

CHAPTER 3

THE WORK OF THE COURT

3.1 INTRODUCTION

As previously stated, the outcome for the Federal Court 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 five output groups for the Court's outcome, namely

- Management of cases and deciding disputes according to law – Federal Court;
- Management of cases and deciding disputes according to law – Tribunals;
- Service to Government;
- Services provided to international jurisdictions; and
- Ensuring the quality of, and access to, the system of justice.

A summary of the Court's performance in relation to these output groups is set out in Table 5.1 on page 126.

3.2 MANAGEMENT OF CASES AND DECIDING DISPUTES BY THE COURT

Introduction

This output group refers to the management of cases that come before the Court. It includes a range of activities which assist judicial decision making, such as the provision of registry services to accept and process documents for court proceedings, the collection of court fees, the listing of matters for hearings, the monitoring of the work of the Court, and to otherwise assist the management and determination of proceedings. It also includes the provision of infrastructure for Court hearings, including hearing rooms, furniture, equipment and transcript services.

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

A summary of the Court's performance in relation to this output group is set out in Table 5.1 on page 126.

General

Jurisdiction

The Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary criminal matters. 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 may raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. Other cases may only concern the immediate parties. See Figure 6.6 on page 137 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) Act 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 (see Table 6.4 on page 146 for a list of some of the enactments under which decisions have been made). Many cases also arise under the *Administrative Appeals Tribunal Act 1975* which provides for a review on the merits by the Administrative Appeals Tribunal of many Commonwealth administrative decisions, and which also provides for a right of appeal from the Tribunal to the Court on questions of law. The Court has jurisdiction under the *Migration Act 1958* to hear applications for judicial review of decisions of the Migration Review Tribunal and the Refugee Review Tribunal. See Figure 6.7a on page 140 for comparative statistics regarding Migration Act matters.

The Court hears taxation matters on appeal from the Administrative Appeals Tribunal, mostly concerning income tax and, until its abolition from 1 July 2000, sales tax. It 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. Applications filed with the National Native Title Tribunal ("the NNT Tribunal") as at 30 September 1998 were transferred to the Court on that date. The Act provides that, when dealing with native title matters, the Court is bound by the rules of evidence, except to the extent that it otherwise orders (section 82(1)), and may take account of the cultural and customary concerns of indigenous people, but not so as to prejudice unduly any other party to the proceedings (section 82(2)). The Court also hears appeals from the NNT Tribunal and matters filed under the Administrative Decisions (Judicial Review) Act involving native title. See Figure 6.12 at page 145 for statistical information on Native Title matters.

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 arrested 14 vessels. In March 2000 the Court ordered the temporary release of the general cargo vessel "Assets Venture" which had been arrested at Christmas Island so that it could travel to Indonesia to refuel and replenish its supplies. The temporary release was necessary because of the lack of facilities at Christmas Island. The vessel sailed to Indonesia and returned in accordance with the terms of the order. In April 2000 the Court ordered the judicial sale of the "Spartan". The sale had not been completed as at 30 June 2000. See Figure 6.8 on page 141 for a comparison of Admiralty Act matters filed in the past five years.

Until the High Court's decision in *Re Wakim* in June 1999, the Court's jurisdiction under the Corporations Law covered a diversity of matters ranging from the appointment of provisional liquidators and the winding up of companies, to applications for the orders available in relation to fundraising, corporate management and misconduct by company officers. This jurisdiction was exercised concurrently with the Supreme Courts of the States and Territories. The High Court's decision has led to a dramatic reduction in the number of Corporations Law matters commenced in the Court. See Figure 6.5 on page 135 for a comparison of Corporations Law 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. Figure 6.11 on page 144 provides statistical information on bankruptcy matters.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of the Australian Capital Territory and the Supreme Court of Norfolk Island. It also hears appeals from the Federal Magistrates Court in non-family law matters. Appeals on points of law from the Administrative Appeals Tribunal and other tribunals are within the original jurisdiction of the Court. Figure 6.9 on page 142 provides statistical information concerning the number 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 122.

New jurisdiction

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

- *Human Rights Legislation Amendment Act (No 1) 1999*
- *Federal Magistrates (Consequential Amendments) Act 1999*
- *Anti-Personnel Mines Convention Act 1999*
- *National Measurement Amendment (Utility Meters) Act 1999*
- *Superannuation Contributions and Termination Payments Taxes Legislation Amendment Act 1999*
- *Telecommunications (Consumer Protection and Service Standards) Act 1999*
- *Health Legislation Amendment (No 3) Act 1999*
- *Border Protection Legislation Amendment Act 1999*
- *Law and Justice Legislation Amendment Act 1999*
- *Migration Legislation Amendment (Migration Agents) Act 1999.*

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 a Deputy Registrar. An officer of 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 will be undertaken as a consequence of the changes to the Court's practice and procedure described elsewhere in this report.

During the reporting year, new rules to coincide with the Court's new jurisdiction under the *Human Rights and Equal Opportunity Commission Act 1986* were made. New rules were also introduced in relation to discovery, Court appointed expert assistants, and facsimile filing. Minor amendments were made to a number of other rules.

In December 1999 the Court replaced Order 71 of the Federal Court Rules with the *Corporations Law Rules 2000*, which set out the rules for proceedings in the Court under the Corporations Law and the ASC Law. The new Rules were prepared by the Council of Chief Justices' Committee on Harmonisation of Practice and Procedure under the Corporations Law, and have also been adopted by the Supreme Court of each State (except Queensland) and Territory.

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 14 on the Court's approach to orders for discovery. He also issued Practice Notes on:

- Information to be provided to the Court to enable the appropriate treatment of persons coming before it (Practice Note No 15);
- Affirmations and Oaths (Practice Note No 16); and
- Guidelines for the use of information technology in litigation in any civil matter (Practice Note No 17).

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 a guide to instituting an appeal in the Federal Court and various notices to practitioners issued by the District Registries. These are also available from the District Registries and in looseleaf legal services.

Decisions of Interest

During the year the judges published 1,877 decisions. To give some illustration of the Court's work, a few of these decisions are summarised below. The range of decisions highlights the varied jurisdiction of the Court.

Trade Practices – Pyramid selling – Misleading and deceptive conduct

Australian Competition & Consumer Commission v Giraffe World Australia Pty Ltd

(26 August 1999, Justice Lindgren)

Giraffe World Australia Pty Ltd ("Giraffe World") had been engaged in a business in Sydney, and other Australian cities, of selling a mat or mattress, suitable to be connected to an electricity supply ("the Mat"). In association with that activity it had been promoting a "Giraffe Club" and a "Grow Rich System". A person was introduced to the product and to the possibility of becoming a member of the Giraffe Club and the Grow Rich System through presentations at "Happiness Circle" meetings.

Giraffe World claimed that when connected to a source of electricity, the Mat emitted negative ions which would benefit the health of a person who slept on it. If a person bought a Mat and joined the Giraffe Club and the Grow Rich System, that person could earn commissions by introducing others, and yet further commissions if those people also joined the Giraffe Club and the Grow Rich System and introduced yet further newcomers.

Justice Lindgren concluded that Giraffe World was promoting a pyramid selling scheme in contravention of section 61 of the Trade Practices Act. As well, he concluded that it was engaging in referral selling in contravention of section 57 of that Act.

The Australian Competition and Consumer Commission ("the Commission") also alleged that in its selling of the Mat, particularly at the Happiness Circle Meetings, Giraffe World engaged in misleading and deceptive conduct, and represented that the Mat had approvals, performance characteristics, uses or benefits it did not have, in contravention of sections 52 and 53(c) of the Act. Ultimately, Giraffe World accepted that on the evidence, it could not support some of the representations that had been made. But some 60 individuals testified that their health had improved in various ways after using the Mat. The Commission led a considerable body of scientific evidence directed to showing that there were no reasonable grounds for thinking that the use of the Mat would produce health benefits. The Commission suggested that in light of the expert testimony, the individuals who testified to the benefits of using the Mat were the sincere but mistaken victims of autosuggestion.

Giraffe World sought to portray the case as a battleground between conventional and alternative health care systems, and between the approaches of modern Western science and medicine on the one hand and an older Oriental approach to human health and well-being on the other. But Justice Lindgren considered his function as being limited to deciding the issues presented for decision, by applying the law to the facts proved by evidence.

The Judge concluded that on the expert evidence before him, and the submissions made to him, Giraffe World contravened the Act to the extent that it represented to prospective buyers that there was medical, scientific or other objective support for the proposition that the Mat would operate, by means of negative ions, to benefit their health.

Justice Lindgren also dismissed a related proceeding brought by Giraffe World against the Commission for defamation.

Genocide – International Law

Nulyarimma v Thompson

Buzzacott v Hill

(1 September 1999, Justices Wilcox, Whitlam and Merkel)

In two separate cases it was claimed that the conduct of various government ministers, members of parliament and the Commonwealth had or would contribute to the destruction of the Aboriginal people as an ethnic or racial group and hence constitute genocide. The matters were heard together and one set of reasons was delivered by the Court.

In the first matter, *Nulyarimma v Thompson*, the conduct complained of was the formulation and support of amendments to the Native Title Act, known as the government's "Ten Point Plan". The amendments

eventually passed into legislation as the *Native Title Amendment Act 1998*. The Act provides for the modification and extinguishment of some native title rights, as well as the validation or protection of certain acts in respect to land (for example, the creation of leases or erection of buildings) that might have been invalid for reason of native title.

The case arose when four Aboriginal applicants asked a Canberra magistrate to issue warrants of arrest for the Prime Minister, John Howard, the then Deputy Prime Minister, Tim Fischer, independent Senator Brian Harradine and Pauline Hanson, MP (at the relevant time), for the crime of genocide. When the magistrate refused to issue warrants of arrest, on the grounds that genocide was not a crime known to Australian law, the decision was appealed first to a single judge of the Supreme Court of the Australian Capital Territory, and then to the Full Court of the Federal Court.

The second matter, *Buzzacott v Hill*, was a motion to strike out proceedings instituted on behalf of the Arrabunna people of the Lake Eyre region, against the Commonwealth, the Minister for Environment and the Minister for Foreign Affairs and Trade for their failure to proceed with an application to place the Arrabunna people's traditional lands on the World Heritage List. It was claimed that activities, such as mining, affect waterholes and native flora and fauna on the lands and, as a result, threaten the Arrabunna people's traditional way of life. The applicant did not seek to institute a criminal prosecution, but sought an order compelling the Government to take steps to protect the land, as well as damages.

Genocide at international law

The 1948 *Convention on the Prevention and Punishment of the Crime of Genocide* defines genocide as "acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group", and lists examples such as killing or causing serious bodily or mental harm to group members, deliberately inflicting on the group conditions calculated to bring about its physical destruction and forcibly transferring children of the group to another group.

The Court accepted that genocide is a universal crime under customary international law and that the prohibition of genocide is a peremptory norm of international law (and accordingly has the status of "jus cogens"). The norm imposes an obligation on all states to either prosecute or extradite perpetrators of genocide found within their borders whether the acts were committed in their territory or not.

Genocide and Australian law

While genocide is recognised as a universal crime in international law, and Australia is a signatory to the Genocide Convention, Australia has not passed legislation which states it is a criminal offence to commit genocide (other than legislation relating specifically to war crimes).

The question for the Court was whether a person can be tried in Australia for the crime of genocide, even though there is no Australian legislation which states that genocide is a punishable offence. Or put another way, what is the legal status of a peremptory norm of international law ("jus cogens") in an Australian court.

Majority Judgments – Jus Cogens and Australian Law

Justices Wilcox and Whitlam delivered separate judgments, each determining that, as a general principle of Australian law, customary international law is of no force in Australia unless carried into force by Australian legislation or recognised by common law.

Justice Whitlam did not consider that the status of jus cogens compelled the recognition of genocide, or any other customary international law, as part of the common law of Australia, and held that in a number of Australian States the creation of new crimes by common law is expressly forbidden by statute.

Justice Wilcox noted that in Australian law, a treaty, to which Australia is a signatory, has no force, unless carried into force by legislation. He said it would be curious if a customary rule had greater effect. Justice Wilcox did not accept that genocide was a crime in Australian common law. While he accepted that some civil rules of international law form part of Australia's common law, he considered it undesirable for policy reasons that a law creating a serious criminal offence should be enforced in Australia absent specific legislation.

Dissenting Judgment – Jus Cogens and Australian Law

Justice Merkel did not share that view. He concluded that a rule of customary international law could be adopted into Australian law, without enacting legislation, if the rule is not inconsistent with Australian statute law or with general policies of Australian common law.

Justice Merkel considered that the adoption of the crime of genocide was not inconsistent with Australian common law; as it was an adoption of an international crime, not the creation of a new one, its adoption was not inconsistent with the policy against the creation of new crimes by courts. In addition, given the existence of the universal crime, it could not be said that offenders would not have been aware that their actions were punishable. For similar reasons, he concluded that adoption of the crime was not a usurpation of parliamentary power.

Could the conduct complained of constitute genocide?

All three Judges agreed that an essential element of the crime of genocide was the existence of an intent to destroy an ethnic or racial group. The Court did not accept that in either case such an intent had been proven. In relation to the second proceeding, Justice Merkel also noted that there were unrelated administrative law considerations, which meant that the decision was not reviewable.

Intellectual Property – Copyright – Test for whether copying occurred

Clarendon Homes (Aust) v Henley Arch Pty Ltd

(7 October 1999, Justices Heerey, Sundberg and Finkelstein)

This case concerned a dispute between project home builders over the copyright in plans.

The appellant claimed that the respondent had copied its plans and therefore did not have copyright in the plans that it claimed were infringed.

The Full Court set down an appropriate test to apply when determining whether copying has occurred:- When the defendant's work is the same as the plaintiff's work then it is clear that the inference of copying can be drawn. In the event that the copyist has not reproduced the plaintiff's work in its entirety the plaintiff must show, in the absence of evidence of access, that the similarities are so strong as to preclude the possibility of the defendant having arrived at the same result independently.

The Full Court dismissed the appeal.

Migration – Protection in non-Convention country

Minister for Immigration & Multicultural Affairs v Al-Sallal

(29 October 1999, Justices Heerey, Carr and Tamberlin)

An applicant claimed to be a refugee within the meaning of the Refugees Convention and therefore entitled to a protection visa. The applicant was a Bedoon born in Kuwait. He was a stateless person, never having had a nationality. After the Iraqi invasion of Kuwait in 1990 and Iraq's subsequent defeat the applicant was detained and questioned as a suspected collaborator. He fled to Iraq where he lived for five years but, fearing conscription for military service, he paid a smuggler to take him across the border to Jordan. Jordan is not a party to the Refugees Convention. However the Refugee Review Tribunal found that Jordan had a tolerant attitude towards Bedoons. Also Jordanian law made provision for residency permits and international laissez-passers for stateless persons.

The Full Court held that Australia's obligations under the Refugees Convention could be satisfied by sending back (or "refoulement") an asylum seeker to a third country notwithstanding that such country was not a party to the Convention.

