

## **CHAPTER 3**

# **THE WORK OF THE COURT IN 2004-05**



### 3.1 INTRODUCTION

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

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

### 3.2 MANAGEMENT OF CASES AND DECIDING DISPUTES

#### Introduction

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

As reported in Chapter 2, the Court fully implemented a new case management system, Casetrack, during the year, which replaced the Court's existing FEDCAMS system. Casetrack has been used to produce the statistics used in the 2004-05 report. It is important to note that the counting methodology of Casetrack is fundamentally different to FEDCAMS in that Casetrack classifies matters in the Court according to eleven main categories, described as "causes of action". This differs from FEDCAMS where matters in the Court were counted as "filings" categorised according to the legislation they were filed under (more than 150 different pieces of legislation make up the Court's jurisdiction). Accordingly, the statistics reported in this year's report may be different to those in previous years. In addition, the Court is still in the process of developing and refining the reports to be produced in Casetrack, so in a very small number of areas it has not been possible to produce statistics to report on aspects of the Court's work this year.

#### The Court's jurisdiction

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

Cases arising under Part IV (restrictive trade practices) and Part V (consumer protection) of the *Trade Practices Act 1974* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. See Figure 5.8 on page 118 for comparative statistics regarding Trade Practices Act matters.

Many cases also arise under the *Administrative Decisions (Judicial Review) Act 1977*, which provides for judicial review of most administrative decisions made under Commonwealth enactments on grounds relating to the legality, rather than the merits,

of the decision. Under the Act, the Court also hears appeals on questions of law from the Administrative Appeals Tribunal.

The Court has jurisdiction under the *Judiciary Act 1903* to hear applications for judicial review of decisions by officers of the Commonwealth. This jurisdiction includes the review of decisions by the Migration Review Tribunal and the Refugee Review Tribunal which are not “privative clause” decisions under the *Migration Act 1958*. The Court’s migration jurisdiction is discussed on page 31.

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*. The Court has jurisdiction to hear and determine native title determination applications, revised native title determination applications, compensation applications, claim registration applications, applications to remove agreements from the Register of Indigenous Land Use Agreements and applications about the transfer of records. The Court also hears appeals from the National Native Title Tribunal (‘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 32.

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 six arrests. See Figure 5.10 on page 120 for a comparison of Admiralty Act matters filed in the past five years.

The Court’s jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* (‘ASIC Act’) covers a diversity of matters ranging from the appointment of provisional liquidators and the winding up of companies, to applications for orders in relation to fundraising, corporate management and misconduct by company officers. The jurisdiction is exercised concurrently with the Supreme Courts of the States and Territories. See Figure 5.7 on page 117 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. See Figure 5.6 on page 116 for a comparison of bankruptcy matters filed in the last five years.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court, and from the Federal Magistrates Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's appellate jurisdiction is discussed on page 29. Figure 5.11 on page 120 shows the appeals filed in the Court since 2000-01.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction are listed in Appendix 4 on page 103.

### **Changes to the Court's jurisdiction in 2004-05**

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

- *Aboriginal and Torres Strait Islander Act 2005*
- *Aboriginal and Torres Strait Islander Commission Amendment Act 2005*
- *Administrative Appeals Tribunal Amendment Act 2005*
- *Australian Energy Market Act 2004*
- *Aviation Transport Security Act 2004*
- *Bankruptcy Legislation Amendment Act 2004*
- *Bankruptcy and Family Law Legislation Amendment Act 2005*
- *Copyright Legislation Amendment Act 2004*
- *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*
- *Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004*
- *Health Legislation Amendment (Private Health Insurance Reform) Act 2004*
- *Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004*
- *National Measurement Amendment Act 2004*
- *National Security Information (Criminal Proceedings) Act 2004*
- *Surveillance Devices Act 2004*
- *Trade Practices Amendment (Australian Energy Market) Act 2004*
- *Trade Practices Amendment (Personal Injuries and Death) Act (No. 2) 2004*
- *US Free Trade Agreement Implementation Act 2004*
- *Water Efficiency Labelling and Standards Act 2005*

### **Amendments to the Federal Court of Australia Act**

There were no amendments to the Federal Court of Australia Act during the reporting year.

The Court is seeking an amendment to the Act to empower the Court to refer all or part of a proceeding to a referee for report to the Court. It is also seeking amendments 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, and to allow for certain types of appeals to be heard and determined by a two judge appeal panel.

### **Amendments to the Federal Court of Australia Regulations**

On 1 November 2004 the Federal Court of Australia Regulations 2004 replaced the Federal Court of Australia Regulations 1978. Among other things, the 2004 Regulations:

- restructured the 1978 Regulations and simplified some of the language to make them easier to understand;
- abolished the poundage fee for the seizure and sale by the Court of vessels under the *Admiralty Act 1988*;
- adjusted the filing fees for notices of motion;
- abolished the hearing fee for notices of motion;
- made a number of changes to fee exemptions;
- reduced the filing fee for an application for an order for substituted service of a bankruptcy notice;
- give the Court a power to allow documents to be filed or services provided where fees have not been paid;
- allow deferral of payment and pre-payment of fees by approved users; and
- allow the Registrar to refund a hearing fee where a hearing does not proceed, despite the required notice not being given to the Registrar, if the failure to provide the notice was not the fault of the person who paid the hearing fee.

### **Federal Court Rules and Practice Notes**

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

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

- update the rules in relation to the entry of orders, including new rules to facilitate the entry of orders in Court;
- remove the requirement that a party giving discovery must file the list of documents and verifying affidavit;
- insert a new Order 35A dealing with default judgment;
- allow an address for service to be the address of a place within Australia (rather than a place within the relevant District);
- revise the rules dealing with the signing of documents by legal practitioners;
- remove the requirement for an appeal book to be prepared in appeals from the Federal Magistrates Court, unless the Court or a Judge otherwise orders; and
- amend Schedule 2 to adopt the increase to the scale of solicitor's costs recommended by the Federal Costs Advisory Committee.

Practice Notes supplement the procedures set out in the Rules of Court. During the reporting year, the Chief Justice revoked Practice Note No 18 – Tax List, which set out the Court’s arrangements for dealing with the large number of appeals against objection decisions by the Commissioner of Taxation in 2001. The Practice Note was revoked on the basis that it was no longer necessary.

