provides access to a self-paced guide that explains how to use *eCourt*. The Public Transcript facility provides access to matters that have been dealt with on *eCourt*, as well as an electronic transcript containing a record of all messages posted by the presiding judge and parties to the *eCourt* in the selected matter.

The Electronic Filing System

The Court's Electronic Filing System (EFS) allows users of the Court to send documents to the Court and, where appropriate, receive them back signed and sealed, electronically. The Federal Court Rules supporting electronic filing also allow parties to serve documents, other than the originating process, by electronic means to a party's nominated email address for service.

The EFS is accessed through the Court's homepage and incorporates a step-by-step guide to lodging a document electronically and payment facilities for the payment of filing fees on-

line, by credit card. A system of online registration for frequent users has been introduced to minimise the information that regular users are required to provide.

Ongoing feedback from users has resulted in further enhancements to the system, including notification to clients of receipt and acceptance/rejection of their documents, capacity for users to amend their registration details and the inclusion of a comments box to enable users to communicate with court staff as part of the filing process.

Electronic Trials and Appeals

Electronic trials and appeals are court proceedings where the majority of documents and related papers are stored and accessed electronically throughout the conduct of the proceedings. Electronic trials are also known as ‘paperless courtrooms’ because the use of paper copies of documents is kept to a minimum.

During 2001-02, the Court piloted a completely electronic trial at first instance in the case of *Peter De Rose v Fuller and the State of South Australia* presided over by Justice O’Loughlin. Most of the trial was heard in a remote location in an area 470km south of Alice Springs, with staff of the Court supervising the majority of the technical aspects. A review of the pilot electronic trial has informed the development of eCourt particularly through:

- examining issues of standards and protocols for courtroom technology; and
- identifying best practices in respect of standards, costs, and courtroom technology.

From the *De Rose* case the Court has identified a number of areas which are critical to supporting electronic trials, including data consistency and integrity, and a high level of support by the Court to assist applicants and parties to access and use the technology. Further, the Court is now better placed for ensuring appropriate planning of an electronic trial or appeal, including for cost effectiveness.

The Court proposes to issue guidelines and practice notes to practitioners and parties to assist in their consideration of whether a trial ought to be conducted electronically. The guidelines will include information on relevant technical issues.

The Court is also working towards piloting the use of electronic appeals, which require the production of an electronic appeal book, which can involve merging paper and electronic files used in the trial into appropriate electronic form. The Court intends to test an assumption that appeals may be conducted more efficiently if electronic appeal books are used. The Court will also need to assess the level of technical and other assistance which parties might need in converting documents and also the implications for standardising the technology to be used.

Electronic Courtrooms & Hearings

The Court has made significant progress in enhancing existing courtrooms and developing new courtrooms that are electronically flexible and able to cater for integrated electronic trials, with connection to the Court’s network and the Internet, and the integration of audio, video and data communications and information.

Accessibility technologies are also being progressively implemented, including hearing loops, audio and video systems, voice reinforcement systems, teleconferencing and

videoconferencing systems and CCTV linkage to other courtrooms and spaces to enable public viewing and media coverage.

Video-Conferencing

Video-conferencing continues to play a key role in supporting the work of the Court, which was the first Australian court to implement a national video-conferencing network in 1993. Since then, video-conferencing has become an integral part of the work of the Court and ensures that the Court is able to operate on a national basis without being constrained by distance. Video-conferencing has also reduced the cost and time of witnesses giving evidence and enabled more effective management of cases by presiding judges who may be at a location away from the normal place of sitting. Importantly, the Court recognises that video-conferencing facilities are increasingly relevant to ensure participation from rural and remote localities in matters before the Court.

During the year, video-conferencing was used in more than 550 hearings by the Court and by the Federal Magistrates Court, maintaining the trend of increasing use of this technology. It has been particularly useful in assisting both the Federal Court and the Federal Magistrates Court in conducting hearings in migration cases. In many instances video-conferencing has provided the means of linking judges or magistrates with legal representatives located in other states and providing applicants with the ability to be present during proceedings, including those applicants located in the migration detention centres in South Australia and Western Australia.