The Full Court said:

“So long as, as a matter of practical reality and fact, the applicant is likely to be given effective protection by being permitted to enter and live in a third country where he will not be under any risk of being refouled to his original country – that will suffice. The fact that a country is a party to the Convention is relevant but not determinative either way.”

Workplace Relations – Freedom of association

CFMEU v Coal and Allied Operations Pty Ltd

(5 November 1999, Justice Branson)

This case involved an application by the Construction, Forestry, Mining and Energy Union (“CFMEU”) for the Court to impose penalties on Coal and Allied Operations for conduct which the CFMEU claimed breached the freedom of association provisions of the *Workplace Relations Act 1996* (Cth) (Part XA) (“the Act”). In six instances, members of the CFMEU employed by Coal and Allied Operations had applied for leave to perform their duties as an employee representative. The leave was not approved and, in each case, warnings were issued and entries made on the employment files of the members for unapproved absence from work. In each case Justice Branson found that, by issuing a written warning of a serious or major breach to one of its employees, Coal and Allied Operations altered the position of that employee to the employee’s prejudice within the meaning of section 298K(1) of the Act.

Justice Branson considered first whether each of the employees on each of the occasions in question was absent “for the purpose of carrying out duties or exercising rights as an officer of an industrial association” (section 298L(m)). The Judge found that attending a hearing before the Australian Industrial Relations Commission for the purposes of being able to give instructions to the applicant’s counsel, and of reporting to Lodge members with respect to the appeal hearing, was for the purpose of carrying out duties or exercising rights as an officer of an industrial association. She also found that attending a meeting concerned with “matters ... affecting the interest of the [Lodge of which the employee was President]” was for the purpose of carrying out duties or exercising rights as an officer of an industrial association. Given the locally focused nature of the Lodge Committees, the Judge was not satisfied that attendance by the Vice-President and Secretary of a Lodge at a meeting of CFMEU divisional delegates held in Melbourne was for the purpose of carrying out duties or exercising rights as an officer of an industrial association.

Justice Branson next considered whether leave was unreasonably refused in each case. In doing so, Justice Branson had regard to: the purpose for which leave was sought; the circumstances surrounding the refusal; the impact of the refusal on the employee and on the legitimate interests of his or her industrial association; and the impact the approval of leave would have had on the employer and its legitimate industrial interests. There was significant confusion within the management of Coal and Allied Operations concerning the policy to be applied to applications for the type of leave sought. The Judge found that leave was unreasonably refused in three of the six instances.

Justice Branson was careful to make clear that her conclusions were conclusions of law and not findings concerning legal entitlement to be granted leave for particular purposes.

Justice Branson found that the CFMEU succeeded in establishing that Coal and Allied had engaged in conduct in contravention of the freedom of association provisions in three instances.

Native Title – Recognition of native title in the sea and sea-bed

Commonwealth of Australia & Ors v Yarmirr & Ors

(3 December 1999, Justices Beaumont, von Doussa and Merkel)

These were appeals against a determination of native title made on 4 September 1998 by Justice Olney. The determination was made under the Native Title Act, before its amendment in 1998. The proceedings raised several important questions, including whether native title may be recognised, and protected, in relation to Australia’s coastal seas, and if so, the extent of such recognition and protection. The appeals were heard in Darwin over five days by a Full Court.

The case at first instance

The application for determination of native title before Justice Olney was made on behalf of the Mandilarri-Ildugij, Mangalara, Murran, Gadura-Minaga and Ngaynjaharr peoples (“the claimant group”). The claim was, in essence, for the ownership and exclusive possession, occupation, use and enjoyment of an area of seas, including the sea-bed and its resources, in the vicinity of Croker Island in the Northern Territory.

Justice Olney upheld the claim in part. His Honour’s findings, and conclusions, in summary, were:

- The provisions of the Native Title Act expressed Parliament’s specific intention to recognise that native title rights, if proved, are capable of recognition in relation to offshore seas and waters.
- The evidence established the existence of traditional laws acknowledged and customs observed, whereby the claimant group had continuously, since prior to non-aboriginal intervention, used the waters of the claimed area for the purpose of hunting, fishing and gathering to provide for their sustenance, and for other purposes associated with their cultural, ritual and spiritual obligations, beliefs and practices.
- These native title rights and interests were regulated, but not extinguished, by Northern Territory and Commonwealth fishing legislation and administrative action. His Honour found that by virtue of the provisions of section 211 of the Native Title Act, the claimant group was not required to hold any statutory licence or permit in order to exercise their native title rights.
- The claimant group did not enjoy any exclusive rights to possess, occupy, use and enjoy the subject waters because:
 - (a) the evidence failed to establish that any exclusive right was part of traditional laws and customs; and
 - (b) in any event,
 - (i) Australia’s obligations under international law of the sea treaties precluded the possibility of recognition of a exclusive possession or occupation, or of a right to control access by others to the area; and
 - (ii) recognition of any such exclusive right would also contradict the public rights of navigation and fishing at common law.
- The claim to the resources within the sea-bed, and the subsoil, including any minerals therein, failed, first because of the absence of evidence to suggest that any local traditional law or custom related to the acquisition or use of, or trade in, such minerals; and secondly because the Crown had, by the exercise of its legislative powers, appropriated to itself an interest which amounted to full beneficial ownership, and no native title rights could have survived the acquisition.
- Although it was not necessary for his Honour to decide (given his construction of the Native Title Act), Justice Olney found that the territorial limits of the Northern Territory (including its “bays and gulfs” within the claimed area) included the waters of Mission Bay, but otherwise did not extend beyond the low water mark of the coastline of the mainland and islands.

For these reasons, Justice Olney determined that:

- (a) native title existed in relation to the sea and sea-bed within the claimed area; and
- (b) that this title was held by the Aboriginal peoples who were the members of the claimant group who traced or claimed their descent through the male line (“the yuwurrumu”).

However, his Honour rejected the claim for exclusive possession, holding that the native title rights and interests did not confer possession, occupation, use and enjoyment of the sea and sea-bed within the claimed area to the exclusion of all others.

His Honour also determined that the relevant native title rights and interests of the claimants were:

- (a) to fish, hunt and gather within the claimed area for the purpose of satisfying their personal, domestic or non-commercial communal needs, including observing traditional, cultural, ritual and spiritual laws and customs; and
- (b) to have access to the sea and sea-bed within the claimed area –
 - (i) to exercise the above rights to travel through, or within, the claimed area; and
 - (ii) to visit and protect places within the claimed area which were of cultural or spiritual importance; and
 - (iii) to safeguard the cultural and spiritual knowledge of the claimants.

His Honour further declared that the native title rights and interests of the claimants could be “affected” by rights and interests in relation to the sea and sea-bed within the claimed area that were validly granted, or which existed, or which may thereafter exist, pursuant to Commonwealth or Northern Territory laws.

The issues on the appeals

The Commonwealth (with the support of the Northern Territory and the fishing industry parties) and the claimant group appealed from different parts of Justice Olney’s judgment and orders.

In summary, the grounds of the Commonwealth’s appeal were:

- That the trial Judge wrongly construed the Native Title Act so as to provide for the recognition of native title beyond the limits of the Northern Territory.
- That there was no basis for the recognition of native title beyond the limits of the Northern Territory, because the common law did not apply outside such limits; and no law provided for that recognition.
- That the native title rights specified in the determination were already exercisable under other public rights – that is, the public rights to fish and navigate at common law; and that these rights were not capable of separate recognition.
- (Alternatively) that there was no evidence, or no sufficient evidence, of traditional or other occupation or use of certain areas to the north and north-east of New Year Island such as to warrant a finding that native title existed in that particular area.

For their part, the claimant group challenged the following conclusions of the trial judge:

- That their native title rights and interests were not held to the exclusion of all others.
- That the content of the native title rights as found by Justice Olney did not include:
 - a right to fish, hunt and gather for the purposes of trade;
 - a right to exploit and control access to and exploitation of resources in the sea, sea-bed and subsoils;
 - the right to exclude persons seeking to explore or mine for minerals pursuant to a law of the Commonwealth or Northern Territory;
 - a right to exclude persons generally.
- That their traditional laws and customs did not “bind” others.

The judgments on the appeals

Two reasons for judgment were delivered on the appeals – one a joint judgment of Justices Beaumont and von Doussa, the other by Justice Merkel.

Justices Beaumont and von Doussa held that both the appeals must fail, essentially for the reasons given by the primary Judge.

Justice Merkel dissented. His Honour would have dismissed the appeal by the Commonwealth, allowed the appeal by the claimant group and remitted the matter back to the trial judge for further hearing. Justice Merkel agreed with Justices Beaumont and von Doussa that native title rights and interests in respect of offshore waters are recognised and protected under the Native Title Act, but disagreed with their Honours as to the nature and content of the rights and interests in two significant respects. The first was that, in his Honour's view, under the Native Title Act, the native title claimed must be established to exist at the date sovereignty was acquired by the Commonwealth over the offshore waters in the claimed area and at the date of the commencement of the Native Title Act, being 1 January 1994. The second was that his Honour concluded that a right to an exclusive fishery in a particular offshore area can be recognised and protected as a native title right or interest under the Native Title Act. Justice Merkel regarded the right to an exclusive fishery as capable of being regulated, but not extinguished, by the extensive legislative and regulatory regimes that apply to fishing in offshore areas which form part of or are adjacent to the Northern Territory.

The formal order of the Court, by majority, was to dismiss the appeals with no order as to costs.

The Full Court's decision is the subject of an appeal to the High Court.

Administrative law – Standing

Transurban City Link v Allan

(10 December 1999, Chief Justice Black, Justices Hill, Sundberg, Marshall and Kenny)

The issue for determination in this case was whether Mr Allan had standing to challenge a decision of the Development Allowance Authority (the "DAA") to grant to Transurban City Link Ltd ("Transurban") a certificate, the effect of which would be to provide a tax incentive to those lending money to the City Link Project (the "Project"). Mr Allan claimed to be a "person affected" by this decision within the meaning of the *Development Allowance Authority Act 1992* (Cth), and requested that the DAA review its decision. At the time, Mr Allan lived 100 metres away from part of the Project, and also claimed to be a member of the Australian Conservation Foundation and concerned about the environmental impact of the Project. The DAA was not satisfied that this was sufficient to make Mr Allan a "person affected" by its decision; nor was the Administrative Appeals Tribunal (the "Tribunal"), on review.

Mr Allan had succeeded in an earlier appeal to the Full Court of the Federal Court (in proceedings to which Transurban was not a party), where the matter was remitted to the Tribunal for reconsideration. By that stage, however, Mr Allan had moved away from the vicinity of the Project, and on this basis the Tribunal again dismissed his application, stating that standing had to be established not only at the time the original application was brought but also in light of any changed circumstances. On review, Justice Merkel did not agree and held that Mr Allan had an "accrued right" to standing. It was that decision which Transurban (having since been joined as a party) appealed to the Full Court.

On the basis of Mr Allan's previous Full Court decision, and an argument by Transurban that the decision ought to be overturned, a bench of five was convened for the appeal.

Apart from endorsing the approach taken by the Tribunal, Transurban argued that the context of the legislative scheme made it clear that the only person who could be "affected" by a decision of the DAA to issue a certificate is the Commissioner of Taxation, who was required to be notified of the decision. In the alternative, it submitted that Mr Allan's application was frivolous or vexatious, as he no longer lived near the Project. Transurban further argued that, the Project having been completed, Mr Allan had no effective remedy available. In response, Mr Allan endorsed the approach of the trial judge, and further added that the Court should follow the previous Full Court decision unless it was plainly wrong.

In a single judgment, the Court began by observing that unless a previous decision of a Full Court is clearly erroneous, the doctrine of precedent dictated that it should be followed; it is not sufficient that a differently constituted Full Court *might* come to a different conclusion. The absence of Transurban from the earlier proceedings, however, justified a re-examination of the issues.

The Court examined the authorities and held that standing was to be determined by the interest that an applicant has in the decision under review. There would be no standing, however, where the actual outcome of the review would not affect the applicant. In the present case, Mr Allan was seeking to prevent the Project from going ahead, but challenging the decision of the DAA could not have achieved that goal; indeed, the

outcome of that challenge would not affect Mr Allan at all. Accordingly, Mr Allan lacked standing to challenge that decision; the previous Full Court judgment was wrong and could not prevail.

Although not necessary for its decision, the Court indicated that it was of the view that where, *after* the date of application to the Tribunal but *before* the relevant hearing or decision, circumstances have changed so that the applicant no longer has an interest in the outcome of the proceedings, that application should be dismissed for lack of standing. There was no principle of “accrued standing”.

The Full Court’s decision is the subject of an appeal to the High Court.

Constitutional law – Validity of Trade Practices Act section 51AA – separation of legislative and judicial powers

Australian Competition & Consumer Commission v C G Berbatis Holdings Pty Ltd

(14 January 2000, Justice French)

This application primarily concerned allegations of unconscionable conduct in contravention of section 51AA of the Trade Practices Act. The conduct in question was that of a shopping centre owner in relation to the renewal and assignment of retail tenancies in the centre.

At the beginning of the trial, the Court expressed the view that it was arguable that section 51AA may be beyond the power of the Commonwealth Parliament due to the apparent attempt to confer legislative power upon the judicial branch of government. Notices under section 78B of the *Judiciary Act 1903* (Cth) notifying the Attorneys-General of the Commonwealth and the States were issued. After hearing argument on the matter, Justice French concluded that section 51AA is a valid exercise of the constitutional power of the Commonwealth for the following reasons.

In raising the question as to the validity of section 51AA the Court referred to the decision of the High Court in *State of Western Australia v Commonwealth* (“the Native Title Act case”) which held invalid section 12 of the Native Title Act. That section provided:

“Subject to this Act, the common law of Australia in respect of native title has, after 30 June 1993, the force of a law of the Commonwealth.”

Section 51AA(1) of the Trade Practices Act provides:

“A corporation must not, in trade or commerce, engage in conduct that is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.”

The High Court, in striking down section 12 of the Native Title Act, said:

“If the “common law” in section 12 is understood to be the body of law which the courts create and define, section 12 attempts to confer legislative power upon the judicial branch of government. That attempt must fail either because the Parliament cannot exercise the powers of the courts or because the courts cannot exercise the powers of the Parliament.”

The preliminary questions in *Berbatis* turned on whether the reasoning of the High Court in relation to section 12 of the Native Title Act also applied to impugn the validity of section 51AA by reason of its apparent adoption of the unwritten law with respect to unconscionable conduct.

His Honour observed that Australian case law has been concerned about unconscionable conduct within the framework of specific doctrines identifying particular classes of conduct albeit their boundaries tend to be blurred by the generality of the notion of unconscionability in equitable doctrine.

In considering the contention that “unconscionable conduct within the meaning of the unwritten law” in section 51AA refers to some kind of legal dictionary, it was important to observe that it had no settled technical meaning. It offers a standard determined by judicial decision-making rather than a rule, albeit it may for the present be subject to limitation in its factual field of operation by the existence of specific doctrines.