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

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

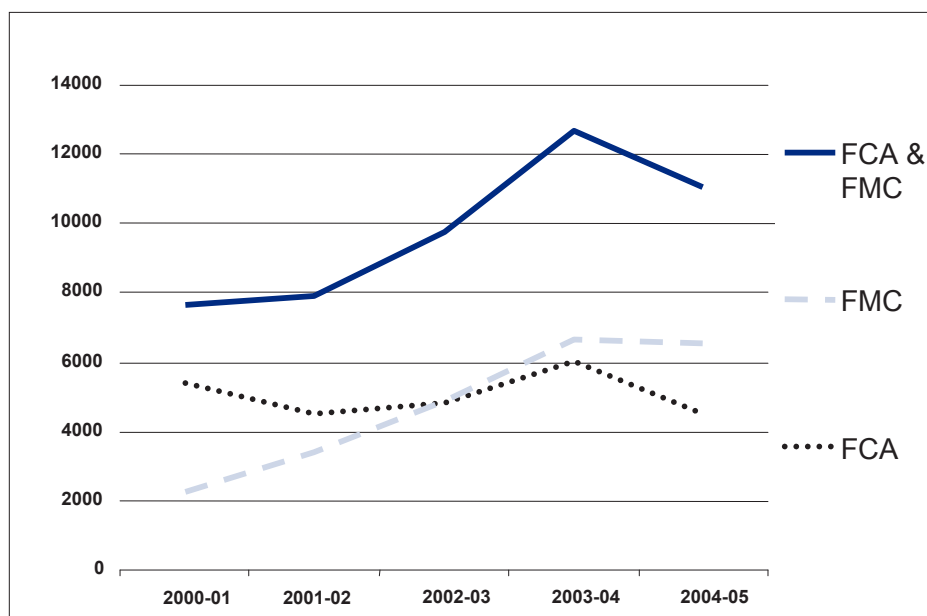
The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law including bankruptcy, human rights and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general federal law jurisdiction.

As shown in Figure 3.1 below, the combined number of filings (excluding appeals) in the two courts has been growing since the establishment of the Federal Magistrates Court in mid-2000. In 2004-05, a total of 11,057 first instance matters were filed in the two courts. In 1999-2000, there were 5,885 filings in the two courts.

The growth in the number of filings has had a considerable impact on the Federal Court’s registries, which process the documents filed in these matters for both courts and provide the administrative support for each matter to be heard and determined by the relevant Court. 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 2004-05 this occurred on 197 occasions; and
- in 2004-05 the registries processed 1,384 appeals to the Court (of which 933 were from decisions of the Federal Magistrates Court) compared to 423 in 2003-04 and 263 in 2002-03.

**Figure 3.1**  
**Filings to 30 June 2005 (excluding appeals and related action)**  
**Federal Court and Federal Magistrates Court**



### **Caseflow management of the Court’s jurisdiction**

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

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

### ***Disposition of matters other than native title***

In 1999-2000 the Court set a 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 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 2000 to 30 June 2005, 89 per cent of cases (excluding native title matters) were completed in less than eighteen months, 82.8 per cent in less than twelve months and 60.7 per cent in less than six months (see Figure 5.4 on page 114). Figure 5.5 on page 115 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2004-05, 91.1 per cent of cases were completed within eighteen months. This compares to 91.9 per cent in the previous reporting year.

The Court expects that the proportion of cases completed within eighteen months will gradually decrease as the proportion of complex cases that make up the Court’s workload increase. Simpler matters would commence in, or be 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, will affect the Court’s ability to meet its goal of disposing of 85 per cent of matters within eighteen months. However, the change in the mix of cases will 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 relation to the disposition of native title matters. This is discussed on pages 32 to 36.

### ***Delivery of judgments***

In the reporting period, 2,118 Full Court and single judge judgments were delivered. Of these, 291 were delivered in Full Court appeals and 1,827 in single judge matters. These figures include both written judgments and judgments delivered orally on the day of the hearing, immediately after the completion of evidence and submissions.

The nature of the Court’s workload means that a substantial proportion of the matters coming before the Court will go to trial and the decision of the trial judge will be reserved at the conclusion of the trial. The judgment is delivered at a later date and is often referred to as a “reserved judgment”. The nature of the Court’s appellate work also means a substantial proportion of appeals require reserved judgments.

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. In past annual reports, the Court has reported on its performance against this goal.

The Court is not able to report against the time goal this year as it is still developing the necessary reports within the new Casetrack system. Anecdotally, however, the Court is confident that the timeliness of judgments in the last twelve months has been consistent with that of previous years.

### Decisions of interest

During the year the judges published over 2,118 decisions. As an illustration of the Court's varied jurisdiction, Appendix 7 on page 129 includes a summary of the following decisions.

- *Olbers Co Ltd v Commonwealth* (16 September 2004, Chief Justice Black, Justices Emmett and Selway)  
Constitutional Law – Fisheries power – Automatic forfeiture of foreign boats engaged in illegal fishing in Australian waters – Whether automatic upon the commission of offences – Whether within Commonwealth legislative power – Whether an invalid exercise of judicial power by Parliament
- *Australian Competition and Consumer Commission v Telstra Corporation Limited* (30 July 2004, Justice Gyles)  
Trade practices – whether promotions misleading or deceptive
- *Australasian Performing Right Association Limited v Metro on George Pty Limited* (31 August 2004, Justice Bennett)  
Copyright – infringement – authorisation of infringement
- *Port Kembla Coal Terminal Ltd v Braverus Maritime Inc* (17 September 2004, Justice Hely)  
Shipping and navigation – compulsory pilotage – negligent navigation by pilot – liability of ship owner – pilot employed by port corporation – entitlement to contribution from port corporation – no entitlement to contribution – statutory immunities operate to defeat contribution claim
- *McCrea v Minister for Customs & Justice* (6 October 2004, Justice North)  
Extradition – whether Minister had power to surrender applicant to Singapore where Singapore gave undertaking that applicant would not be executed if found guilty of murder
- *Commissioner of Taxation v Amway of Australia Limited* (12 October 2004, Justices Hill, Sundberg and Kenny)  
Income tax – whether expenditure on transport and accommodation or food, drink and recreation fell within the exception under section 51AE(5) *Income Tax Assessment Act 1936 (Cth)*
- *JMA Accounting Pty Ltd v Michael Carmody, Commissioner of Taxation* (14 October 2004, Justices Spender, Madgwick and Finkelstein)  
Income Tax – legality of search and seizure executed by the ATO
- *Minister for the Environment & Heritage v Greentree (No 2) and Minister for the Environment & Heritage v Greentree (No 3)* (11 June 2004 and 14 October 2004, Justice Sackville)  
Environment – civil penalties
- *de Bruyn v Minister for Justice & Customs* (22 December 2004, Justices Spender, Kiefel and Emmett)  
Extradition – whether surrender to Republic of South Africa would be unjust,

oppressive or incompatible with humanitarian considerations for the purpose of reg 5(4) of the Extradition (Republic of South Africa) Regulations