To support the current level of use, two video-conferencing systems are employed in the Court's larger registries enabling concurrent video-conferencing to be conducted when required.

In the coming year, it is intended to replace the current, original video-conferencing systems with new technology that will enhance systems, through increased useability and reduced maintenance costs. In the longer term, these enhancements will also enable the Court to extend its video-conferencing capability across the Court. The Court will also be working to improve the integration of video-conferencing with other technology used by judges in the courtroom.

Managing the eCourt Strategy

The Court recognises that there will be challenges involved in the continued implementation of the strategy and that these need to be managed proactively, consultatively and innovatively. The Court's web site will continue to provide information to court users and the broader community on the progress of the eCourt Strategy and will provide an opportunity for feedback.

An important component in managing the different technology involved in the strategy will be through the implementation of the Court's new case management system, Casetrack, which, amongst other things, will integrate eCourt initiatives with the Court's primary source of statistical, operational and other essential management information.

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

Court's Internet Home Page

The Court's web site at www.fedcourt.gov.au has become a primary source of information to the legal community and the public. In addition to links to a wide range of legal resources, the web site contains helpful information about the Court and its work including full text judgments, daily court lists, practice and procedure guides, forms and fees, community information and new initiatives. It also provides access to the electronic filing system and eCourt. The site has been recognised by the legal profession as providing an excellent single point of access to legal resources in Australia and overseas.

The Court has sought accreditation from Vision Australia and will be the first Australian court to be recognised for conformance with the global standards for web content accessibility released by the World Wide Web Consortium (W3C).

The Court will continue to provide new and additional resources and services to the public via the web site. Information, resources and services that might be considered as a starting point and which are consistent with the eCourt philosophy are:

- interactive forms;
- assistance with filing and templates;
- plain English guides to the Court's practice and procedure;
- information in community languages;
- videos of court procedures, taking evidence, etiquette, stages of litigation etc;
- glossaries of legal terminology;
- on-line help connecting the public to a member of staff (such as a registrar); and
- a step-by-step guide for self represented litigants with links to all outside sources of information and assistance (eg legal aid, community legal centres).

Published Information

The Court publishes a number of brochures for court users on aspects of its work, including a guide for witnesses appearing in the Court and information on procedures in bankruptcy, native title and human rights cases and on the Court's use of mediation. These brochures are available from any of the Court's registries. Similar information is available on the Court's web site.

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 provides electronic copies of judgments to legal publishers and other subscribers.

Judgments are also available on the Internet at the Australasian Legal Information Institute ("AustLII") site. These judgments are accessible directly from the Court's home page. The

availability of judgments electronically assists the speedy dissemination of the Court's judgments to the legal and wider community.

Information for the Media and Televised judgments

Through the Court's Director, Public Information, assistance is provided to journalists covering Federal Court cases and issues related to the Court's work. This includes managing access to court proceedings by television news outlets in matters of public interest. Notable cases in the reporting year included:

- Mastercard International Incorporated versus the Reserve Bank of Australia, and Visa International Service Association versus the Reserve Bank of Australia, regarding their challenge to the bank's decision to regulate the credit card market (Justice Tamberlin); and
- Francis Djaigween and others on behalf of the Yawaru/Djugin and Goolarabooloo People versus the State of Western Australia - a major native title case in and around Broome (Justice Merkel).

Vision recorded in such cases is maintained by the Court and can be used in video productions that assist in a greater understanding of its work.

A key initiative during the year was a 25-minute video/CDROM commemorating the Court's 25th anniversary in 2002 which featured interviews with the Attorney-General, retired and present judges of the Court, as well as historic and contemporary material about the Court.

The Court has a Media Management Committee which has provided, and continues to provide, advice to the Chief Justice and judges on how to deal with issues concerning media coverage of court proceedings and related matters.

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. As well as one off projects, 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 significant activities during the year.