The term “the unwritten law” is a reference to the common law or judge-made law of Australia. The term “unconscionable” is found in the dictionary. Its meaning is not altered by the common law. What the common law does presently is to confine its operation to certain classes of case.

His Honour observed that section 51AA does not purport to adopt the common law relating to unconscionable conduct and give it the force of statute. In form, the section prohibits conduct which under the common law would be treated as unconscionable. In this respect, section 51AA differs from section 12 of the Native Title Act which exceeded the legislative power of the Commonwealth by taking the whole of the common law in respect of native title and purporting to confer upon it the force of a law of the Commonwealth.

In the Native Title Act case, however, the High Court, having acknowledged that an extra parliamentary text can be adopted as a law of the Commonwealth, said that:

“...the common law is not found in a text; its content is evidenced by judicial reasons for decision.”

Justice French said that courts, particularly the High Court and ultimate appeal courts in the common law world, exercise a law making function in the development of the common law and through processes of statutory construction. The myth that courts merely find and declare the law and that the judges are, to use the words of Blackstone, “living oracles”, is long exploded. There is no clear definition of the limits of judicial law making. For the most part it is incremental subject to self imposed restraints which themselves derive from recognition of the overriding principle that laws are made by parliaments. Neither is there, nor has there ever been, an impermeable boundary between statute law and judge-made law.

The judge deciding a case under section 51AA will have regard to the case law on unconscionable conduct generally, but in the end will have to make an assessment whether the conduct in question is unconscionable within the class of case for which the common law or equity provides a remedy. The possibility that those classes may expand incrementally or by some sudden rationalisation of the concept of unconscionability at the level of the High Court does not put the judge in any more difficult a position than the judge applying the wider statutory prohibitions on unconscionable conduct in section 51AB or section 51AC of the Trade Practices Act. The application would occur in the light of the common law or otherwise in accordance with established approaches to statutory construction. His Honour said that there was no express line of logic to be found in the reasoning in the Native Title Act case drawing a clear distinction between the considerations which led to the invalidation of section 12 and the position in cases such as the present. But the form of section 12 and the direct operation of external judicial decisions on the content of the law, which is transmuted directly into Commonwealth law, was significantly closer as a matter of degree to authorising judicial legislation than section 51AA.

Aboriginal Land Rights – Whether affected by common law or statutory rights to fish

Arnhemland Aboriginal Land Trust v Director of Fisheries (Northern Territory)

(24 February 2000, Justice Mansfield)

In a broad sense, this case concerned the relationship between the land rights granted to Aboriginal people under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to the low water mark and the line across the mouths of rivers and estuaries from the extremities of the low water mark, the public right to fish, and licences granted under the *Fisheries Act 1988* (NT).

The central questions concerned whether a holder of a licence granted by the Director of Fisheries under section 10 of the Fisheries Act was able, by virtue of that licence and the public right to fish, to fish and engage in other related activities (such as affixing nets or other objects to the land and entering the seas by boat) in tidal waters over land granted to the Arnhemland Aboriginal Land Trust above the low water mark up to the high water mark and in rivers, streams and estuaries which are affected by the tides.

It was the applicant's primary contention that the grant of land to the Arnhemland Aboriginal Land Trust abolished any right to fish in any of the tidal waters whatsoever other than that pursuant to the grant. They contended that the establishment of the statutory licensing scheme under the Fisheries Act abolished the common law right to fish or alternatively that such a right did not extend to the waters and estuaries affected by tides. It was also submitted that the grant of licences by the Director detracted from the enjoyment of that land by Aboriginals, and was therefore inconsistent with the grant.

Justice Mansfield held that the land grant did not include power to exclude persons from use of waters in the intertidal zone between the low water mark and the high water mark. It was not inconsistent with the exercise of public fishing rights in those areas. His Honour found, however, that the land grant did impliedly abolish the public right to fish in tidal waters in rivers streams and estuaries to the landward side of the line joining the mean high water mark on opposite sides of those rivers streams and estuaries. In effect, the public right to fish and the rights of license holders under the Fisheries Act could be exercised notwithstanding the land grant in tidal waters, but only up to the high water mark and in rivers streams and estuaries seaward of a line joining the mean high water mark on opposite sides of those rivers streams and estuaries.

In reaching these conclusions his Honour made the following findings:

- Citing *Yamirr v Northern Territory* (No 2) and several land claim reports, that the land grant did not exclude any public or statutory right to fish in the waters;
- That the public right to fish could only be abrogated by statute, relevantly the Fisheries Act and its predecessors;
- That the public right to fish was preserved by section 10(2) of the Fisheries Act despite that subsection being limited to fishing for subsistence or personal use;
- That the rights and privileges granted to licence holders did not constitute some form of interest in land but were, adopting the characterisation of Chief Justice Mason, Justices Deane and Gaudron in the High Court decision of *Harper v Minister for Sea Fisheries*, "an entitlement of a new kind" something like a *profit a prendre* (that is, a right to take something from another's land), but in fact a discrete statutory entitlement;
- That the land grant, and the powers of the applicant under the Aboriginal Land Rights (Northern Territory) Act in respect of land the subject of the land grant, were inconsistent with the exercise of public fishing rights to fish in rivers, streams and estuaries landward of the high water line mark or its continuation across the mouths of rivers streams and estuaries;
- That the temporary affixing of nets to the land surface underlying tidal waters falls within the reasonable exercise of the public right to fish, as does the right of passage upon the waters.

The case represents an important explanation of the extent of native title rights granted under the Aboriginal Land Rights (Northern Territory) Act.

The decision is the subject of an appeal to the Full Court of the Federal Court.

Native Title – The meaning and extinguishment of native title

State of Western Australia & Others v Ben Ward & Others

(3 March 2000, Justices Beaumont, von Doussa and North)

These were appeals, and a cross-appeal, against a determination of native title made by Justice Lee in favour of the Miriuwung and Gajerrong people. The claim covered an area of land and waters in the north-east of Western Australia, known as the East Kimberley District, and adjoining land in the Northern Territory. The total claim area was approximately 7,900 square kilometres and included part of the township of Kununurra, Lake Argyle and Lake Kununurra, part of the Ord River irrigation area and the Argyle Diamond Mine. The claim area also included some vacant Crown land and Crown land that had been leased or reserved for various purposes, including for conservation, preservation of Aboriginal art, mining and the Keep River National Park. At one time or another a great deal of the claim area has been the subject of pastoral leases.

The trial

The hearing of the trial before Justice Lee occupied 83 days with much of the applicants' primary evidence being taken at various sites within the claim area. The transcript of the trial ran to more than 9,000 pages. Justice Lee's judgment was 277 pages.

Justice Lee held that ordinarily native title is a communal interest in land, determined by reference to the Aboriginal community's traditional laws and customs and that community's connection with the land. His Honour held that native title may be extinguished by an act of the Crown, but only if the Crown demonstrates a clear and plain intention to extinguish native title. Furthermore, he held that if rights over the land were granted to a third party in a way that regulated or modified the exercise of the native title rights, such as by a grant of a pastoral lease, licence or reserve, native title was not necessarily extinguished. For extinguishment to occur, Justice Lee held that the rights granted must be permanently inconsistent with the native title rights and have the effect of removing all connection of the indigenous people with the land. Where some lesser effect was shown native title rights may be suspended, curtailed or otherwise regulated.

The trial judge held that native title was proved to exist over most of the area claimed, as the Miriuwung and Gajerrong people had substantially maintained their connection with the land. The only extinguishment of that native title which had occurred was effected by the construction of roads, permanent public works, freehold grants and some reserves.

The appeal

The appeal was heard in Perth and lasted for 15 days, making it one of the longest appeals in the Court's history. The written submissions ran into thousands of pages. The hearing of the appeal was greatly assisted by the Court's technological facilities so that the CD-Rom version of the transcript of the trial could be viewed by both counsel and the bench via computer screens centrally operated in Court.

The Full Court was called upon to consider a large number of issues. Two reasons for judgment were delivered on the appeals and cross-appeal – one a joint judgment of Justices Beaumont and von Doussa, the other by Justice North which dissented in part.

Connection of the claimants with the land

The existence of native title is a question of fact to be ascertained by evidence of the connection of the Aboriginal community with the land at the time of occupation and evidence of the maintenance of that connection since that time.

The judgment of the trial judge was based on a thorough analysis of evidence from many sources, including evidence from senior members of the Miriuwung and Gajerrong community as well as anthropological evidence. Both the majority and the dissenting judge upheld the trial judge's findings of fact in relation to

the connection of the present Miriuwung and Gajerrong community with the land claimed, and their connection with the Aboriginal people in occupation of the claim area at the time of sovereignty.

The other major issue dealt with by the Full Court was whether or not native title had been extinguished.

Extinguishment of native title

The majority judgment found that the principles by which the trial judge determined whether extinguishment had occurred departed from the test approved by the High Court in *The Wik People v The State of Queensland* and *Fejo v Northern Territory of Australia*. In relation to the rights granted by the Crown, there is no requirement in Australian law that the rights be permanently inconsistent with native title, nor that the rights actually be exercised.

Furthermore, the majority held that it is possible for some of the “bundle of rights”, which together make up native title, to be extinguished. Where this happens, “partial extinguishment” occurs. This concept has not been authoritatively determined by the High Court in the cases that had come before it to date. Nor had it been determined by a Full Court of this Court until this case.

The majority found that in relation to the pastoral leases, the grant of the leases in the claim area partially extinguished native title. Most of the pastoral leases contained reservations which protected Aboriginal peoples’ rights of access and use of the land under lease. In Western Australia this is limited to areas that are unenclosed and unimproved. This has the result that there may be areas within the Western Australian pastoral leases where native title has been extinguished altogether. In the Northern Territory the majority found that there had not been total extinguishment in any of the areas, as the explicit protection of the Aboriginal rights is not limited in the same way.

The majority agreed with the trial judge that the creation of the Keep River National Park did not extinguish native title. Similarly, reservations of land for a public purpose do not automatically cause extinguishment. However, the majority held that native title had been wholly extinguished in respect of the areas covered by the Ord Irrigation Project and the Argyle Diamond Project. The nature of such major projects and the range of activities involved are completely inconsistent with the continued enjoyment of native title. The majority also found that native title rights in minerals and petroleum in the claim area had been wholly extinguished by legislation. Further, the majority held that the grant of mining leases in the Western Australian portion of the claim area had wholly extinguished native title in the areas covered by the leases.

The dissenting judge, Justice North, differed from the majority decision primarily on the question of the proper approach to extinguishment. His Honour held that native title is not a bundle of rights but a fundamental right to land. Accordingly, there can be no “partial extinguishment” of some of those rights. His Honour held that extinguishment will only occur where there is a total and permanent inconsistency between the rights granted and the native title. Where a lesser degree of inconsistency exists, native title is not extinguished but merely temporarily suspended or impaired.

Justice North agreed with the trial judge’s interpretation of the law relating to extinguishment and his Honour’s application of that law to the claim in question. Justice North also recognised a native title right to maintain, protect and prevent the misuse of cultural knowledge.

In the result, the appeals failed on the “connection” issues, but by a majority (Justices Beaumont and von Doussa) the appeals were allowed in part on the extinguishment issues. Justice North, dissenting, would have dismissed the appeals. The cross-appeal was dismissed.

The Full Court’s decision is the subject of an appeal to the High Court.

Workplace relations – Freedom of association

BHP Iron Ore Pty Ltd v Australian Workers’ Union

(7 April 2000, Chief Justice Black, Justices Beaumont and Ryan)

In late 1999, BHP Iron Ore Pty Ltd (“BHPIO”) adopted a practice of offering individual workplace agreements to employees presently covered by certain awards (“award employees”). The new agreements,

which were in a relatively standard form and purported to import the terms of the awards, would then be registered under the *Workplace Agreements Act 1993* (WA). The evidence also suggested that, at the same time, BHPIO had adopted a firm stance of refusing to engage in collective bargaining with various unions in relation to the terms covering award employees.

The Australian Workers' Union ("AWU") asserted that this conduct was contrary to the Workplace Relations Act in a number of respects, and specifically that it breached several of the freedom of association provisions contained in the Act. In essence, the AWU alleged that BHPIO's conduct was designed to eliminate the presence of unions from its workplaces and deprive its workers of any effective union representation. The AWU made three substantive submissions.

First, the AWU argued that as a result of its actions, BHPIO was disadvantaging award employees who refused to sign an individual agreement, because the new agreements offered benefits not made available to those who did not sign (although the agreements had potential disadvantages as well). Second, it argued that BHPIO's stance on collective bargaining meant that union membership became irrelevant for those covered by individual agreements, so that in effect BHPIO was unlawfully encouraging workers to stop being members of a union. In these two arguments the AWU alleged an attack on freedom of association, with BHPIO, in effect, offering incentives to its workers to stop being members of union and punishing those employees who did not accept those offers.

Third, the AWU argued that the conditions of employment governing award employees included a term of an award that prohibited BHPIO from contracting with any employee in a manner inconsistent with the award, and that the offering and making of individual agreements breached this term.

The AWU sought an interlocutory injunction restraining BHPIO from offering any further individual workplace agreements. Because that application was for *interlocutory* relief pending the final determination of the issues, the trial judge, Justice Gray, only needed to be satisfied that there was a serious question to be tried, and that the balance of convenience lay toward the grant of an injunction.

His Honour held that it was strongly arguable that award employees had been injured in their employment, or at least had had their position altered to their prejudice. He was also satisfied that union membership was likely to decline among employees who signed an individual agreement, and therefore it was seriously arguable that BHPIO's conduct was designed to induce those employees to stop being union members. He also found that it was arguable that BHPIO was in breach of contract with respect to its award employees.

The Full Court granted leave to appeal this interlocutory decision. On the "injury" point, the Full Court found that what the legislation impliedly prohibited was intentional acts of an employer directed to an individual employee or prospective employee. In the present case, BHPIO had offered the new agreements indiscriminately to all of its employees, and any "injury" could not be said to result from any intentional act on its part; nor was there sufficient evidence that BHPIO had yet discriminated against those who did not sign the agreements.

Similarly, the Full Court was not satisfied that BHPIO was in breach of contract. It doubted that the relevant document incorporating the awards terms was meant to have the effect asserted by the AWU, and in any event express provisions are needed if an award is to be incorporated into an employment contract.

As to the alleged inducement to cease union membership, the Full Court rejected the approach taken by the trial judge of disregarding any absence of intention on the part of the employer, stating that intention was an important element when characterising the conduct of the employer (viewed in the overall context). The Full Court was satisfied that, on the evidence, however, there remained a serious question to be tried on this point.

Accordingly, the Full Court was satisfied that an interlocutory injunction in the general terms ordered by the trial judge was appropriate and that the balance of convenience lay toward its grant. The Full Court noted, however, that the injunction might impair BHPIO's competitiveness and prejudice those workers actually wishing to enter into individual agreements, and so varied the orders of the trial judge to alter the duration of the injunction and require that the substantive application be prosecuted as expeditiously as possible.