- *Crosbie; In the matter of Media World Communications Ltd (Administrator Appointed)* (31 January 2005, Justice Finkelstein)  
Corporations – Whether members of a company in administration who also wish to make claims in damages against the company are entitled to be treated as creditors
- *Minister for Immigration and Multicultural and Indigenous Affairs v SZANS* (17 March 2005, Justices Weinberg, Jacobson and Lander)  
Practice and procedure – whether decision of a single judge of the Federal Court not exercising appellate jurisdiction binding on Federal Magistrates
- *S v Secretary, Department of Immigration & Multicultural & Indigenous Affairs* (5 May 2005, Justice Finn)  
Tort – immigration detention – Commonwealth’s duty to provide mental health care services
- *TCN Channel Nine Pty Limited v Network Ten Pty Limited (No 2)* (26 May 2005, Justices Sundberg, Finkelstein and Hely)  
Intellectual Property – copyright – infringement – television broadcast – whether substantial part taken – qualitative test – other factors to be considered
- *Humane Society International Inc v Kyodo Senpaka Kaisha Ltd* (23 November 2004 and 27 May 2005, Justice Allsop)  
Practice and procedure – service out of the jurisdiction – discretionary considerations including the international political nature of the issues and the question of futility

## **The workload of the Court in its original jurisdiction**

### ***Incoming work***

In the reporting year, 3,133 cases were commenced in, or transferred to, the Court’s original jurisdiction, a decrease of 1,984 compared to 2003-04. The decrease between the two reporting years was due principally to the fact that the 2003-04 filings included 1,716 migration remitted by the High Court. In addition, there were 411 fewer migration filings and 98 fewer bankruptcy filings. The decrease was partly offset by an increase in filings in other areas of the Court’s jurisdiction, including corporations (351 more filings) and an increase in appeals and related actions (482 more 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 2004-05, 90 matters were remitted or transferred to the Court:

- 53 from the High Court of Australia
- 27 from the Federal Magistrates Court
- 10 from other 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 2004-05, 204 matters were transferred from the Court:

- 1 to the Family Court of Australia
- 197 to the Federal Magistrates Court
- 6 to other courts

### ***Matters completed***

Table 5.2 on page 109 shows a comparison of the number of matters commenced in the Court's original jurisdiction and the number completed. The number of matters completed during the reporting year was 3,112 against 5,219 in the previous reporting year. The decrease in the number of completed matters was primarily due to the 2003-04 figures including a large number of the migration cases remitted from the High Court, which were dismissed summarily in 2003-04. The number of matters transferred to the Federal Magistrates Court also contributes to the disposition of cases.

### ***Matters on hand***

The total number of matters on hand in the Court's original jurisdiction at the end of the reporting year was 3,354 (including native title matters) (see Table 5.2 on page 109), compared with 3,355 in 2003-04.

### ***Age of pending workload***

The comparative age of matters pending in the Court's original jurisdiction (against all major causes of action, other than native title matters) as at 30 June 2005 is set out in Table 3.1 below.

Native title matters are not included in Table 3.1 because of their complexity, the role of the NNT Tribunal and the need to acknowledge regional priorities. The age of pending native title matters is set out in Table 3.4 on page 35.

**Table 3.1 Age of current matters  
(excluding appeals and related actions and native title matters)**

<b>Current Age</b>	<b>Under 6 months</b>	<b>6 – 12 months</b>	<b>12 – 18 months</b>	<b>18 – 24 months</b>	<b>Over 24 months</b>	<b>Sub-Total</b>
Cause of Action						
Administrative Law	71	37	13	7	17	145
Admiralty	16	12	13	1	9	51
Bankruptcy	108	37	31	7	11	194
Competition Law	9	8	2	3	19	41
Trade Practices	97	79	62	59	155	452
Corporations	333	80	25	19	23	480
Human Rights	11	8	2	1	8	30
Industrial	40	35	13	12	10	110
Intellectual Property	74	51	30	18	53	226
Migration	77	32	45	150	14	318
Miscellaneous	25	13	4	3	3	48
Taxation	62	147	101	87	77	474
<b>Total</b>	<b>923</b>	<b>539</b>	<b>341</b>	<b>367</b>	<b>399</b>	<b>2569</b>
% of Total	36%	21%	13.2%	14.3%	15.5%	100%
<b>Running Total</b>	<b>923 (36%)</b>	<b>1462 (57%)</b>	<b>1803 (70.2%)</b>	<b>2170 (84.5%)</b>	<b>2569 (100%)</b>	

Table 3.1 shows that as at 30 June 2005 there were 776 cases over eighteen months old compared to 518 in 2004. A number of these cases are migration cases which were remitted from the High Court in 2003-04 and are yet to be finalised.

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 107.

## **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. Thus judges who sit on Full Courts would have less time to devote to their own individual docket work, and this also impacts on the Court's ability to dispose of first instance work. Any substantial

increase in 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.

Towards the end of each calendar year, the Court publishes its program of Full Court sittings for the following year. In the 2005 calendar year, four Full Court sittings have been programmed for Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, Hobart and Darwin. Once an appeal is ready to be heard, it can usually be listed for the next scheduled Full Court sitting in the capital city where the matter was heard at first instance.

When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court which may, if necessary and appropriate, hear the appeal in a capital city other than that in which the case was originally heard or use video conferencing facilities. During the reporting year, 16 special hearings of the Full Court (totalling 14.5 hearing days) were held to enable the early disposition of urgent appeals.

### **The appellate workload**

In 2004-05, 1,384 appeals and related actions were filed in the Court (see Table 5.3 on page 110) – 482 more than the previous reporting year. This represents an increase of more than 53 per cent. An “Appeal or Related Action” includes any appeal or interlocutory application filed in the Court's appellate jurisdiction in relation to a decision of a court exercising federal jurisdiction. The related actions include, for example, applications to the Court for leave or special leave to appeal, an extension of time within which to institute an appeal or security for costs in relation to an appeal.