The Art of Delivering Justice – Curriculum materials and Art Competition

In 2001-02 the Court reported on a major community relations project to develop national curriculum materials for Australian secondary schools on issues such as the Australian court system and its relationship to Parliament, the independence of the judiciary and particular areas of the Federal Court's work. The materials, *The Art of Delivering Justice - Resources on Law and Justice in Australia*, were distributed to every secondary school in Australia and the materials are also now being used by many primary school teachers.

To coincide with the release of the Curriculum materials, the Court initiated a national art competition for Australian secondary students. In July 2002, the Chief Justice awarded prizes at a ceremony in Melbourne involving a national videoconference hook-up with entrants around the country which linked secondary school children in Broome, Hobart, Perth, Bundaberg, and Canberra.

Competition winners also travelled from New South Wales and South Australia to attend and all artwork was on display in the Court's building. The Court used one of the winning artworks on the cover of its 2001-02 Annual Report.

User Groups

The Court has 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. 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.

Activities with the Community

During the year the Court was involved in the following activities with schools, students and community organisations.

In Western Australia, registry staff conducted information sessions for Murdoch University indigenous pre-law students and for Aboriginal Liaison Officers from the Jamatji Land and Sea Council. A moot competition for the University of Western Australia was held at the Court and judged by Justice French and a trial advocacy competition for Murdoch University students was also held and judged by Justice Nicholson. Justice Nicholson also delivered a Minter Ellison talk to law students.

In Victoria, a moot court was conducted by Justice North for students from Presentation College in Windsor and there were four school visits to the Court conducted by registry staff which covered the operation of the Court.

In South Australia, the registry conducted a seminar on native title issues for secondary school students during Law Week and ran an information seminar on the Court for secondary school teachers.

In Queensland, the registry was involved in the Legal Practice Course at the Queensland University of Technology. Two moot courts were also arranged for students enrolled in the Course. Visits by schools were also conducted during the year.

In NSW, various presentations on eCourt were made during the year to members of the legal profession. There were also a number of visits to the Court by schools and by legal studies students. Two of these groups from Tranby Aboriginal Cooperative College received presentations on the Court's native title work.

Complaints about the Court's processes

During the reporting year 22 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.

Cross-vesting Monitoring Committee

The Chief Justice of the Federal Court is the Convenor of the Cross-Vesting Monitoring Committee. The other members of the committee, usually judges, are the nominees of the Chief Justices of the Family Court of Australia and the Supreme Courts of the States and Territories. The purposes of the Cross-Vesting Monitoring Committee are:

- to monitor and compile statistics on the operation of the cross-vesting scheme;
- to identify problems in the operation of the scheme and to consider how they may be resolved; and
- to consider, in the light of the experience of the operation of the scheme, possible improvements to it.

The Cross-Vesting Monitoring Committee prepares a report each year for the Council of Chief Justices.

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 and registrars presented papers, gave lectures and chaired sessions at judicial conferences, judicial administration meetings, continuing legal education courses, university law schools, participated in Bar reading courses, Law Society meetings and other public meetings. An outline the judges' contribution in this area is included in Appendix 8 on page 158.

3.4 WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

The Court is extensively involved in providing judicial and non-judicial support to assist the continuing development of international jurisprudence. Activities include individual judges holding second commissions in overseas courts (listed on pages 4-7), participation in international committees and conferences, involvement in legal education programs that provide training to judges and staff of overseas courts, and provision of library services to countries of the South Pacific. The following outlines the major areas of this work during the reporting year.

Legal Education Programs

Indonesia

During 2002-03, the Federal Court, with the Supreme Court of Indonesia, conducted its fourth training program for the Indonesian judiciary, with the assistance of funding of more than \$530,000 from the AusAID's Legal Reform Program. The Court has conducted a similar program annually since 1999 with AusAID funding. Each successive program has built on the achievements of, and lessons learned from, the previous program. A major review of the program was also undertaken in May 2002. Critical to the success of the program is the strong relationship the Court has developed with the Indonesian judiciary and its primary training facility, the Research and Development Centre (RDC) at the Supreme Court of Indonesia. The Court also worked closely with Australian Legal Resources International in Sydney to deliver the program.