Bankruptcy – Validity of bankruptcy notices – Whether Full Court bound by prior Full Court decision

Bendigo Bank Ltd v Williams

(18 April 2000, Justices Moore, Kiefel and Lehane)

In this case the Full Court considered whether a bankruptcy notice in which interest is claimed on a judgment debt but which fails to state the statutory provision under which interest is claimed is a valid bankruptcy notice. The Bankruptcy Regulations contain the prescribed form of a bankruptcy notice, and this form includes a note that a document must be attached to the notice setting out the statutory provision under which interest is claimed.

Another Full Court had previously considered this issue in *Kirk v Ashdown*. In that case, the Full Court determined that such an omission from a bankruptcy notice is a mere “formal defect or irregularity” and causes “no substantial injustice”. Accordingly, by operation of section 306 of the Bankruptcy Act, the omission does not invalidate the notice.

In *Bendigo Bank Ltd v Williams*, the Full Court considered the legislative scheme and authorities governing the information that must be included in a bankruptcy notice.

In the majority judgment, Justices Moore and Lehane concluded that a complete failure to include a piece of information required by the prescribed form is not a mere “formal defect or irregularity”. The current prescribed form, which was inserted into the Bankruptcy Regulations in 1996, and the scheme of the Bankruptcy Act and Regulations, evince an intention on the part of Parliament and the Executive to provide a debtor with detailed information, enabling the debtor to know the precise basis on which the elements of the debt are claimed. Accordingly, the complete omission of the statutory provision under which interest is claimed invalidates a bankruptcy notice.

Justices Moore and Lehane referred to the principles governing one Full Court not following another Full Court, contained in *Transurban City Link Ltd v Allan*. In application of those principles, their Honours observed that prudent creditors are unlikely to order their affairs in reliance on *Kirk v Ashdown* by consciously omitting information required by the prescribed form from bankruptcy notices.

In a dissenting judgment, Justice Kiefel did not consider a failure to specify the legal basis for interest claimed to be a substantive defect capable of invalidating a bankruptcy notice. Her Honour distinguished mere requirements of form, such as those criteria referable only to the regulations and its prescribed forms, and those made essential by the Act. The latter were identified as being requirements consistent with the objects and purposes of the Act, and were pre-requisites for a valid bankruptcy notice. The general scheme of the Act, and particularly the identification of circumstances constituting an act of bankruptcy pursuant to section 40(1)(g), did not identify the additional information as significant. A statutory stipulation that notices comply with the prescribed form could not elevate the status of all elements of the prescribed form, where some terms were not reflected by the purposes of the Act. In any event, the legal basis for interest was construed as being a minor detail, and not one the legislature would have envisaged as being pivotal to the validity of the notice. Her Honour applied the decision of the Full Court in *Kirk v Ashdown*.

The decision of the Full Court in *Kirk v Ashdown* is the subject of an application for special leave to appeal to the High Court. The application before the High Court has been adjourned pending the hearing and determination by a specially constituted five member Full Court of the Federal Court of three matters in which the same issue is raised: *Royal & Sun Alliance Workers' Compensation Ltd v Oakes*, *Australian Steel Company (Operations) Pty Ltd v Lewis* and *Metropolitan Fire & Emergency Services Board v Zemlic*.

Representative Proceedings – Validity Of Federal Court Of Australia Act Part IVA

Femcare Limited V Kerrie Bright

(19 April 2000, Chief Justice Black, Justices Sackville and Emmett)

Ms Bright brought an action under Part IVA of the Federal Court of Australia Act as representative of a group of women who had undergone a sterilisation process, parts of which involved the use of products manufactured by Femcare Limited. It was alleged that those products were defective and that each of the women had suffered damage as a result. Compensation was sought, in part, under Part V of the Trade Practices Act.

Part IVA provides a mechanism in which the separate claims of a group of people can be consolidated into a single action conducted by a representative of that group, provided that each of those claims arises out of “the same, similar or related circumstances” and gives rise to “a substantial common issue of law or fact”. It is, in effect, a class action. Each of the people who comprise the represented group must be given the chance to “opt out” of the grouped proceeding, but if they do not then they effectively forfeit the ability to pursue an individual action should the grouped proceeding fail. The nature of the scheme is such that consent of the individual group members is not required, and indeed some members of the group may be represented without their knowledge. On the other hand, the scheme grants to the Court a supervisory role in a number of important areas, such as settlement of the claim, the substitution of a more appropriate group representative, the adequacy of the notice given of the representative action and the hearing of individual claims and issues.

Femcare challenged the constitutional validity of the Part IVA procedure, and at first instance Justice Lehane rejected that submission. On appeal, Femcare contended that Part IVA authorises the Court to conduct proceedings other than in accordance with judicial process, because group members might not receive notice of important determinations and otherwise have very little say in the conduct of their claim, and because the representative may be forced to pursue some claims that lack a reasonable basis. Femcare argued also that a representative proceeding would not involve the resolution of any justiciable “matter” or “controversy” (a Constitutional requirement for federal courts) where a group member had not received notice or was not even aware that they had a claim. Finally, Femcare asserted that by giving control to a single representative over the group members’ claims, Part IVA effected an acquisition of property other than on just terms, contrary to the guarantee contained in section 51(xxxi) of the Constitution.

The Full Court did not agree and dismissed the appeal. In a joint judgment, it held that there was nothing in the authorities dealing with grouped proceedings to suggest that individual notice to those represented was an intrinsic part of the judicial process; nor is individual control over an action inherent in that process. Instead, the courts have been concerned to develop procedures designed to do justice, especially in those cases where individual attempts to enforce rights would not be feasible. In any event, the scheme includes mechanisms to preserve individuals’ freedom of choice and to ensure that they do not suffer unfair disadvantage as a result of the nature of the proceeding.

Further, the Full Court held that even if a judicial “matter” requires awareness of the controversy, there is nothing unusual about judicial power being exercised in relation to controversies generated by one person on behalf of another. On the issue of “hypothetical questions”, the Full Court noted that Part IVA requires the Court to be satisfied that each claim gives rise to a substantial common issue, and while this might prove difficult in some cases it did not make the exercise hypothetical.

The Full Court’s decision is the subject of an application to the High Court for special leave to appeal.

Human Rights – Disability discrimination – “Unjustifiable hardship”

Hills Grammar School v Human Rights and Equal Opportunity Commission & Ors (18 May 2000, Justice Tamberlin)

In this case the Court was asked to review a finding by the Human Rights and Equal Opportunity Commission (“the Commission”) that the Hills Grammar School (“the School”) had unlawfully discriminated against Scarlett Finney, a prospective student. The Court did not review the original decision on the merits, but considered whether the Commission had made an error of law.

Scarlett suffered from spina bifida, a spinal condition that can lead to reduced mobility, the need for a wheelchair, incontinence, and some learning difficulties. However the symptoms suffered by any particular person vary and the evidence was that Scarlett’s current disability at present was mild.

In 1997 Scarlett applied for enrolment in kindergarten at the School. Her application was rejected on the ground that the School did not have the resources to adequately meet her special needs. It was accepted by all parties that this refusal amounted to discrimination on the ground of Scarlett's disability. The issue was whether that discrimination was unlawful.

Section 22(4) of the Disability Discrimination Act provides that it is not unlawful for a school to discriminate against a prospective student by refusing to admit them if the student's admission would cause the school "unjustifiable hardship". Before the Commission the School argued it would need to spend about \$1.1 million on renovations, and modify its distinctive curriculum, to accommodate the special needs of Scarlett. The School said that the "hardship" suffered by it should be assessed on the assumption that Scarlett would remain at the School until Year 12. The Commission rejected these submissions, and made findings critical of the process the School had engaged in when assessing Scarlett's application.

On the review application the Court determined the Commission had made no error of law. As to the length of Scarlett's enrolment, the Court noted the Commission had referred to the uncertainties of life before predicting that Scarlett would remain at the School until Year 6. It was considered appropriate for the Commission to make this estimate, and assess the level of hardship against this time-span. That the School offered education from kindergarten to Year 12 was not determinative of the issue.

As to the financial hardship alleged, the School's estimate had not been based on Scarlett's particular circumstances. Many of the proposed modifications were found by the Commission to be unnecessary. The Commission's finding that the cost of modifications would amount to "a small fraction" of \$1.1 million was based on an assessment of the level of Scarlett's disability and was supported by evidence. Nor was the fact that the Commission did not give a precise dollar figure an error.

The Commission's reference to the admission application process, and the way in which parties should deal with circumstances such as these, did not amount to taking an irrelevant matter into account. The circumstances of the School's refusal were part of the overall context of the case, and it was appropriate for an administrative tribunal such as the Commission to recommend approaches that could avoid disputes in the future.

Finally, as to the adequacy of the reasons given by the Commission, the Court noted that the reasons of an administrative decision maker are there to inform, and should not be reviewed with a fine tooth comb. Reasons do not need to consider every piece of evidence, but must illustrate the essential reasoning process undertaken by a decision maker. The reasons given by the Commission did this.

Practice and procedure – Vexatious litigant

Skyring V Ramsey

(9 June 2000, Justices Ryan, O'Connor and Weinberg)

This was an appeal against an order by Justice Sackville under Order 21 rule 1(1) of the Federal Court Rules. His Honour had found that the appellant had "habitually and persistently", and without any reasonable ground, instituted vexatious proceedings in the Court. The consequence of that finding was that the appellant was disqualified from instituting or continuing legal proceedings in the Court without first obtaining leave.

In making his decision, Justice Sackville had had regard to a number of proceedings commenced by the appellant. The common feature of these proceedings was an assertion by the appellant that paper currency or coinage in use in Australia is invalid or that the legislation authorising the issue of paper currency or coinage is invalid. The appellant's pursuit of judicial recognition, in some form, of that assertion had ranged over some 15 years of litigation in a number of forums, including the High Court. Justice Deane's rejection of that assertion in 1985 (affirmed on appeal to the Full High Court in the same year) rendered any future attempt to litigate the issue in the Federal Court entirely hopeless.

However, as Justice Sackville found, the appellant had continued to institute and prosecute litigation, predicated on the same assertion. Much of that litigation has been instituted in the Federal Court. His Honour concluded that by initiating that litigation, the appellant had brought himself within Order 21 rule 1 by “habitually and persistently”, and without reasonable grounds, instituting proceedings which were correctly characterised as vexatious.

The Full Court upheld the conclusion reached by Justice Sackville. The Court also discussed whether any future argument based on section 36(2) of the *Reserve Bank Act 1959* would be sufficiently distinct from that which had previously been rejected by the High Court in relation to section 36(1) of that Act, to enable the appellant to have some prospect of success, despite the High Court’s ruling. The Court’s conclusion was that any proceedings instituted by the appellant in reliance on section 36(2) of the Act could not succeed.

The orders of Justice Sackville affirmed on appeal, do not absolutely preclude the appellant from recourse to the Court in the future. They simply make any such recourse subject to leave first being obtained from a judge, thereby ensuring that the resources of the Court and of prospective respondents are not unnecessarily expended on revisiting contentions which have been conclusively rejected.

Management of the workload of the Court

Caseflow Management

One of the key caseflow management principles is the establishment of a time goal within which cases will be disposed. A related principle is the implementation of practice and procedure designed to dispose of cases within the time goal.

The Court has previously reported that it had set the period of eighteen months from commencement as the goal within which it should dispose of at least 98 per cent of its cases. During the year under review the Court reconsidered this percentage and reduced it to 85 per cent. The reduction was due to an increase in long, complex and difficult cases (including native title matters), and a decrease in less complex matters, such as winding up and related applications under the Corporation Law.

When considering the time goal, the number of native title matters now before the Court was of particular significance. In this regard, the Court has set a time goal, from filing to disposition, of three years for its native title matters. For many matters this may not be achieved because of their complexity, the issues involved, the number of parties and the location of the native title claim. In addition, in some matters the trial Judge’s decision may be appealed to a Full Court, and that Full Court decision itself may then be appealed to the High Court of Australia. The time goal, however, will ensure that all parties involved in native title litigation will be aware, from the commencement of proceedings, that their cases will be actively case managed through all stages of the litigation.

Notwithstanding the revised time goal, the Court expects that the majority of 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 need to be disposed quickly after commencement and the Court’s practice and procedure facilitates this. During the year, 64.3 per cent of cases were disposed of in less than six months.

During the five year period from 1 July 1995 to 30 June 2000, 88.3 per cent of matters were completed in less than eighteen months, 81.1 per cent in less than twelve months and 64.8 per cent in less than six months (see Figure 6.4 on page 133). By focussing upon achievement of its time goal, the Court has increased the percentage of cases disposed of in less than eighteen months. Figure 6.4a on page 134 shows the percentage of matters completed within eighteen months over the last five reporting years. The figure shows a steady rise leading to 90.8 per cent of matters in 1999-2000 being completed within eighteen months.

Figure 6.4a also shows that in 1995-96, 3,879 matters were completed compared to 4,883 matters in 1996-97 – an increase in the completion rate of 26 per cent. In 1997-98, 7,357 matters were completed, an increase of 51 per cent over the previous reporting year. For the current reporting year, 6,613 matters were completed – a decrease of 12.4 per cent from the 7,546 completed in the 1998-99 reporting year.

As is mentioned elsewhere in the report, bankruptcy and related cases are included in the total completed figure from 16 December 1996.

A key factor in the ability of the Court to maintain its disposal rate is the mix of cases. If the number of bankruptcy cases were to increase or decrease substantially then it could be expected, if the rest of the case mix remained unchanged, for the disposal rate to rise or fall (as the case may be). This is because bankruptcy matters, the majority of which are dealt with by registrars in sequestration proceedings, are usually completed in less than six months. However, working against such a trend may be another major change in the case mix, such as the large increase in native title matters.

The mix of cases will therefore affect the Court's ability to meet its goal of disposing of 85 per cent of matters within 18 months. The Court may need to further revise its goal in the light of changes to the incoming workload and the resources available to dispose of that workload.

The Court believes that the increased disposal rates for reporting years 1996-97 onwards is, in a large measure, attributable to the Individual Docket System and associated practice and procedural reforms. Under this system, a matter will ordinarily stay with the same judge from commencement until disposition, leading to greater familiarity with, and management of, the proceeding. The key elements of the Individual Docket System are set out in the Court's Annual Report for 1998-99. The Australian Law Reform Commission, in its report *Managing Justice – A review of the federal justice system* (ALRC 89), observed that "there was unanimous positive feedback in consultations and submissions about the operation of the individual docket system. This is a significant accolade".

By enhancing the Court's ability to provide greater efficiency and flexibility in setting dates for interlocutory applications, short hearings and trials, the Individual Docket System appears to be contributing to the increase in the number of matters completed by the Court within its time goal of eighteen months. Figure 6.4a shows that 90.8 per cent of matters were completed within eighteen months of commencement in the reporting year, compared to 83.2 per cent in 1995-96 and 90.6 per cent in 1998-99.