The number of appeals and related actions are dependent on many factors including the number of first instance matters disposed of in a reporting year, the nature of matters filed in the Court, and whether the jurisdiction of the Court is enhanced or reduced by legislative changes or decisions of the High Court of Australia on the constitutionality of legislation.

The Federal Magistrates Court continues to be the most significant source of appeals and related actions, accounting for 67 per cent (933) of the total number of appeals and related actions filed in the Court in 2004-05. Further information on the source of appeals and related actions is set out in Figure 5.11 on page 121.

In the reporting year 1,177 appeals and related actions were completed, compared with 827 in 2003-04. The higher number is largely attributable to the increase in the number of appeals and related actions, particularly migration cases, from the Federal Magistrates Court.

The majority of appeals and related actions from the Federal Magistrates Court were heard and determined by single judges exercising the appellate jurisdiction of the

Court. Over the four Full Court sitting periods during the reporting year, only 46, or approximately 5 per cent, of appeals and related actions from the Federal Magistrates Court were heard by a Full Court, comprising three judges.

As at 30 June 2005 there were 641 pending appeals and related actions – 207 more than for the previous reporting year. This is consistent with the overall increase in the number of appeals and related actions commenced in the Court during 2004-05.

The comparative age of matters pending in the Court’s appellate jurisdiction (including native title appeals) as at 30 June 2005 is set out in Table 3.2 below.

At 30 June 2005 there were 31 appeals and related actions over 18 months old. A third of these cases involve associated appeals and related actions that arise out of the same or related proceedings at first instance. A number of cases have been remitted back to the Court from the High Court following successful appeals. The age of these appeals and related actions generally reflects the nature and complexity of these cases.

**Table 3.2 Age of Current Appeals and Related Actions**

Current Age	Less than 6 months	6-12 months	12-18 months	18-24 months	Over 24 months	Total
Appeals and related actions	439	133	38	10	21	641
% of total	68.5%	20.7%	5.9%	1.6%	3.3%	100%
Running total	439	572	610	620	641	
Running %	68.5%	89.2%	95.2%	96.7%	100%	

### **The Court’s migration jurisdiction**

Following amendments to the Migration Act in October 2001, the Court has concurrent jurisdiction with the Federal Magistrates Court under the Judiciary Act to review decisions made by the Migration Review Tribunal and the Refugee Review Tribunal which are not “privative clause” decisions under the *Migration Act 1958*. As a result of the High Court’s decision in *Plaintiff S157/2002 v Commonwealth of Australia*, these courts are also able to review decisions where there is a claim of jurisdictional error.

In recent years the Court has had to deal with a significant number of migration matters at first instance. In 2003-04 there were over 2,590 migration matters filed in, or remitted to, the Court in its original jurisdiction. This included 1,716 matters remitted by the High Court.

The Court’s workload decreased in 2004-05, with 464 migration matters commenced in its original jurisdiction. The change in workload reflects the fact that most migration applications are now commenced in the Federal Magistrates Court. This trend is expected to continue, particularly with the passage of the Migration Litigation Reform Act 2005, which will amend the Migration Act so that the Court will only have original jurisdiction for the judicial review of a decision under the Migration Act in a limited number of prescribed circumstances.

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. The Court is not able to report on its performance against these goals for the reporting year as it is still developing the necessary reports from Casetrack. However, the Court can report that during the reporting year, 64 per cent of all migration cases were finalised within 6 months and 83 per cent within 12 months.

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 2004-05, where 75.8 per cent of appeals involved a review of a decision under the Migration Act. Table 3.3 shows how the number of appeals involving the Migration Act has increased as a proportion of the appellate workload since 2000-01. This trend is expected to continue, with most of the appeals being against decisions of the Federal Magistrates Court. The Court has introduced a number of procedures to streamline the preparation and conduct of these appeals, most of which are heard by a single Judge rather than a Full Court. It is important to note that rather than seeking additional judicial resources, the Court has implemented structural and procedural changes to facilitate the expeditious management of the migration workload.

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

Full Court Appeals	2000-01	2001-02	2002-03	2003-04	2004-05
Migration Appeals	201	375	437	663	1050
%	44.6%	56.4%	61.8%	73.4%	75.8%
Total Appeals	451	665	707	903	1384

### **The Court’s native title jurisdiction**

Since 30 September 1998, the Court has been responsible for the management and determination of native title applications. To perform these functions the Court has a wide range of powers under the Native Title Act in relation to the management and resolution of native title applications.

Under the regime, applications are filed in the Court. Applications that satisfy the Court’s requirements are referred to the National Native Title Tribunal (NNT Tribunal), which applies a registration test to determine whether the native title applicant has the right to negotiate. The Tribunal will also mediate applications referred to it by the Court.

The native title jurisdiction presents particular challenges from a case management perspective for the Court. The Court has adopted an active and innovative approach to achieving the effective and efficient management and resolution of native title cases. This section of the report sets out some of the ways in which the Court meets this challenge.

### ***The national allocation protocol***

The Court continues to manage the jurisdiction on a national basis in accordance with a national allocation protocol for the case management and listing of native title matters. The protocol provides that each case is allocated provisionally to a judge (‘the Provisional Docket Judge’) who is responsible for the initial management of the case. 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 National Native Title Unit for substantive allocation to a trial judge.

At 30 June 2005, 340 native title matters had been substantively allocated, of which 147 were still active and managed by judges of the Court.

### ***Strategic management of native title cases***

The Court is responding to the challenge of achieving an appropriate balance between the litigation process, the scheme of the Native Title Act and the resource demands placed upon applicants and others.

Central to the Court’s strategy is the implementation of sensible and transparent processes for prioritising native title matters in each State, Territory and region. There is general acceptance of the need for a more systematic approach to ensuring appropriately resourced native title claims can be progressed to trial or consent determination in a timely manner. The processes developed by the Court, including the use of user group meetings and regional case management conferences, acknowledge the rights of the parties and the institutional constraints on the Court and the other key agencies in the native title system. Some of these are discussed in more detail below.

### ***Supervision of the mediation conducted by the NNT Tribunal***

The Native Title Act does not impose a time limit on the mediation of native title applications, or on other types of negotiations. However, as the Court supervises the mediation of native title applications, it has, in some cases, imposed a timetable and set deadlines with regard to any identified priorities of the relevant State, Territory or region.