The fourth program delivered five workshops in Indonesia for judges from Jakarta and regional Indonesia. The workshops were conducted by Justice Lindgren of the Federal Court, Justice Wood, Chief Judge at Common Law of the NSW Supreme Court and Justice O'Malley, President of the Dust Diseases Tribunal of NSW. The workshops involved 193 Indonesian judges and covered the Australian legal system, judicial independence, Assisted Dispute Resolution (ADR), class actions and the use of information technology in Australian courts. From 24 March to 10 April 2003 the program included a three-week study tour in Australia for 14 judges who had participated in the training in Indonesia, as well as judges from the Supreme Court. The program was undertaken in Sydney and Melbourne and involved training provided by the NSW Judicial Commission and the Australian Institute of Judicial Administration (AIJA), as well as a week of presentations and meetings with the Federal Court and visits to other institutions.

The program also provided specialist legal interpreting training to interpreters in Jakarta and Australia to develop a pool of specialist interpreters who will be available to assist the Court's and other legal development programs for Indonesian justice system.

At the conclusion of the program in May 2003, at AusAID's and the Supreme Court's request, the Court, with ALRI's assistance, developed a fifth program which will be conducted between August 2003 and April 2004. This program will include similar components and importantly, the development of a Memorandum of Understanding between the Federal Court and the Supreme Court of Indonesia which will provide a framework for ongoing cooperative engagement. There is also a strong prospect that the Court's program will continue in future years through funding from AusAID's further commitment to legal reform programs in Indonesia.

Philippine Judicial Exchange Program

The Court has continued its engagement in judicial exchange activities with the Supreme Court of the Philippines, through a program funded by the Centre of Democratic Institutions (CDI) at the Australian National University (ANU). The Court's role has included hosting visits by groups of judges from the Philippines and visits by Australian judges to the Philippines to conduct workshops.

In October 2002 the Court hosted another visit by six judges to both Sydney and Melbourne. This visit followed three previous visits to Sydney in 2000 and 2001. Justices Beaumont and Emmett in particular, have been involved in arranging these visits.

Visit by judges from East Timor

With funding from the CDI, the Court arranged a visit by two judges, Judge Duarte Soares Tilman and Judge Deolindo Dos Santos, from East Timor to Darwin from 28 May to 2 June 2003. The visit was hosted by Justice Marshall of the Court and included attendance at the Judicial Conference of Australia's Colloquium and several days of meetings and visits with courts in Darwin. The conference and meetings provided an opportunity for the East Timorese judges to learn about the Australian judicial system and share information and experiences with Australian magistrates, judges and lawyers.

Exchange Program with the Supreme Peoples' Court of Vietnam

Since 1999, the Court has also been involved in judicial development activities with the Supreme Peoples' Court of Vietnam. Justices Moore and Tamberlin have been active in promoting the Court's engagement with the Vietnamese judiciary and were instrumental in the development of the training program, which is funded by the CDI and run in cooperation with the Judicial Training Institute in Hanoi. The Court has hosted three visits in Sydney under the program - in 2000, and 2001, and a further visit in November 2002. These visits have focussed on substantive legal issues.

China

The Court continues its interest in engaging with courts of the People's Republic of China. The Court received a number of visits during 2002-03 from delegations from Chinese courts. In return, judges of the Court and court officials have made visits in recent years to China to discuss issues of mutual interest and possible opportunities for further engagement between Australian and Chinese judiciaries. The Registrar of the Court visited China in 2001 and in May 2002 for this purpose. In April 2003 a high level official delegation from Beijing visited the Court in Sydney and Melbourne to continue the exchange.

South Pacific

Justice Beaumont is a member (representing Australia and New Zealand) of the Steering Committee of the Pacific Judicial Education Program, based at the University of the South Pacific in Suva. The program is funded by a partnership of the governments of Australia and New Zealand and facilitates judicial education activities for judges of the region.