Appellate jurisdiction

The Court's appellate workload is substantial and has increased significantly in recent years. The number of appeals to the Full Court has increased from 282 in 1995-96 to 407 in 1999-2000 (see Figure 6.9 on page 142 for comparative filings). Towards the end of each calendar year, the Court publishes its program of Full Court sittings for the following year. In the 2000 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. During the reporting year, 34 special Full Court hearings (totalling 49.75 hearing days) were held to enable the early disposition of urgent appeals. On occasions when matters have been sufficiently urgent, it has been necessary to either convene an urgent sitting of a Full Court in a capital city other than that in which the case was originally heard or use video-conferencing facilities.

Delivery of judgments

In the reporting period, 1,877 Full Court and single judge judgments were delivered. This figure includes both written judgments and judgments delivered 'ex tempore' on the day of the hearing. When decisions are published, they are immediately made available to the parties and the media.

The Court provides electronic copies of judgments to legal publishers and other subscribers. Judgments are e-mailed to subscribers of this service several times a day as they are indexed. At the end of the reporting year, this e-mail service had 14 external users.

Judgments are also available on the Internet at the Australasian Legal Information Institute (AustLII) site. These judgments are accessible directly from the Federal Court's home page. The availability of judgments electronically assists the speedy dissemination of the Court's judgments to the legal and wider community.

The nature of the Court's workload means that a substantial proportion of the matters coming before the Court will go to trial and that the decision of the trial judge will be reserved at the conclusion of the trial. The nature of the Court's appellate work also means that a substantial proportion of appeals require reserved judgments.

The Court has set the period of three months from the date a judgment is reserved within which it should deliver the judgment. The degree to which the Court is able to meet this goal will depend on the complexity of each case in question and other issues, such as the pressure of the business of the Court. For the reporting period, the median time between reserving and delivery of judgments, for single judge matters and Full Court appeals, was 31 days. Some 53 per cent of reserved judgments in matters in the Court's original jurisdiction were delivered within 30 days. In the Court's appellate jurisdiction, over 55 per cent of reserved judgments were delivered within 60 days. It is important to note that these figures do not take into account the significant number of single judge and Full Court judgments delivered on the day of the hearing. Judgments involving judicial registrars, registrars and Industrial Relations Court of Australia matters were excluded from the above calculations.

Any party having a concern about delay in delivery of a reserved judgment may direct an inquiry to the President of the appropriate Bar Association or Law Society. The President then refers the inquiry to the Chief Justice for attention without disclosing which of the parties has raised the matter.

Workload Trends

General trends

In previous Annual Reports the Court reported upon a number of factors which affected its workload. Some of those factors continued in the reporting year and are set out below.

- Since 26 May 1997, matters which would have been filed in the Industrial Relations Court of Australia are filed in the Court. In the reporting year, 273 workplace relations matters were filed in the Court. In addition, of the 381 matters transferred from the Industrial Relations Court of Australia on 26 May 1997, 8 were still current.
- The High Court's decision in *Re Wakim Ex parte McNally & Anor* meant that the Court could no longer hear Corporations Law matters unless they relate to a Territory Corporation or fall within the pendent or associated jurisdiction of the Court. The loss of jurisdiction led to a dramatic reduction in the number of Corporations Law matters commenced in the Court. Prior to the decision there was already a decline in Corporations Law matters, mainly due to the large filing and other fees introduced in late 1996. Figure 6.5 on page 135 sets out details of the Corporations Law matters filed in the Court since 1995-96.
- Since December 1996, the Insolvency and Trustee Service, Australia, has been responsible for a number bankruptcy administration functions previously undertaken by officers of the Court. One consequence of this change is that bankruptcy statistics, formally recorded in their own database, are now recorded in the Court's general applications database, the Federal Court Case Management System ("FEDCAMS").
- Since 30 September 1998, all new applications for a determination of native title (including a revised determination) or compensation must be made to the Court. On the same date, all the applications that had been made to the NNT Tribunal were transferred to the Court. At 30 June 2000, 99 new native title matters had been commenced in the Court, and 605 of the 794 matters transferred from the NNT Tribunal remained current.

In addition, the following factors in the reporting year impacted upon the Court's workload and will continue to do so in future.

- On 13 April 2000 the Court was given jurisdiction under the Human Rights and Equal Opportunity Commission Act ("HREOC Act") to hear and determine complaints of unlawful discrimination made under the Sex Discrimination Act, Racial Discrimination Act and Disability Discrimination Act. These complaints were previously dealt with by the Human Rights and Equal Opportunity Commission. As at 30 June 2000 there had been 103 applications made to the Court under the HREOC Act.

- The Federal Magistrates Court was established on 23 December 1999 to deal with less complex matters arising under certain federal laws. It has concurrent jurisdiction with the Federal Court in relation to matters under the Administrative Decisions (Judicial Review) Act, Bankruptcy Act, HREOC Act and Part V of the Trade Practices Act. The Federal Court may also transfer certain appeals from the Administrative Appeals Tribunal to the Federal Magistrates Court. Each court may transfer a proceeding to the other. As the Federal Magistrates Court did not commence operations until 23 June 2000, it had no impact on the Federal Court's workload during the reporting year. However, the Court expects that in future years a greater proportion of its workload will consist of complex cases as simpler matters are commenced in, or transferred to, the Federal Magistrates Court. This will have an impact on the Court's ability to meet its goal of disposing of 85 per cent of matters within 18 months.

Incoming work

Table 6.1 on page 129 is a summary of workload statistics for the reporting years 1995-96 to date. The table shows that 6,276 cases were commenced in 1999-2000, a decrease of 1,769 compared to 1998-99, when 8,045 cases were commenced. The decline in filings between the two reporting years was due principally to a reduction in bankruptcy (478 fewer filings) and Corporations Law (662) matters, and the one-off effect of 794 native title matters transferred to the Court from the NNT Tribunal on 30 September 1998 pursuant to provisions of the Native Title Amendment Act.

In last year's annual report the Court commented on the apparent decline in incoming matters caused by the reduction in Corporations Law filings and the effect of one-off transfers, such as the 381 workplace relations matters transferred to the Court from the Industrial Relations Court of Australia in 1997. The Court, however, concluded that the underlying trend for the reporting period 1995-96 to 1998-99 was that its workload increased in each reporting year, with the exception of 1995-96.

Similarly, if the number of filings in the 1998-99 and 1999-2000 reporting years are considered and adjusted in light of the factors noted above, then the incoming workload of the Court in 1999-2000 was in fact 147 matters more than in 1998-99.

Matters completed

Table 6.1 allows for a comparison between the number of matters commenced and the number completed. The number of matters (including bankruptcy matters) completed during the report year was 6,613, as against 7,546 in the previous reporting year. This decline in completed matters was against the trend, commencing in 1995-96, of the number of matters completed increasing in every reporting year. If completed Corporations Law, bankruptcy and native title matters are excluded, there was a decrease of only eight matters completed in the reporting year compared to 1998-99.

Matters on hand

The total number of matters on hand in the reporting year was 4,666 (see Table 6.1), which is 165 fewer than for the previous reporting year. This figure can be explained by the decline in the number of current Corporations Law and bankruptcy matters filed in the reporting year. That is, a decline from 239 to 42 in the number of Corporations Law matters, and from 1,181 to 1,150 in bankruptcy matters. However, if Corporations Law, bankruptcy and native title matters are excluded from the total number of matters on hand, then the balance of 2,695 as at 30 June 2000 is 129 higher than it was at 30 June 1999 (see the last section of Table 6.1).

Appellate workload

As previously reported, the trend has been for the number of Full Court appeals to increase in all reporting years since 1995-96, with the largest percentage increase of 27 per cent occurring between the reporting years 1997-98 (330 appeals) and 1998-99 (419 appeals).

In this reporting year, 407 appeals were made to the Full Court (see Figure 6.9 on page 142). This was 12 appeals, or 2.9 per cent, less than the number of appeals in 1998-99. The number of Full Court 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. For example, in 1998-99 there were 95 migration, 34 bankruptcy and 20 Corporations Law appeals to the Full Court, whereas in 1999-2000 there were 146 migration, 40 bankruptcy and 3 Corporations Law appeals.

Although it is difficult to predict future appellate workload, the Court believes on the basis of its current jurisdiction and workload mix that the number of Full Court appeals is likely to remain around 400 matters a year, or to increase progressively above that figure in future reporting years.

Increases in the number of Full Court hearings, which are usually constituted by three and sometimes five judges, add to the workload of the Court and its ability to dispose of first instance work. Judges sitting on Full Courts may not be available for first instance work, or have less time to devote to their own individual docket workload.

The Court will continue to monitor the effects on its workload of an increase in the number of appeals and, as necessary or relevant, 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.

Age of pending caseload

The comparative age of matters pending as at 30 June for the reporting year and the four previous reporting years is set out in Table 3.1 below.

In looking at Table 3.1, consideration needs to be given to the effect in 1999 and 2000 of the 794 native title matters transferred to the Court on 30 September 1998. At 30 June 1999 the 3,650 pending matters included 726 of the native title transfers – this distorted the trend, evident from the reporting year ending 30 June 1997, for the Court's pending matters to reduce. If comparisons are to be properly made with previous years, then the 726 matters should not be considered in the 3,650 pending matters. If they are not included then the 2,924 pending matters at 30 June 1999 is less than the pending matters at 30 June 1998.

At 30 June 2000, 605 of the transferred native title matters were current. As in the previous reporting year, this distorts the pending workload. It is also responsible for a significant increase in the number of matters over 18 months old. If the 605 matters are not included in the 3,516 pending matters, then the balance of 2,911 pending matters is less than the equivalent figure at 30 June 1999 and the trend for the number of pending matters to decline continues in the reporting year, albeit more slowly than in previous years.

Since 1997 the number of cases over 18 months old has been decreasing. However, at 30 June 2000 the number of cases over 18 months old was 1,325 – a significant increase from the 753 cases over 18 months old as at 30 June 1999. This increase is due to the inclusion of 605 native title matters transferred to the Court on 30 September 1998. If these matters are not included in the total, then the number of matters over 18 months old is 720, 33 fewer than at 30 June 1999. It is appropriate that the transferred native title matters not be included in the cases over 18 months old for two reasons. First, in light of the issues involved, the number of parties, the complexity and the remote location of most native title claims, the Court has set a separate time goal from filing to disposition of three years for native title matters. Second, although the matters transferred to the Court were deemed to be filed in the Court on and from 30 September 1998, the majority continued to be substantively under the control of the NNT Tribunal with regards to mediation, the registration test and other legislative requirements of the Native Title Act.

The Court will continue to focus on reducing its pending case load and the number of matters over 18 months old by avoiding and reducing delay, and introducing appropriate practice and procedure reforms and Rule changes to assist, enhance and improve its case management.

Table 3.1
Current matters (including Corporations Law matters) - historical

Age of matters	Current as at 30-Jun-96	Current as at 30-Jun-97	Current as at 30-Jun-98	Current as at 30-Jun-99	Current as at 30-Jun-00
under 6 months	1,444	1,427	1,196	1,257	1,161
6-12 months	754	729	631	1,378	717
12-18 months	769	390	391	262	313
Under 18 months	2,967	2,546	2,218	2,897	2,191
18-24 months	232	256	268	197	843
over 24 months	588	825	582	556	482
over 18 months	820	1,081	850	753	1,325
Total	3,787	3,627	3,068	3,650	3,516

(These figures do not include bankruptcy matters consisting of creditors petitions and related applications.)

A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 6 to this report commencing on page 128.

Migration matters

Figure 6.7a on page 140 sets out details of the Court's workload in matters concerning decisions under the Migration Act for the period 1995-96 to 1999-2000. The migration workload of the Court, although national in nature, is concentrated in New South Wales, Victoria and lately in Western Australia. In 1995-96, 331 matters under the Migration Act were filed, of which 169 were filed in New South Wales, 153 in Victoria, 8 in Queensland and one in South Australia. In the reporting year, 829 Migration Act matters were filed, of which 569 were in New South Wales, 227 in Victoria, 13 in Western Australia and the remaining 20 in South Australia, Queensland and the Australian Capital Territory. In addition, in 1999-2000 there were 116 migration applications filed under the Administrative Decisions (Judicial Review) Act (see Table 6.4 on page 146), of which 89 were filed in Western Australia, 15 in South Australia and the remaining 12 in New South Wales (7), Victoria (1), Queensland (2) and the Australian Capital Territory (2).

Migration Act matters also form an important and sensitive part of the Court's appellate jurisdiction. In 1995-96 there were 282 appeals to the Full Court (see Figure 6.9 on page 142), of which 23 or 8.16 per cent concerned the Migration Act. This can be contrasted with the reporting year, where 146 or 35.9 per cent of the 407 Full Court appeals were Migration Act matters. Most of the 146 Migration Act appeals to the Full Court were filed in New South Wales (115 matters), Victoria (13 matters) and Western Australia (7).

As noted above, in 1999-2000 there were 89 matters under the Administrative Decisions (Judicial Review) Act filed in Western Australia which related to decisions under the Migration Act. This is a significant increase from previous years, which may in turn lead to an increase in number of appeals filed in the

Western Australia registry. If such an increase occurs, it may be necessary to constitute additional Full Courts from judges outside of Western Australia.

Native title matters

Native title workload

The role of the Court in native title matters was significantly changed when amendments to the Native Title Act commenced on 30 September 1998. The amendments established a new regime where the Court has responsibility for the mediation and determination of native title applications. To perform its new functions the Court was given a wide range of powers in relation to the management and resolution of native title applications.

Under the new 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.

When the amendments commenced, 794 native title applications before the NNT Tribunal were taken to be filed with the Court. In addition, at that time some 65 matters were already before the Court having been referred by the NNT Tribunal under section 74 of the old Native Title Act. As at 30 June 2000, the Court had before it 779 native title and related applications.

The reduction in native title matters since 30 September 1998 is due in part to active judicial case management which has identified overlapping claimant applications. This has led to a substantial number of claimant applications being amended, combined, withdrawn or discontinued. Leaving aside applications for the review of decisions by the Native Title Registrar and for interlocutory matters, the consolidation and streamlining of native title matters means that there are, in practical terms, 546 claimant applications being heard by the Court. The case management of native title matters has also meant, despite the reduction in the number of matters, that the Court's native title workload will increase, at least for the next 4 to 5 years, as matters become ready for, or go to, trial.

Time span of active caseload

The average time span from filing to disposition for native title matters determined by consent is 3 years and 5 months, and for matters determined by a trial judge it is 4 to 5 years. As previously mentioned, the Court has set a time goal of three years from filing to disposition for native title matters. The Court expects this time goal will be achieved through the active case management of matters, and the implementation and refinement of the Court's initiatives set out below.

National allocation of matters

The Court has 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, with the assistance of a Deputy Registrar, is responsible for initially managing 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 NNT 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 Secretariat for substantive allocation to a trial judge.