### ***Use of regional case management conferences***

The Court continues to respond to the challenge of achieving an appropriate balance between litigation, the scheme of the NTA and the resource demands placed upon applicants and others by implementing sensible and transparent processes for prioritising native title matters in each State, Territory and region.

The regional case management conferences allow a judge or judges (sometimes sitting together) to identify priorities and timeframes for mediation, negotiation and litigation on a regional basis having regard to regional priorities, interrelated claims and resource considerations.

In Queensland, the native title provisional docket is divided into four regions, based upon the boundaries of native title representative bodies. This was done to facilitate more intensive case management of native title applications by the Court and involved regional direction hearings in each region twice during the year.

### ***Hearing of limited evidence***

The Court continues to hear ‘early’ evidence from applicants (either for the limited purpose of preserving the evidence of applicants who are elderly or unwell or to hear some limited evidence on connection).

### ***Evaluation of on-country hearings***

In 2003-04 the Court engaged a consultant to prepare a report on the effectiveness and efficiency of the on-country native title hearings. The report contained a number of wide ranging recommendations suggesting ways that the Court could improve the efficiency and effectiveness of on-country hearings. The Federal Court’s Native Title Coordination Committee considered the report and the Court’s response was provided to those outside the Court who were involved in the review, as well as to some peak bodies for their comment.

The review made several recommendations relating to expert evidence in native title proceedings and the Court initially responded to these by convening a seminar which looked at the role of experts and expert evidence in native title proceedings. This was convened in June 2005 as part of the Australian Institute of Aboriginal and Torres Strait Islanders Studies Native Title Conference 2005. There was a strong interest in the seminar with a focus on some of the emerging tensions regarding the development of the law and practice in this area.

### ***Early neutral evaluation and compulsory conference of experts***

In addition to mediation, judges are increasingly looking to other informal procedures that will encourage the parties to identify and deal with the central issues, with a view to assisting settlement. One procedure has been the use of early neutral evaluation (‘ENE’).

In recognition of the considerable number of experts who are often called to give evidence in native title proceedings, the Court has on occasions exercised its powers to refer the experts to a compulsory conference of experts before a registrar of the Court. The purpose of the conference is for the experts called by the parties to confer and produce a document identifying the matters upon which they agree and disagree.

Such an approach was used in the Native Title Determination Application D6035 of 2002, referred to as Blue Mud Bay No.2. In that matter the aim of the conference was to draw together all the experts called by the parties to participate in what was, in effect, a round table on the issues in question. The conference achieved considerable areas of agreement between the experts and assisted in the efficiency of the trial. By allowing the parties to refine the scope of their challenge to the expert anthropological evidence and, in particular, to focus their cross examination to issues of substantive dispute and assist the parties in considering areas of facts which may also be agreed.

### ***Mediation***

The Court has continued its practice where a judge may refer one or more issues in a native title case to a registrar for a case management conference or mediation. To date, this practice has been working favourably for the parties with issues being resolved without the need to resort to a contested hearing. Registrars will also mediate discrete and narrow issues in a native title proceeding where it has the potential to assist and support the NNT Tribunal's broader mediation role.

### ***The native title workload***

**Table 3.4**  
**Age of Current Native Title matters**

<b>Age at 30 June 2005</b>	<b>Under 6 months</b>	<b>6 – 12 months</b>	<b>12 – 18 months</b>	<b>18-24 months</b>	<b>Over 24 months</b>	<b>Total</b>
Native Title Action	31	21	14	17	702	785
% of Total	3.9%	2.7%	1.8%	2.2%	89.4%	100.0%
Running Total	31	52	66	83	785	
Running %	3.9%	6.6%	8.4%	10.6%	100.0%	

It is important to note that the figures set out in Table 3.4 are based on all applications under the Native Title Act that have been filed in the Court and which remain open on the Court's data base Casetrack. However, a large number of cases have been effectively closed as a result of being combined or consolidated with one or more cases. 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 2005 there were, in practical terms, 570 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 2005 there were 570 active claimant applications before the Court, of which the NNT Tribunal is mediating 346. There were also 16 compensation claims and 29 non-claimant applications. Of the 570 active claimant applications before the Court, 532 have been notified.

During the reporting year, the Court made 12 determinations that native title exists and one determination that native title does not exist. Three determinations were made after contested hearings and ten were arrived at through mediation and negotiation. One matter was heard on appeal where it was determined that native title exists.

### ***Native title decisions of interest***

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

- That the non-extinguishment principle found in s. 238 was to be applied on the basis of the facts in existence at the date at which a claimant application is filed in the court and not at the date at which such an application is the subject of a determination of native title by the court. *Rubibi Community v Western Australia*
- That, in the exercise of judicial discretion under s. 84C, an applicant should be allowed the opportunity to amend the application. *Bodney v Bropho*
- Whether the grant of a lease at a particular date was either a past or valid future act, and whether or not that lease should be included in a determination of native title *Daniel v Western Australia*
- That the court has a discretion under s. 84(5) of the NTA to join the members of a potential claim group who had no current native title claim as respondents to an existing native title claim. *Kokatha Native Title Claim v The State of South Australia*
- The application of the provisions of the *Evidence Act 1995 Cth* ('*The Evidence Act*') to the admissibility of anthropological reports in native title cases: see *Harrington-Smith (No 7)*, *Jango v Northern Territory of Australia*. In all of these decisions, their Honours considered the form and content of the expert reports being presented as evidence in the native title proceedings, with findings focusing on the admissibility of opinion evidence and the form of expert reports.