During the year, the Court also received an AusAID grant to support the participation of three senior judges from the Solomon Islands, Papua New Guinea and Fiji to attend the Supreme Court and Federal Court Judges' Conference in Adelaide in January 2003. This was the second year the Court had facilitated this assistance.

Canada

At the invitation of Public Works and Government Services Canada, the Registrar of the Court worked in Canada for one month during September and October 2002. The Registrar provided assistance and advice concerning a proposal to construct a new Federal Judicial Building in Ottawa which will house all of the National Capital Area operations of the Federal Court of Appeal, the Court Martial Appeal Court, the Federal Court and the Tax Court of Canada. The Registrar was able to provide valuable advice and insight to the Departments of Justice and Public Works and Government Services, as well as the

Commissioner for Federal Judicial Affairs and the Courts, using the Federal Court of Australia's recent experience in innovative development of its buildings, procedures and administration. All of the costs (including remuneration) were paid by the government of Canada.

Participation in international committees and conferences

A number of Federal Court judges actively participated in international committees and conferences during the reporting year. Some of this work is included in the list of judges' activities in Appendix 8.

5th Worldwide Common Law Judiciary Conference

Between 7 and 11 April 2003, the 5th Worldwide Common Law Judiciary Conference was held at the Court in Sydney. The Conference was hosted jointly by the High Court of Australia, the Federal Court and the Supreme Court of New South Wales. Senior members of the judiciary from 10 common law countries attended the Conference. They included the Lord Chief Justice of England and Wales, the Chief Justice of New Zealand, the Chief Justice of Ireland, the Lord Justice Clerk of Scotland, the Chief Justice of the Federal Court of Canada and the Chief Justice of Nova Scotia. The Conference was also attended by the Chief Justice of Australia and the Chief Justices of many of the States or their representatives.

Library services to the South Pacific and Thailand

The Court has been operating a program of ongoing assistance to libraries in the South Pacific since 1992, funded both by the Court and AusAID grants. In March 2003, the Court was successful in receiving a further AusAID grant of \$107,500 over 5 years to provide regular assistance over the next five years to law libraries in Vanuatu, Kiribati and Tonga. The libraries will receive law reports, catalogues and material donated by Australian law libraries which is dispatched twice a year. The grant will also fund visits to each court by a professional law librarian who will train local staff and review collections.

In addition, the Court supports a specialist intellectual property court in Thailand, sending regular shipments of reports and textbooks. Further, this year the Court also sent a special donation of superseded textbooks from a retiring NSW Supreme Court judge to Fiji to be shared amongst three libraries.

Visitors to the Court

The Court was visited by a significant number of judges and officials from overseas jurisdictions. These visits provided the judges and staff of the Court with an opportunity to develop relationships and learn from people involved in the administration of justice around the world. The number of visits reflects the international reputation of the Federal Court as a leading court, in its administration and its practice and procedure.

During the reporting year over 221 visitors from the following countries came to the Court, more than half of these to Sydney. These visits require significant planning and coordination by judges and Court staff. Visitors came from: Bangladesh; Canada; East Timor; Fiji; France; Germany; Indonesia; Ireland; Japan; Malaysia; New Zealand; Pakistan; Peoples

Republic of China; Philippines; South Africa; Switzerland; Thailand; United Kingdom; United States of America; Vanuatu and Vietnam.

Pegasus Scholarship Trust

The Pegasus Scholarship Trust was established in England to make it possible for gifted young lawyers to learn about the practical working of the common law system in countries other than their own, and to form enduring links with lawyers in those countries. Since 1987 the Trust has been sponsoring Pegasus Scholars from overseas to study and work in England, and Pegasus Scholars from England to live and work abroad. The Trust is supported by the Inns of Court, several major law firms, the Cambridge Commonwealth Trust, and government and commercial agencies.

During the reporting year the Chief Justice arranged for the Court to host a Pegasus Scholar, Mr Andrew Blake, a London barrister. He was with the Court from 12 August to 6 September 2002 as a research assistant to the Melbourne judges. The Court has been supporting the work of the Trust in this way since 1995 and will host another Pegasus Scholar in 2003-2004.