Court initiatives

The Court has continued to introduce various initiatives in relation to the management of native title matters. These include the following:

- regular review hearings by the Provisional Docket Judge, conducted approximately every 3 months, for the purpose of reducing the number of times that parties need to appear before the Court;
- the active use of video-conferencing and telephone conferences for case management;
- a coordinated approach to the listing of matters to ensure that overlapping or related proceedings are heard at the same time;
- the combining of applications;
- the use of case management or mediation conferences at discrete times during a proceeding, particularly prior to notification;
- the delegation of directions hearings to the Court's Registrars in appropriate cases;
- consideration of alternatives, where appropriate, to the taking of evidence where the evidence is of a non-contentious nature;
- the recruitment of experienced staff as Deputy Registrars for Native Title and native title case managers who can assist the Provisional Docket Judge in the review hearing process, and help applicants and other parties to a native title proceeding comply with the practice and procedure of the Court;
- the review and amendment of Order 78 "Native Title Proceedings" of the Federal Court Rules to remove ambiguity and uncertainty, and assist the management of cases;
- the preparation, under the auspices of the Court's Native Title Coordination Committee, of notes to assist practitioners, unrepresented applicants and other interested persons to understand the Court's practice and procedure in native title cases;
- the convening of native title user groups by the Provisional Docket Judges in each State and Territory – in general terms, the aim of each native title user group is to allow the Court to explain its procedures to the people who use the Court, and to allow the users to give the Court feedback about their requirements and the need for any procedures to be improved;
- in complex multi-party cases, ensuring that at an early stage a party list is settled and that parties are allocated to appropriate and manageable groups.

Evidence

Judges of the Court consider it appropriate, and in keeping with the requirements of the Native Title Act, for at least part of a native title hearing to be conducted in the area which is the subject of the native title claim. In this regard, the Court is developing considerable expertise in dealing with the logistical requirements of remote locality hearings.

Native title cases

The transitional provisions of the amended Native Title Act and a number of the provisions of the Native Title Act itself have been the subject of judicial consideration. Judgments of the Court have clarified:

- the administration of the registration test (*Bullen v State of Western Australia, Strickland v Native Title Registrar* and *State of Western Australia v Native Title Registrar & Ors*);
- the requirements for amending an application (*Donnelly v Minister for Land & Water Conservation*);
- the level of authorisation required for the filing and amendment of an application (*Moran v Minister for Land and Water Conservation* and *Drury v State of Western Australia*); and
- the notice requirements of the Native Title Act and the extent of the duty and discretion of the Native Title Registrar (*Robert Charles Bropho v The State of Western Australia*).

During the reporting year there was one judgment on the determination of native title – the first concerning land in and around a major town. The trial in *Myra Hayes & Ors v Northern Territory of Australia* was held in Alice Springs and, at the request of the applicants and respondents, a number of sites were visited in the course of the 35 day hearing. In its judgment the Court determined that the applicants held native title in respect of a number of Crown Land allotments around the town of Alice Springs.

On 3 March 2000 the Full Court of the Federal Court delivered its judgment in *Western Australia v Ward* and *Northern Territory v Ward* (the Miriuwung Gajerrong appeals). The Full Court considered the common law approach to the construction of native title, the application of this approach to the facts of the case, and the extinguishment of native title at common law. A summary of the judgment is on page 32.

A Full Court heard the appeal in *Yorta Yorta Aboriginal Community v Victoria* in August 1999. The principal issues to be decided include the nature and extent of the connection required to establish native title, and the weight which ought to be afforded to the various forms of evidence presented to the trial judge. The Full Court's decision is reserved.

In the matter of *Wilson v Anderson*, a Full Court considered whether native title could coexist with grazing leases in western New South Wales. The matter before the Full Court arose out of an application on behalf of the Euahlay-I Dixon Clan for a determination of native title in respect of land in the Western Division of New South Wales. The Full Court found it unnecessary to answer the question of whether native title could coexist with grazing leases, as such a question must be addressed on a case by case basis.

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 Law
Federal Magistrates Act 1999.

During 1999-2000, 58 matters were remitted or transferred to the Court:

49 from the High Court of Australia
 2 from the Family Court of Australia
 6 from State or Territory Supreme Courts
 1 from State District or County 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 1989
Administrative Appeals Tribunal Act 1975.

During 1999-2000, 57 matters were transferred from the Court:

3 to the Family Court of Australia;
46 to State or Territory Supreme Courts; and
6 to State District or County Courts
2 to State or Territory Local or Magistrates Courts.

Cross-Vesting Monitoring Committee

The Chief Justice of the Federal Court is the Convenor of a body known as 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.

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 3.1 on page 53 sets out the number of matters referred to mediators during the period 1995-96 to 1999-2000. The program has proved popular, with a total of 2,030 matters referred to mediation since its commencement in 1987. Of that total, 1,296 were referred in the period 1995-96 to 1999-2000, or an average of 260 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.

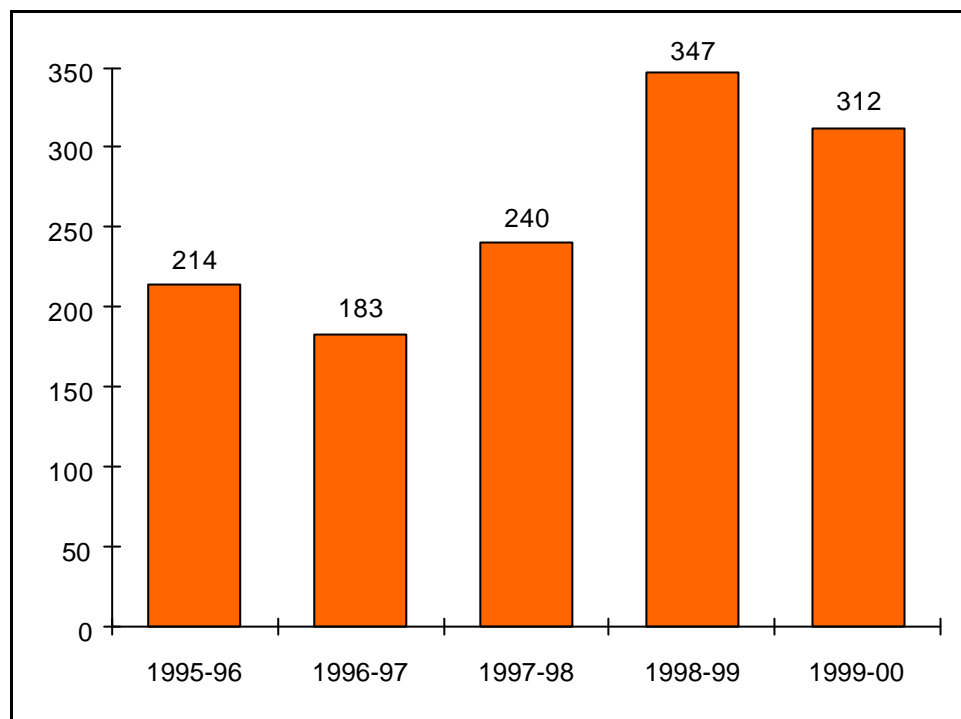
Prior to 17 April 1997, the program was based upon parties consenting to mediation. However, from that date, section 53A of the Federal Court of Australia Act was amended to provide for non-consensual mediation.

With the introduction of the Individual Docketing System, greater emphasis has been put on the identification, at an early stage, of cases suitable for assisted dispute resolution. In the reporting year, 312 matters were referred compared with 347 in 1998-99.

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 3.1
Assisted Dispute Resolution (ADR) 1995-96 to 1999-2000
(matters referred for mediation)



External mediation

Eight matters were referred to external mediators in 1995-96, 70 in 1996-97, 28 in 1997-98, 76 in 1998-99 and 56 in the reporting year. These figures are included in Figure 3.1.

Complaints about the Court's processes

During the reporting year, 24 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.

3.3 MANAGEMENT OF CASES AND DECIDING DISPUTES BY TRIBUNALS

Introduction

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 Court's performance in relation to this output group is set out in Table 5.1 on page 126.

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the Trade Practices Act to hear applications for the review of

- determinations by the Australian Competition and Consumer Commission (“ACCC”) in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Trade Practices Act for being anti-competitive;
- decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines; and
- determinations by the ACCC in relation to notices issued under section 93 of the Trade Practices Act in relation to exclusive dealing.

A review by the Tribunal is a re-hearing or a re-consideration of a matter, and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of the review. It can affirm, set aside or vary the decision under review.

The Minister may also refer to the Tribunal, for inquiry and report, issues concerning certain practices by ocean cargo carriers.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is, subject to the Trade Practices Act and regulations, within the discretion of the Tribunal. The Trade Practices Regulations 1974 set out some procedural requirements in relation to the making and hearing of review applications.

Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General.

During the reporting year, the President of the Tribunal was Justice von Doussa and the Deputy Presidents were Justices Goldberg and Hely.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 119.

Activities

The business of the Tribunal during the year consisted entirely of review proceedings. No matters were referred by the Minister for inquiry and report.

Five review proceedings were current at the start of the reporting year. During the year, one proceeding was commenced and five matters were finalised. One matter is pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* to hear applications dealing with five main types of matters:

- to inquire and determine the amount of royalty payable in respect of the recording of musical works;
- to fix royalties or equitable remuneration in respect of compulsory licences;
- to arbitrate disputes in relation to the terms of existing and proposed licensing schemes;
- to deal with applications for the grant of licences; and
- to set terms for the use of copyright material for the services of the Commonwealth or a State or Territory.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is, subject to the Copyright Act and regulations, within the discretion of the Tribunal. The Copyright Tribunal (Procedure) Regulations 1969 set out procedural requirements for the making and hearing of applications.

Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General.

During the reporting year, the President of the Tribunal was Justice Burchett and the Deputy President was Justice Finkelstein.

The Secretary of the Tribunal is an officer of the Federal Court. Details of the Secretary are set out in Appendix 3 on page 119.

Activities

Four proceedings were current at the start of the reporting year. During the year, three proceedings were commenced, one matter was finalised and three stated cases arising from two matters were referred to the Federal Court. Six matters (including the two matters in which stated cases were referred to the Federal Court) are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1974* to hear and determine appeals by persons who have been

- convicted of a service offence, or
- who have been acquitted of a service offence on the ground of unsoundness of mind (“a prescribed acquittal”)

by a court martial or a Defence Force Magistrate under the *Defence Force Discipline Act 1982*.

The Tribunal may dismiss or allow the appeal, substitute for a conviction a prescribed acquittal, or, if satisfied the appellant was unfit to stand trial, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is within its discretion.

Membership and staff

The Tribunal consists of a President, a Deputy President and such other members as are appointed by the Governor-General.

During the reporting year the President of the Tribunal was Justice Gallop.

The Registrar and Deputy Registrar of the Tribunal are both officers of the Federal Court. Their details are set out in Appendix 3 on page 119.

Activities

The Tribunal dealt with one appeal during the year.

No proceedings were current at the start of the reporting year. During the year, one proceeding was commenced and finalised. No matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Federal Police Disciplinary Tribunal

Functions and powers

The Federal Police Disciplinary Tribunal was established under the *Complaints (Australian Federal Police) Act 1981* to deal with disciplinary offences under the Australian Federal Police (Discipline) Regulations. In addition, the responsible Minister may refer to the Tribunal for inquiry and report a matter relating to the Australian Federal Police.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General.

During the reporting year, the President of the Tribunal was Justice Whitlam and the Deputy President was Justice Olney.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 119.

Activities

No disciplinary proceedings were current at the start of the reporting year. During the year, no proceedings were commenced. Nor were any matters referred by the Minister for inquiry and report.

No complaints were made to the Tribunal about its operations during the reporting year.

3.4 SERVICES PROVIDED TO GOVERNMENT

Introduction

This output group refers to the Court's responsibility for maintaining an effective relationship with the Attorney-General's Department and other government departments, and its accountability to the Parliament in relation to its effective management of resources. This includes such activities as the Court's appearances at Senate Estimates hearings, drafting prompt, accurate responses to Parliamentary questions, Ministerial correspondence, and responding to requests for comment on proposed legislation. These activities are included as an output group because they are services provided by the Court in addition to managing cases and deciding disputes according to law.

A summary of the Court's performance in relation to this output group is set out in Table 5.1 on page 126.

Information to the Parliament

The Registrar and senior officers of the Court appeared before the Senate Legal and Constitutional Legislation Committee during the Consideration of Estimates on 1 December 1999, 9 February 2000 and 29 May 2000. The Court also responded to 47 Parliamentary questions during the reporting year.

In August 1999 the Registrar and Senior Deputy Registrar gave evidence to the Senate Legal and Constitutional Legislation Committee in relation to the legislation to establish the Federal Magistrates Court.

Requests for information and comments on proposed legislation

The Court is often asked to provide information concerning issues under consideration by the Executive Government, or to comment on proposed legislation. During the reporting year the Court responded to over 5 requests for information and more than 15 requests for comment.

While the Court does not comment on the policy that may underlie a particular Bill or legislative proposal, it will, where appropriate, identify any technical problems with the legislation or proposal. This year the Court was invited to comment on legislation in relation to a number of areas, including the Federal Magistrates Court, the proposed Administrative Review Tribunal, and amendments to the Migration Act and Workplace Relations Act.

Although the number of requests for information and comments was relatively small, some involved extensive work by judges and Court staff. For example, the information and comments provided by the Court on the proposals for a Federal Magistrates Court involved the Chief Justice and several judges of the Court, as well as the Registrar and a number of senior staff.

3.5 SERVICES PROVIDED TO INTERNATIONAL JURISDICTIONS

Introduction

This output group refers to the provision of judicial and non-judicial services by the Federal Court to assist the continuing development of international jurisprudence. Activities include individual judges holding second commissions in overseas' courts, participation in international committees and conferences, provision of training to judges and staff of overseas' courts, and provision of library services to a number of South Pacific nations.

A summary of the Court's performance in relation to this output group is set out in Table 5.1 on page 126.

Commissions in overseas' courts

Several of the Court's judges hold commissions in overseas' courts.

The following judges of the Court hold commissions with courts in the South Pacific (excluding Australian territories).

Justice Beaumont	Judge of the Court of Appeal of Tonga and Privy Council Acting Judge of the Supreme Court of Vanuatu
Justice Burchett	Judge of the Court of Appeal of Tonga and Privy Council
Justice von Doussa	Acting Judge of the Court of Appeal of the Supreme Court of Vanuatu

Legal education programs

Members of the Court are involved in a range of activities in providing judicial training and other assistance to courts in the South Pacific and Asia. These activities include training programs in Indonesia, the Philippines, China and the South Pacific, details of which are set out below.

Indonesia

During 1999-2000, the Court conducted a training program for the Indonesian judiciary, with the assistance of funding of \$250,000 from AusAid's Government Sector Linkages Program (GSLP). The Court's program worked closely with the Indonesian judiciary and its primary training facility, the Supreme Court Training Centre (SCTC) in Jakarta, to run training sessions for Indonesian judges in Australia and Indonesia.