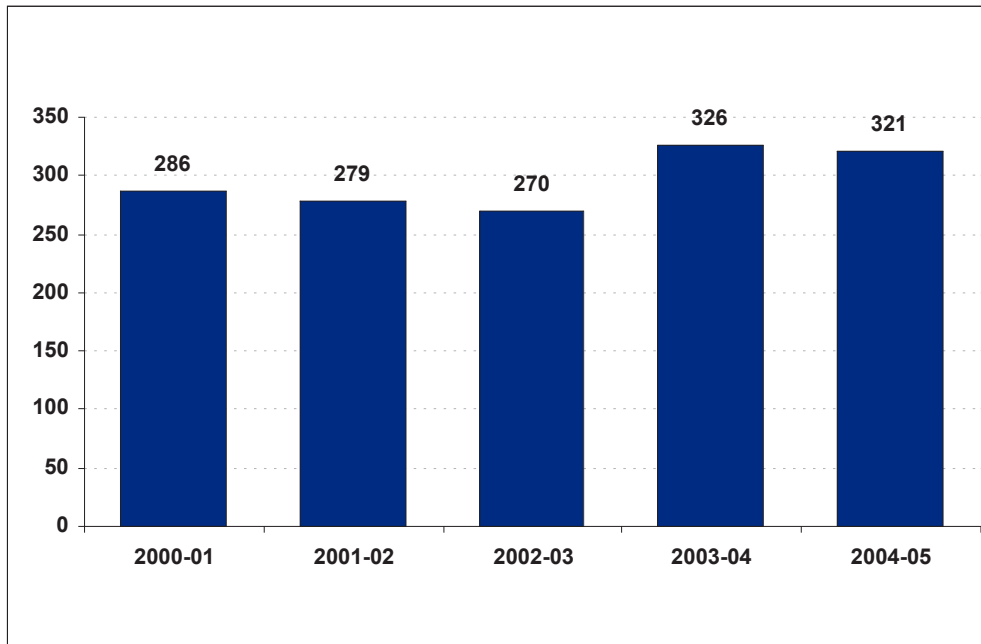
### Assisted Dispute Resolution

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, the Court also facilitates parties using the services of appropriately qualified external mediators. Figure 3.2 on page 37 sets out the number of matters referred to mediators during the five year period to 2004-05. The program has proved popular, with a total of 3,567 matters referred to mediation since its commencement in 1987. In the last five years, an average of 296 matters has been referred each reporting year. In the reporting year 321 matters were referred to ADR. During the reporting year the Court appointed a Director of ADR to manage the Court's program.

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. With the introduction of the Court's Individual Docket System greater emphasis has been put on the early identification of cases suitable for 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) 2000-01 to 2004-05**  
**(matters referred for mediation)**



### **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, collect fees, list matters for hearings, and to otherwise assist the management and determination of proceedings. The Court also provides the infrastructure for tribunal hearings, including hearing rooms, furniture, and equipment and transcript services.

A summary of the function of each tribunal and the work undertaken during the reporting year is set out in Appendix 6 on page 124.

## **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 reform of 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 further enhancing the quality and accessibility of the Australian justice system, including the participation of judges in bodies such as the Australian Law Reform Commission, the Judicial Conference of Australia and in other law reform and educational activities.

### **Practice and procedure reforms**

The Practice Committee is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee considered the following issues:

- the operation of the Court's rules in relation to judicial review proceedings under section 39B of the *Judiciary Act 1903* and, in particular, the absence of special procedures directed to actions under section 39B and section 75(v) of the Commonwealth of Australia Constitution Act;
- the filing and retention of court documents, particularly the Court's statutory and other obligations in relation to the retention of court records and other documents;
- the Law Council of Australia's proposed Costs Assessment Scheme in relation to costs assessment in federal courts, including consideration of a proposed new 'fair and reasonable' test for the fixing of costs in lieu of the current 'necessary and proper' test;
- use of interpreters in matters before the Court;
- disposition time goals;
- current registry Individual Docket System practices;
- amendments to the *Administrative Appeals Tribunal Act 1975*;
- application of the *Administrative Decisions (Judicial Review) Act 1977* to decisions under the Court's legal assistance scheme;
- procedures for the enforcement of orders imposing a pecuniary penalty for contempt;
- citation of electronic judgments;
- issues arising from the Court's statistics and procedures in trade practices, human rights and corporations matters and transfers to, and appeals from, the Federal Magistrates Court; and
- procedures for the preparation of Appeal Books.

### ***Liaison with the Law Council of Australia***

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

- the Council's proposal for a federal costs assessment scheme;
- discovery of electronic records;
- electronic initiatives and case management issues;
- native title; and
- the Federal Civil Justice System Strategy Paper.

### **Assistance for self represented litigants**

In recent years the Court has undertaken a range of activities in response to the challenges raised by self represented litigants. In 2004-05, about one third 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 the Court's migration and bankruptcy jurisdictions (both in first instance matters and in appeals).

In August 2002 the Court adopted a Self Represented Litigants Management Plan which implemented:

- arrangements to improve the nature and quality of information collected by the Court on self represented litigants and their needs;
- a revision of the Court's brochures and guides;
- staff training on giving appropriate advice and assistance to self represented litigants; and
- the development of rules and practices that will allow the Court to deal more effectively with self represented litigants.

The Court continued to revise the content and location of information on its website to provide greater assistance to self represented litigants, including details of possible sources of legal advice and assistance. It also produced an information sheet which clearly identifies the assistance that a registry can provide for a litigant and what is expected of the litigant.

In September 2004 the Court, with the Australian Institute of Judicial Administration, hosted a self represented litigants forum attended by representatives of federal, State and Territory courts and tribunals, government departments and legal practitioners. The forum provided courts and tribunals with an opportunity to share information about initiatives to assist self represented litigants and to ease their impact on the court system.

The Court is developing a range of statistical reports to be produced by Casetrack which will allow the Court to more closely monitor the impact that self represented litigants have on the litigation process and to measure the effectiveness of initiatives to assist them.

### **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 2004 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 pensioner concession card or a Commonwealth seniors health card; or
- is the holder of any other card issued by the Department of Family and Community Services or the Department of Veterans Affairs certifying entitlement to Commonwealth health concessions; or
- is an inmate of a prison or is otherwise lawfully detained in a public institution; or
- is a child under the age of 18 years; or
- is in receipt of a youth or AUSTUDY allowance; or
- is in receipt of an ABSTUDY allowance.

Registrars also have 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. There were no applications to the Tribunal during the reporting period.

Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 64.

### **Remote hearings**

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

### **Public information**

#### ***Internet home page***

The use of the Court's web site at [www.fedcourt.gov.au](http://www.fedcourt.gov.au) has increased markedly and is now integral to the conduct of the Court's business. 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, information for litigants and new initiatives. It also provides access to the electronic filing system and the eCourt online forum.