The training involved five workshops in Indonesia, four of which were conducted by judges of the Federal Court. In total, over 150 Indonesian judges participated in the workshops which covered the Australian legal system and issues of particular interest to the Indonesian judges, including public confidence in the judiciary, the independence of the judiciary and social and cultural issues relating to judicial process. Justices Gray, RD Nicholson and Merkel each visited different regions of Indonesia to conduct the two-day training workshops.

As part of the program, 16 Indonesian judges spent three weeks in Sydney and Melbourne in May and June 2000 to attend a series of seminars with the Federal Court, the NSW Judicial Commission and the Australian Institute of Judicial Administration. They also visited other Australian courts of all levels, and organisations such as the Human Rights and Equal Opportunity Commission (HREOC) and the Administrative Appeals Tribunal.

The Court received very positive feedback on the program and has received further AusAID funding of nearly \$250,000 for another training program in 2000-2001. The next program will also assist the SCTC with its management and technical expertise, and the upgrading of its legal resources.

The Philippines

During March 2000, the Court participated in a judicial exchange program with judges of the Supreme Court of the Philippines coordinated by the Centre for Judicial Studies in Sydney, the Centre for Democratic Institutions at the Australian National University and the Philippines Judicial Academy. The program involved 8 Philippine judges spending several days with judges of the Federal Court in Sydney. In exchange, Justices Beaumont and Emmett undertook a four-day visit to the Philippines where they were involved in a training program with Philippine judges which included a forum with judges of the Philippine Court of Appeals and visits to various local courts. There has been some suggestion that the Court be involved in another, similar program.

China

In June 2000 the Court in Sydney hosted a week-long visit by 5 Chinese judges from the Supreme People's Court of China which was organised by HREOC with funding under AusAID's Australia-China Human Rights Technical Assistance Program. The Chinese judges attended seminars conducted by judges of the Court, observed cases and were briefed on the administration of the Court.

At the invitation of the Supreme Peoples' Court of China, the Registrar visited courts in Shanghai, Beijing and Wuhan during the first week of June 2000. This visit followed an earlier visit in 1998 by the Chief Justice and the Registrar which coincided with an

international judicial administration conference in Shanghai. These visits are part of an ongoing program of exchange that is building a strong working relationship between the two courts.

South Pacific

Justice Beaumont regularly represents the Court and Australia at the biennial meetings of the South Pacific Judicial Conference (SPJC). Justice Beaumont is also involved in a Steering Committee overseeing a SPJC project to strengthen judicial training services in the Pacific. The Pacific Judicial Training Project is being funded by a partnership of the Asian Development Bank, the United Nations Development Program and the Governments of Australia, New Zealand and the United Kingdom. The project is based at the University of the South Pacific in Suva and its aim is to establish a reference centre and an ongoing regional training program for judges and court officials from courts in the South Pacific.

Other legal education activities

Justice von Doussa presented a paper on “Legal Protection of Cultural Artistic Works and Folklore” to the South Pacific Judges’ Conference in Samoa.

Justice Sackville delivered papers to the Legal Theory Workshop at McGill Law School, the International Law Association in Montreal and Ottawa, the Canadian Department of Justice’s Continuing Legal Education Program, and the Global School Program of the New York University.

Participation in international committees and conferences

A number of Federal Court judges actively participated in international committees and conferences during the reporting year. For example,

Justice Beaumont is a member of the South Pacific Judicial Committee Sub-Committee for the Establishment of a Centre for Judicial Education in the South Pacific, and a member of the American Law Institute Advisory Committee on its Transnational Civil Procedural Law Project.

Justice Cooper is a member of the Board of Governors of the International Maritime Organisation World Maritime University, Malmo, Sweden.

Justice Branson presented a paper at *Partnership across borders: An international forum on access to justice*, a conference hosted by the Association of the Bar of the City of New York.

Justice Mathews presented a paper at a conference of the International Women Judges’ Association in Buenos Aires.

Justice Tamberlin attended the World Trade Organisation and World Intellectual Property Organisation in Geneva where he participated in a number of seminars on the legal regime, and the resolution of disputes, in relation to international trade and intellectual property.

Justice RD Nicholson is Chair of the International Advisory Board of the International Judicial Academy. He presented a paper on “Capturing and Maintaining Public Confidence in the Courts” to the Conference of Chief Justices of the LAWASIA Region in Seoul. During the year he also presented training sessions to Indonesian judges in Indonesia and Australia

Justice Finn is a member of the Unidroit Working Group for the preparation of the Second Edition of the Unidroit Principles.

Justice Weinberg presented a paper on “Commercial and Financial Fraud: A Comparative Perspective” to the 13th International Conference of the International Society for the Reform of Criminal Law in Malta. He travelled to Indonesia to advise on the preparation of terms of reference for a comprehensive review of the operational policies and procedures of the Indonesian Attorney-General’s Department.

Library services to the South Pacific and Thailand

To assist law libraries in the South Pacific the Court has a program in place that is assisted by a five-year AusAid grant. The Court donates library materials in the form of textbooks and bound law reports to law libraries in Vanuatu, Kiribati, Western Samoa and Tonga. In addition intellectual property books are sent to a specialist court in Thailand. During the year a total of 185 items were donated. A further 17 boxes of library books, donated by Justice Lockhart when he retired from the Court, were sent to Thailand.

Other support for international jurisdictions

At the request of the Acting Chief Justice of Vanuatu, the Hon Vincent Lunabek, the Registrar in April 2000 spent a week in Port Vila preparing a report for the Courts of the Republic of Vanuatu on court administration. While the Registrar's report focussed on developing recommendations for the introduction of an effective case management system in the Courts, it also included comments on a proposed Judicial Service and Courts Bill for the Republic of Vanuatu, and advice on management issues within the Courts' registries. It is likely that the report will provide a basis for the Republic of Vanuatu to seek some outside assistance to implement improvements to their court administration.

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 from 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 150 visitors from 15 countries came to the Court. A list of visitors is set out in Appendix 7 on page 150. These visits require significant planning and coordination by judges and senior Court staff.

Judicial exchange program

The judicial exchange program had its origins in 1997 when the Chief Justice visited Washington DC and had discussions with Mr James Apple, head of the Interjudicial Affairs Office at the Federal Judicial Centre.

In the reporting year there was no exchange of judges to or from Australia under the program. The Court, however, is committed to continuing the program and expects that exchanges will take place in the next reporting year.

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 Matthew Chapman, a young London barrister, spent three weeks with the Court in Melbourne – two weeks as an Associate to Justice Heerey and one week as a research assistant to Melbourne judges generally.

The Court will host two Pegasus scholars in the next reporting year.

3.6 ENSURING THE QUALITY OF, AND ACCESS TO, THE SYSTEM OF JUSTICE

Introduction

This output group refers to the Court's commitment to ensuring, and enhancing, the quality and accessibility of the justice system. The activities in relation to this output group fall into two broad categories.

The first category consists of activities directed at improving the operation and accessibility of the Court. These include reforms to the Court's practices and procedures, the revision of its rules, improvements to the accessibility of the Court's services, the exemption and waiver of fees, and the availability of information about the Court and its work.

The second category consists of activities directed at improving the accessibility and quality of the justice system generally. These include the participation of judges in various judicial committees; the involvement of judges and Court staff in such bodies as the Australian Institute of Judicial Administration, the Australian Law Reform Commission, the Judicial Conference and other law reform activities; and the participation of judges and Court staff in educational and community activities.

A summary of the Court's performance in relation to this output group is set out in Table 5.1 on page 126.

Improving the operation and accessibility of the Court

Practice and procedure reforms

The Practice and Procedure Committee, with a membership of ten judges, is responsible for developing and refining changes to the Court's practice and procedure.

Some of the issues considered by the Committee during the reporting year are set out below.

- **Experts**

In September 1999 the judges adopted a recommendation by the Practice and Procedure Committee and the Rules Committee that the Rules be amended to allow a judge, in appropriate cases and with the consent of the parties, to appoint a Court expert who would report to the judge on specific issues within the expert's field. A new Order 34B, giving effect to this amendment, commenced on 3 December 1999.

- **Discovery**

In September 1999, the judges adopted a recommendation by the Practice and Procedure Committee and the Rules Committee to amend Practice Note No 14 and Order 15 of the Rules to replace the *Peruvian Guano* test with a test of direct relevance. The former test often led to the discovery of numerous documents that were never used in evidence in the case. Under the new test, unless the docket judge directs more limited discovery, or discovery on some other basis, a party needs only discover documents which are directly relevant, being documents on which a party relies, or documents which, to a material extent, undermine that party's case or support another party's case.

The revised Practice Note and the changes to Order 15 commenced on 3 December 1999. The Committee is monitoring the operation of the new test.

- **Responsibility for pleadings**

During the reporting year the Committee continued to consult with the Law Council of Australia about the Court's proposals that (a) pleadings be verified by the party on whose behalf the pleading is filed, and (b) a pleading filed by a lawyer be accompanied by a Certificate of the Legal Practitioner.

- **Management of Appeals**

For some time the Committee has been developing proposals to ensure that the increasing number of appeals do not impair the Court's ability to continue to deal with appeals efficiently, effectively and in a timely manner. In April 2000 the judges adopted a recommendation by the Committee that the Court seek amendments to the Federal Court of Australia Act to broaden the categories of decisions requiring leave to appeal, and allow certain categories of appeals to be determined by two judge benches. The Committee is also working with the Management of Appeals Committee to revise Practice Note No 1, which deals with appeals.

- **Long cases**

The Committee continued to consider the effect of long cases on the Individual Docket System.

- **Other issues**

The Committee examined a number of other issues, including:

- the reduction of documents on Court files – research is underway to determine how often particular documents presently required to be filed are actually used by the Court;
- the circumstances in which people may intervene or appear as amicus in proceedings, and the consequences of them doing so;
- the delegation of additional judicial functions to registrars of the Court;
- a national listing system to manage the growing number of applications in migration matters;
- a proposal by Professor Williams for the revision of rules and scales relating to costs;
- rules and protocols for the Court's jurisdiction relating to the Federal Magistrates Court;
- national procedures relating to the issue of subpoenas; and
- consideration of the Australian Law Reform Commission Discussion Paper No 62 and Report No 89, *Managing Justice: A review of the federal civil justice system*.

The Committee met during the reporting year with the Law Council of Australia's Federal Court Practice and Procedure Committee to discuss matters concerning the Court's current and proposed changes to practice and procedure.

Amendments to the Federal Court Act

During the reporting year, the Chief Justice wrote to the Attorney-General seeking a number of amendments to the Federal Court of Australia Act. These included an amendment to section 20 to allow a single judge to hear and determine interlocutory matters in proceedings that must be dealt with by the Full Court under section 20(2) of the Federal Court of Australia Act, and an amendment to make clearer provision for the use of audio and video links in proceedings before the Court.

Rules Revision Project

In September 1998 the Judges' Meeting established a project to revise the Court's Rules. The goals of the project are that the Court have Rules which:

- (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 will, where practicable, not use legal jargon or Latin terms. Work on the project is continuing.

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 of the Court and the provision of its services. The Committee also provides advice on judicial studies on gender issues.

The Equality and the Law Committee, chaired by Justice Catherine Branson, has broad terms of reference to consider issues related to gender equity in both the Court's internal operations and in external matters which impact upon the Court. During the reporting year, the Committee undertook a number of activities related to gender issues. These included meetings between the Court and female legal practitioners. The Committee also actively monitored the activities of Bar Councils across Australia in response to the report commissioned by the Victorian Bar Association in late 1998, entitled *Equality of Opportunity for Women at the Victorian Bar*. Through its meetings with women practitioners, and its work arising from its consideration of the report, the Committee has been particularly interested in identifying and addressing difficulties which women practitioners may experience in their contact with the Court.

In terms of the Court's internal operations, during the reporting year the Committee gave particular consideration to strategies to increase the representation of women in senior positions in the Court. The Committee's work on this issue continues.

Disability, race and sex discrimination

The Equality and the Law Committee's terms of reference include oversight of the provision of the Court's services to ensure that in all aspects of the Court's operations, persons who have contact with the Court are treated fairly and equitably and that, where necessary, special services are provided to people who face particular disadvantage in accessing 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 the implementation and issues arising from the Court's human rights jurisdiction, with particular emphasis on the provision of appropriate public information about the Court's role, and the Court's capacity to cater for parties, in human rights cases.
- Initiating a review of the Court's current user groups and other consultative mechanisms to ensure that the Court's consultations with all its users are as effective as possible.
- Monitoring the development of the Court's printed materials to ensure that the Court's brochures are easily accessible to its users, and that appropriate information is provided to users with particular needs, such as witnesses and litigants in areas of the Court's jurisdiction such as migration.
- Consideration of the Court's employment of women (mentioned above), Aborigines and Torres Strait Islanders, and the development of strategies to improve employment opportunities in the Court for these groups
- Development of Practice Note No 15, which requires practitioners to provide information to the Court on any special needs of their clients, including appropriate manners of address, in advance of court

hearings. The Practice Note was developed in consultation with the Law Council of Australia and was issued by the Chief Justice on 1 November 1999.

In addition, during the year the Registrar and officers from the Principal Registry continued their regular meetings with officers from the HREOC to consider issues arising from implementation of the *Human Rights Legislation Amendment Act (No. 1) 1999*. Under this Act, the Court was given jurisdiction to hear complaints alleging unlawful discrimination under the Disability Discrimination Act, the Racial Discrimination Act and the Sex Discrimination Act. In consultation with HREOC, the Court developed rules and forms for the new jurisdiction, which commenced on 13 April 2000.

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 can not 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 been granted a waiver of fees under the Federal Court Regulations.

Accessibility - facilities and registry services

The Federal Court registries are centrally located in each of the State and Territory capital cities. The locations and business hours of the registries are set out in the front of this report. Pamphlet guides on Federal Court registry services are available from each of the registries.

The Court is conscious of the need for its facilities to be available to all members of the community and is committed to ensuring that there are no access problems for those with disabilities.

The Court shares many of its buildings with other jurisdictions. Facilities are managed by Local Building Management Committees which consist of representatives of the occupants. A National Building Management Committee sets budgets, deals with matters of common interest and maintains an overall management brief. The Court contributes to capital, maintenance and operating costs of shared buildings.

In 1997-98, the National Committee commissioned a national audit of court buildings to identify areas where access could be improved. The audit included registries, courtrooms and other facilities used by the Court. The report provided detailed recommendations. These were prioritised by local committees and developed into a national works program.

The program has now reached the stage where the majority of works have been completed. During the reporting period, \$161,000 was spent on buildings occupied by the Court. Works included modifications to stairways, handrails, signage, walkways, toilet facilities, doorways, lighting, public telephones and floor surfaces.

In other developments, registry counters are being altered in Brisbane and Adelaide to ensure they are more user friendly to those with disabilities. The works include modifications to counters, benches, notice boards, publication racks and furniture as well as new facilities to assist those with hearing impairment.

In Sydney, courtroom 20E has been refurbished to allow evidence to be presented in electronic form during hearings. The opportunity was also taken to improve access to the courtroom. A new raised floor has been installed with integrated ramps to provide easy access for all persons using the courtroom. The design of a new, fully accessible witness box for the courtroom was finalised and this will be installed in 2000-01.

Facsimile and electronic filing

In September 1999 the Court amended its Rules to allow documents to be lodged, and for any fees to be paid, by facsimile transmission.

The Court also continued work on a project to allow for the electronic filing, lodgement, service and handling of documents in proceedings that come before it. The project consists of four stages, with the final stage being the implementation of an electronic document system which is fully integrated with the Court's case management and finance management systems.

The first stage of this project is to allow for documents to be filed and lodged electronically. Users will be able to send documents to the Court, and to pay any fees, electronically. The documents will then be printed and handled in the same manner as documents delivered to the Court or sent by post, document exchange or facsimile transmission. The Court has put into place the rules and technology required to implement stage one, which it expects to commence early in the next financial year.

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 for the purpose of taking evidence from witnesses who may not otherwise be able to attend the Court. The opportunity is also taken to view sites at these locations which are relevant to the claims.

Hearings by video-conference

The Court uses video technology for the taking of submissions and evidence in appropriate cases. The use of video links helps parties and witnesses who live, or have their place of business, in different towns or States avoid having to travel long distances to attend directions hearings or final hearings of their cases.

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 1998 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. The Administrative Appeals Tribunal did not receive any applications to review any such decisions during the reporting period.

Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 90.

Public information

The Court's Director Public Information ("DPI") advises the Chief Justice on media issues and assists journalists throughout the country with inquiries on specific cases. The DPI is based in Melbourne and is a member of the personal staff of the Chief Justice.

Through the work of the DPI, the Court continued to gain valuable experience in the area of court television. During the reporting year, television cameras were permitted to record judgment summaries in matters of public interest on eight occasions. The recordings were done on a pool basis and shared amongst television and radio stations. Recordings can be seen by visiting the Court's audio-visual archive on its Internet home page.

Of particular note was the first live broadcast (known as "streaming") on the Internet of a judgment summary by an Australian court. Justice Lindgren's decision in *Australian Olympic Committee Inc v Big Fights Inc* was also carried live by the cable channel Sky News. The broadcast was repeated on the home page several hours later, and the number of unique visits for the day totalled 734 (plus 921 reloads). This compared to the average number of unique visits to the home page of 135. The Internet has provided the Court with the option of live streaming other judgment summaries and, possibly, proceedings in the future.

The Internet also provides a speedy method of delivering the full text of judgments and judgment summaries.

On two occasions the Court allowed independent documentary makers to record appeals to a Full Court – one was a native title matter and the other concerned a decision of a judge of the Supreme Court of the ACT.

The DPI was responsible for the production of several videos during the year, including one about achieving major organisational change in the Court, and another about the new Commonwealth Law Courts Building in Melbourne.

Searches on the Court database

Public access is available to FEDCAMs at registry computer terminals. Anyone may inspect initiating documents filed with the Court, subject to any order of a judge to the contrary, or to any limitation or fee imposed by the Federal Court Rules or Regulations.

Fees for copying documents are prescribed by the Federal Court of Australia Regulations.

The Court's Internet home page

The Court's home page on the Internet has continued to enable access to judgments within hours, and sometimes within minutes, of being handed down. In addition, visitors to the home page can access, among other things, the Court Rules, Forms and Practice Directions, and can link to other legally related Internet sites. The Court is developing ways in which the Internet can be put to greater use to disseminate information about the Court and its work.

Community Relations Program

In September 1999, the Court established the Community Relations Program. The first of its kind in Australia, the Program's focus is toward enhancing public confidence in judges and courts.

The aims of the Community Relations Program include the development of national strategies to promote community information about the Court, and to initiate education programs which raise general awareness about the Court and the justice system. Other functions are to encourage feedback about the Court from the community and user groups, generate discussion within the Court about the needs and issues affecting the Australian community, and develop information for Court users.

During the reporting year, the Court conducted community information sessions in most States and Territories for individuals and organisations affected by the Federal Court's new role in hearing complaints of unlawful discrimination under the HREOC Act. A civics education program for the Court is being developed for implementation in Australian schools during the Centenary of Federation. The Court also participated in Law Week activities during May 2000, and will play an even greater role in 2001.

A range of publications has been produced about the Federal Court, human rights, mediation, bankruptcy and each of the Court's Registries. These publications have been complemented by a Community Information site on the Court's home page, which contains information on the Court's human rights jurisdiction that can be downloaded in 11 community languages. Specific strategies have been initiated to promote greater community understanding in relation to native title and migration in the next financial year.

Improving accessibility and quality of the justice system generally

Judges' Committees

There are 9 standing and other committees, involving 33 of the 43 judges who do not have substantial commitments to other courts or tribunals, whose work is directed at enhancing the accessibility and quality of the Court and the justice system generally:

Admiralty	Native Title Coordination
Assisted Dispute Resolution	Practice and Procedure
Equality and the Law	Rules
Information Technology	Transcript
Management of Appeals	

When necessary, the Chief Justice also establishes ad hoc committees to deal with particular issues.

The committees perform their functions using a range of techniques. Committees may hold regular meetings (either in person or by teleconference), work solely "on the papers", or use a combination of both to carry out their functions. While it is, for this reason, difficult to provide a precise statement of the amount of work carried out by the committees, the workload is substantial and involves a considerable commitment from the judges and senior Court staff.

Reform activities

The Court is an active participant in a range of activities aimed at improving the justice system.

Examples of the Court's significant involvement in this area include the following.

Justice Gallop is the Chair of the Steering Committee of the Supreme Court and Federal Court Judicial Conference and has been a member of the Steering Committee of the Australian Judicial Conference since January 1995.

Justice Beaumont is Convenor of the Council of Chief Justices Sub-Committee on Harmonisation of Appellate Practice and Procedure. He is also a member of the Australian Law Reform Commission's Advisory Committee on the review of the *Judiciary Act 1903*.

Justice Wilcox chaired a session of the Australian Law Reform Commission's "Managing Justice" Conference.

Justice Gray is a member of the Australian Institute of Judicial Administration's National Aboriginal Cultural Awareness Committee. He is also Chair of the Advisory Board, Centre for Employment and Labour Relations Law at the University of Melbourne.

Justice Burchett is a member of the Commonwealth Evidence Act Advisory Committee.

Justice French was a Member of the Council and Board of Management of the Australian Institute of Judicial Administration and Convenor of its Research Committee during the reporting period. He is a member of the Council of the Australian Association of Constitutional Law, and of the Australian Institute of Judicial Administration's National Aboriginal Cultural Awareness Committee.

Justice von Doussa is a part-time Commissioner of the Australian Law Reform Commission.

Justice O'Connor is Chair, Communications Law Centre Limited.

Justice Higgins is a member of the Council of Chief Justices' Committee on Harmonisation of Practice and Procedure under the Corporations Law.

Justice Cooper is the Presiding Member of the Admiralty Rules Committee which is responsible for rules made under the Admiralty Act, and a member of the advisory panel to the Australian Law Reform Commission's Review of the *Maritime Insurance Act 1909*.

Justice Moore is a member of the Commonwealth Evidence Act Advisory Committee.

Justice Branson is President of the Australian Institute of Judicial Administration.

Justice Lindgren is Convenor of the Council of Chief Justices' Committee on Harmonisation of Practice and Procedure under the Corporations Law. He organised a national conference on 20 May 2000 on the subject of Court Rules which was attended by representatives of Courts, Governments and the legal profession.

Justice Tamberlin is a member of the advisory panel to the Australian Law Reform Commission's Review of the *Maritime Insurance Act 1909*.

Justice Sackville is Chairman, Advisory Board of the Justice Research Centre.

Justice Kiefel is a member of the National Institute for Law, Ethics and Public Affairs Advisory Board; a member of the Advisory Board of the Key Centre for Ethics, Law, Justice and Governance; and a foundation member of the Queensland Academy of the Arts and Sciences.

Justice RD Nicholson is a member of the Council of the Australian Institute of Judicial Administration, Secretary of the LAWASIA Judicial Section, and Member of the Advisory Board to the *Journal of Law and Medicine*. He was Guest Editor of the 1999 Yearbook of the Centre for Independence of Judges and Lawyers.

Justice Madgwick was a member of the November 1999 Mission to Turkey from the Centre for the Independence of Judges and Lawyers (a component of the International Commission of Jurists) – the Mission's Report was published in July 2000 and concerns issues of judicial independence and official impunity for torture in Turkey.

Justice Weinberg is a part-time Commissioner of the Australian Law Reform Commission, and a member of its Advisory Committee on the Judiciary Reference – Review of the *Judiciary Act 1903* (Cth). He delivered a paper to the Australian Institute of Judicial Administration’s conference “Reform of Criminal Trial Procedure”.

Justice Dowsett attended the Second World Conference on New Trends in Criminal Investigation and Evidence in Amsterdam. He also participated in a strategic planning exercise conducted by a committee of the Bar Association of Queensland.

Justice Katz is a member of the Australian Law Reform Commission’s Advisory Committee on the Judiciary Reference – Review of the *Judiciary Act 1903* (Cth). He also participated in the national conference on Court Rules.

In addition, the Registrar of the Court is a member of the National Alternative Dispute Resolution Advisory Committee, and a Council member of the Australian Institute of Judicial Administration. Senior Court staff also participated in various committees and other activities directed at improving the justice system during the reporting year.

Legal education programs in Australia

The Court is an active supporter of legal education programs, both in Australia and overseas. Information about legal education for international jurisdictions is described on page 59 above. 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, Bar reading courses, Law Society meetings and many other public meetings.

Examples of the Court’s significant contribution to legal education include the following.

Justice Gallop delivered the Blackburn Lecture on the topic “The Role of the Attorney-General”.

Justice Beaumont spoke on native title to the NSW Bar Readers Course, and chaired a session on intellectual property and competition law at the Trade Practices and Consumer Law Conference in Sydney. He contributed chapters to *The Oxford Companion to the High Court of Australia* and to the *Australian Federal Judicial System*.

Justice Wilcox presented papers to the Australian Plaintiff Lawyers Association and the Australian Institute of Insurance Law.

Justice Gray presented a paper at the International Association of Law Librarians Conference, and delivered seminars to the Faculty of Law at Deakin University and the Probus Club of Moorleigh. He is a member of the Editorial Board of the *Australian Journal of Labour Law*.

Justice French presented papers and lectures to the University of Western Australia, Monash University, Melbourne University, Sydney University, Murdoch University and the Law Society of Western Australia. He participated in the 25th Anniversary Conference for the Trade Practices Act, and the National Conference of Insolvency Practitioners of Australia. Justice French also contributed a chapter to the *Australian Federal Judicial System*.

Justice Hill is the Challis Lecturer in Taxation (part time) at the Faculty of Law, University of Sydney (LLM degree). He was a visiting Judicial Fellow at Flinders University. His Honour presented a paper on “International Aspects of the Goods and Services Tax” in Potsdam, and a paper on “Goods and Services Tax Avoidance” to the Tax Law Teachers Association Annual Conference.

Justice von Doussa is Chair of the Advisory Committee that oversees the South Australian Practical Legal Training Course conducted by the Law Society of South Australia, a member of the Advisory Board of the Centre for Legal Education (NSW) and a member of the Legal Practitioners Education and Admission Council (SA).

Justice Cooper is a member of the Board of Management of the Queensland Bar Practice Centre which conducts practical legal training courses as a joint venture of the Bar Association of Queensland and the Queensland University of Technology.

Justice Branson was a Visiting Judicial Fellow at Flinders University, and participated during the reporting year in advocacy training for the legal profession with the Australian Advocacy Institute. Justices Branson and Lindgren are advisory editors of a new loose-leaf service, *Federal Litigation Precedents*, which was published during the reporting year.

Justice Mathews presented a paper to the NSW Administrative Decisions Tribunal.

Justice Lindgren is Chair of the Advisory Board of the Centre for Legal Education (NSW) and, for the first half of the reporting year, was also Chair of the Legal Education Committee of the New South Wales Bar Association and a member of the Board of Directors of the College of Law (NSW). For a second year, Justice Lindgren organised, under the auspices of the College of Law, a series of seminars for legal practitioners under the title "The Judges' Series – Practical Litigation in the Supreme Court and the Federal Court". Each seminar was presented by a Federal Court Judge and a Supreme Court Judge. Justice Lindgren presented, or commented on, papers at seminars and conferences, including the 1999 annual conference of the Supreme Court of New South Wales, a seminar and a conference on the Trade Practices Act, and several seminars for the profession on aspects of practice and procedure.

Justice Tamberlin delivered papers to the NSW College of Law, and the Swiss-Australian Chamber of Commerce.

Justice Sackville presented papers to the Australian Plaintiff Lawyers Association Conference, the Australian National University's Public Law Weekend and the conference "Administrative Law in a Federal System: A Seminar to Honour Sir Anthony Mason". He contributed a chapter to *The Oxford Companion to the High Court of Australia*.

Justices Kiefel and Dowsett participated in the Colloquium of the Judicial Conference of Australia. Justice Kiefel also delivered a paper on the relationship between courts and media to the Oceania Press Council, a paper on Leadership and Law at Edith Cowan University, and a paper on Australian and German law relating to guarantees by family members to the Annual Conference of Supreme and Federal Court Judges. She chaired a session and participated in the 1999 Fulbright Symposium "Beyond the Republic: Meeting the Global Challenges to Constitutionalism".

Justice RD Nicholson is Deputy Convenor of the Trustees of the Francis Burt Education Centre, and a member of the Advisory Board of the Murdoch University Law School.

Justice Lehane is an occasional lecturer in Principles of Equity and in Corporate Finance at the Sydney University Law School.

Justice Marshall presented papers on workplace relations to conferences in Victoria, New South Wales and the Australian Capital Territory. He also assisted the Leo Cussen Institute's labour law program and the Victorian Bar Readers Course.

Justice Mansfield is Chair of the Professional Development Advisory Group, Law Society of South Australia; and Chair, Board of Examiners, National Course in Arbitration and Mediation.

Justice Emmett is the Challis Lecturer in Roman Law and a member of the Faculty of Law at the University of Sydney. He lectured at the NSW College of Law, and addressed visiting lawyers and judges during the year.

Justice Weinberg is a Board member of the Faculty of Law at Monash University.

Justice Dowsett is a member of a sub-committee established by the Judicial Conference of Australia and the Australian Institute of Judicial Administration to consider questions associated with judicial education. He delivered the closing address on "Creating the Future – A Strategic Plan for the Bar?" at the Queensland Bar Practice Course. He also represented the Bar Association of Queensland and

the Bar Practice Centre at the annual Bar Practice Education Forum in Sydney. He delivered a paper on “Towards an Immigration Policy for the Future” to the annual conference of the Migration Institute of Australia.

Justice Katz assisted the NSW Bar Reading Course.