A new website was released in July 2004 with the redesign incorporating specific areas for practitioners and litigants targeted at their different needs. For litigants this includes step-by-step guides, links to the correct forms and pamphlets for downloading for the main areas of the Court's jurisdiction. eCourt services were further enhanced with the provision of eSearch which enables on-line searching for specific case details. Information relating to user forums including meeting announcements, agendas and minutes has been added to the site. A new admiralty and maritime page was established, which provides information on the Court's jurisdiction and practice, case law generally, legislation, papers and publications and related links is regularly updated. *Practice News*, a free email subscription service advising of changes to the rules and other practice related matters, was launched for the 2005 law term.

### ***Published information***

The Court publishes a number of brochures 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 and are downloadable from the website.

### ***Access to judgments***

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

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

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

### ***Information for the media and televised judgments***

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

**Nangkiriny v State of Western Australia** – This native title determination was delivered by Justice North in the community of Bidydanga south of Broome. It was recorded by the ABC and the regional network GWN.

**McCrea v Minister for Customs and Justice** – This judgment, delivered by Justice North, concerned an alleged murderer whom the Singapore government was attempting to extradite. It was taped by the ABC.

**Wik Peoples v State of Queensland** – a major native title determination delivered by Justice Cooper at Aurukun in far north Queensland. The vision was shot by the ABC and provided to other networks.

**De Rose v State of Queensland** – A full court native title matter with judgment delivered by Justice Wilcox on behalf of himself, and Justices Sackville and Merkel.

**Stanley Mervyn and others on behalf of the Peoples of the Ngaanyatjarra Lands v The State of Western Australia and Ors** – another native title determination delivered by Chief Justice Black and videoed for use by all outlets.

During the reporting year, the following videos were produced for internal training and external use: "The Role of the Court Officer", "Videoconferencing in the Federal

Court of Australia”, “Assisted Dispute Resolution”, “The Role of the Admiralty Marshal”, “The Role of the Associate” and “The Federal Court of Australia and the Australian System of Justice”.

### **Community relations**

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

### ***User groups***

The Court continued its involvement in user groups to provide an opportunity for information exchange with practitioners and other people with an interest in particular areas of its jurisdiction. During the year meetings were held with local law societies and bar associations in the states and territories and regular liaison meetings were held between the Practice Committee and the Law Council of Australia. 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 the legal profession, schools, students and community organisations.

The NSW Registry was involved in presentations to the NSW Bar Readers Course and the Deputy District Registrar presented a paper entitled “ADR: and alternative to hearings in Bankruptcy matters” at the Personal and Corporate Insolvency Conference 2004. The Registry also organised a joint seminar on competition law, held in March 2005 with the Law Council of Australia. The Registry also participated in the NSW Law Society program for school students entitled “School’s Conflict Resolution and Mediation”.

The Victorian Registry was involved in a presentation of “Role of Admiralty Marshal” in April 2005 to members of Victorian Chapter of Maritime Lawyers Association of Australia and New Zealand. It also gave a presentation on eCourt Services and Integration Project in April 2005 and presentations to the Victorian Bar Readers Course. The Registry also participated in an exhibition and guided tours of the Commonwealth Law Court’s Building in Melbourne during Law Week 2005. It also hosted visits from Melbourne University, Canterbury Girls Secondary College, and Chisholm Institute of TAFE. In particular, the Registry also participated in the following seminars/lectures:

- Victorian Bar Legal Assistance Scheme – Migration Advocacy training
- ASIC – Witness/Advocacy Training
- Castan Centre for Human Rights Law – Lecture

- Victorian Council of Law Students' Societies – Grand Finals Junior and Senior Mooting Competition
- Advocacy training for Blake Dawson Waldron, the ANU and University of New England
- Moots lectures for the Bar Readers course, Monash and La Trobe Law Students

The Queensland Registry made presentations on eSearch to legal practitioners and conducted moot court exercise and delivered lectures to Queensland University of Technology legal practice course students on bankruptcy.

In South Australia the Registry presented information sessions for newly admitted practitioners and participated in the SA Bar Readers Course. The Registry also gave a presentation for secondary school children during Law Week.

In the Northern Territory, the Registry, in conjunction with the Law Society of the Northern Territory, arranged an Admiralty and Maritime Law Seminar held in October 2004. The Registry also prepared and distributed to regular Court users a monthly bulletin of events in the Court.

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

During the reporting year twenty three complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. This figure does not include complaints about the merits of a decision by a judge or the Court, which may only be dealt with by way of appeal.

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

The Court is an active supporter of legal education programs, both in Australia and overseas. Information about the Court's engagement with legal education programs for international jurisdictions is described below. During the reporting year, the Chief Justice and many judges:

- presented papers, gave lectures and chaired sessions at judicial and other conferences, judicial administration meetings, continuing legal education courses, university law schools; and
- participated in Bar reading courses, Law Society meetings and other public meetings.

An outline of the Judges' contributions in this area is included in Appendix 8 on page 143.

## **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 from page 4), 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***

On 20 April 2005, the Chief Justice signed an Annex to the Memorandum of Understanding between the Federal Court and the Supreme Court of the Republic of Indonesia at a ceremony in Jakarta. The Chief Justice of the Republic of Indonesia, Professor Dr H Bagir Manan signed the Annex on behalf of the Supreme Court. The Annex complements the Memorandum of Understanding between the two Courts, which was signed in March 2004 to promote and facilitate cooperation in conducting judicial development programs. The Annex identifies an indicative program of activities to be conducted over two years commencing in 2005 and to set out mechanisms for consultation, administration and implementation for the program. The new program will build upon the five judicial training programs which the Court has run since 1999 for the Indonesian judiciary, in cooperation with the Supreme Court of Indonesia.

#### ***Sri Lanka***

Justice North delivered presentations and facilitated discussions with judges in Sri Lanka for two days between 19 and 20 December 2004. The presentations entitled: ‘*The Structure of the Federal Constitution – Issues and Challenges: The Australian Experience*’, and ‘*Recent Trends in Australian Administrative Law*’ were part of a workshop for judicial officers. AusAID funded the cost of Justice North’s travel to Sri Lanka.

#### ***Thailand***

Between 9 and 17 February 2005, Justice Hill worked with the Central Bankruptcy Court and Central Administrative Court in Bangkok, Thailand to examine how the Federal Court might use its expertise and information technology to assist in case management. The Court received \$29,504 in funding from AusAID under its Thailand-Australia Government Sector Linkages Program for these programs.

### **Interim Regional Judicial Development Program**

At AusAID’s request, the Court was asked to provide interim assistance to South Pacific judiciaries during the design phase of a new program of regional assistance. Thirteen activities across ten judiciaries were designed in consultation with each of the Chief Justices, and \$282,000 in funding from AusAID was received to cover the implementation costs. Seven of the activities focussed on alternative dispute resolution, and six responded to national priority areas. The following outlines the nine activities which were completed before 30 June 2005. The remaining activities will be implemented by the end of September 2005.

### ***Cook Islands***

Between 11 and 12 June 2005, a workshop for Justices of the Peace (JP) was conducted in Rarotonga, Cook Islands. This was the first of three phases of a program of assistance for the Islands.

### ***Fiji***

Justice North, with the assistance of Deputy District Registrar, John Efthim conducted a three-day Assisted Dispute Resolution (ADR) Workshop in Suva, Fiji between 8 and 10 March 2005, for 30 participants from four Pacific countries. A large number of judicial officers, court staff and private sector lawyers attended the workshop that was the first of its kind conducted under the Interim Regional Judicial Development Program.

### ***Kiribati***

In February 2005, a Criminal Law and Procedure Workshop was held in Kiribati. The purpose of the workshop was to build the capacity of eight Single Magistrates as trainers who will continue to train their lay Island peers who may be involved in hearing and dispensing with criminal law matters.

Three judicial officers from Kiribati also attended the Assisted Dispute Resolution workshop in Fiji in March.

### ***Niue***

Between 7 and 9 June 2005 a Judicial Skills Workshop was conducted for judicial officers in Niue. The purpose of the workshop was to build the capacity of judicial officers to efficiently, effectively and confidently carry out their judicial functions.

Three court officers from Niue also attended the Assisted Dispute Resolution workshop in Fiji in March.

### ***Papua New Guinea***

On 26 February 2005, Justice French presented a paper to judges and lawyers in Papua New Guinea entitled “The Role of the Court in Competition Law” at the invitation of the Independent Consumers and Competition Commission, the PNG Government’s competition regulatory agency. The objective of his Honour’s participation was to assist judges and lawyers in Papua New Guinea to confidently manage cases in this jurisdiction by offering a judicial perspective of competition law.

### ***Samoa***

Justice Moore, with the assistance of Native Title Registrar Louise Anderson, conducted a three-day Land Law and Procedure Workshop in Apia, Samoa between 2 and 5 May 2005. The objective of the workshop was to increase participants’ knowledge of case management principles and approaches to the resolution of customary land law disputes and practice.

District Registrar Jamie Wood and Deputy District Registrar Tim Connard facilitated an Advanced Mediation Skills Workshop over three days in May 2005 for participants drawn from the legal profession in Samoa. This followed a basic Alternative Dispute Resolution (ADR) workshop conducted in 2004.

### ***Solomon Islands***

A third ADR Workshop was conducted in the Solomon Islands from 31 May to 2 June, facilitated by Justice Lander and Deputy District Registrar, Kim Lackenby. Fifty-five participants attended the workshop from a cross-section of the judiciary and legal profession.

### ***Tonga***

During the last week of June, the Federal Court arranged a three-day Evidence and Sentencing Workshop for Magistrates. Its purpose was to develop the participants' skills and knowledge so that they could make appropriate decisions cognisant of the law, accompanying rules and procedure. They were also trained to train their peers to continue building the capacity of Tongan judicial officers and registry staff.

### ***Vanuatu***

Following the initial Assisted Dispute Resolution Workshop in Fiji, Justice Merkel, assisted by Deputy District Registrar Cathy Cashen, conducted two similar workshops in Port Vila, Vanuatu for 52 participants. The first workshop, which ran for two days between 12 and 13 April, had 37 participants and included Chief Justice Lunabek, most of the Vanuatu judiciary and a large number of public sector lawyers (including both the Attorney General and the public prosecutor). The second one-day workshop was held on 14 April for 15 participants, and involved private practitioners and two public sector lawyers.

## **Pacific Governance Support Program**

Following an approach from AusAID, the Court developed a program in consultation with a number of courts in the South Pacific to provide assistance in the area of judicial and administrative support. The Court received \$144,396 from AusAID to cover the costs of implementing the program. The following activities were conducted as part of the program.

### ***Fiji***

The South Australian District Registrar, Patricia Christie, conducted an assessment of the judicial and administrative procedures of the Fijian High Court between 13 and 17 December 2004. In April this year, the Chief Justice of Fiji, Daniel Fatiaki and Acting Deputy Registrar / Resident Magistrate Salesi Temo visited the Court for two weeks on an intensive study tour arranged by the Court. The purpose of their visit was to view several Australian courts in operation and consider how their practice and procedures could be adapted for the needs of the Fijian judiciary.

Following the recommendations contained in the needs assessment report, a registrar of the Court, Natalie Cujes, visited Fiji in April 2005 to assist two judges of the High

Court of Lautoka, with a callover of its backlog of cases. Assistance was provided in the form of advice to the judges on relevant aspects of civil case management, and a review of registry practices regarding file management. During a four-week period, 2,361 cases were called over, 611 of these were set down for trial and the remaining 1,750 were dismissed or determined.

### ***Tonga***

In November 2004, Deputy Registrar Philip Kellow conducted an assessment of the judicial and administrative systems of the Supreme Court in the Kingdom of Tonga. The assessment identified a number of areas where the Supreme Court could further improve its judicial and administrative systems. Following this, the Chief Justice of Tonga, Robin Webster and Chief Registrar Manikovi Pahulu visited the Federal Court in April 2005 on a week long study tour.

### **Visitors to the Court**

The Court is visited by a significant number of judges and officials from overseas jurisdictions. These visits provide 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. During the reporting year more than 95 visitors from countries, including China, Vietnam, Indonesia, the United Kingdom, the United States of America, New Zealand and Iraq came to the Court. These visits often require planning and coordination by judges and Court staff, particular when the visit is part of a program of a larger study tour.

### **Pegasus Scholarship Trust**

The Pegasus Scholarship Trust was established in England to help gifted young lawyers learning 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 agreed to the Court hosting a Pegasus Scholar, Mr Alex Potts, a London barrister. He was with the Court from 6 September to 1 October 2004 as a research assistant to the Melbourne judges, based in the Chief Justice's chambers. The Court has been supporting the work of the Trust in this way since 1995 and will host another Pegasus Scholar in 2005-06.