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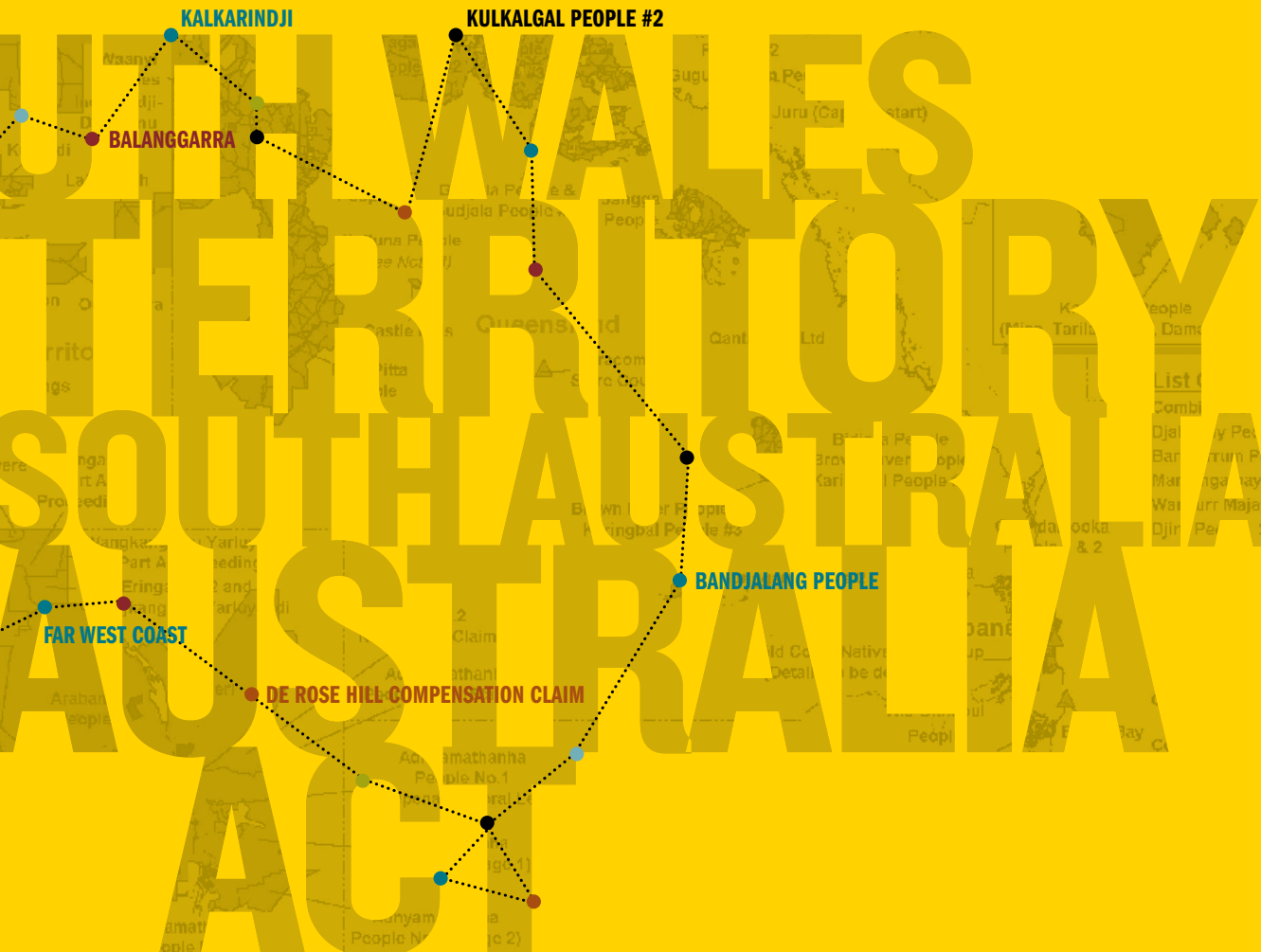
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FEDERAL COURT OF AUSTRALIA

ANNUAL REPORT 2013-2014



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FEDERAL COURT OF AUSTRALIA
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12 September 2014

Senator the Hon George Brandis QC
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I have the pleasure in submitting, in accordance with section 18S of the *Federal Court of Australia Act 1976*, a report of the management of the administrative affairs of the Court during the financial year 2013–2014 and the financial statements in respect of that financial year. The report also includes information about the Court, its composition, jurisdiction and workload.

This is the Court's twenty-fifth annual report.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'JLB Allsop'.

J L B Allsop AO
Chief Justice

PART 1 OVERVIEW OF THE FEDERAL COURT OF AUSTRALIA

OBJECTIVES

The objectives of the Court are to:

- Decide disputes according to law – promptly, courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the Constitution.
- Provide an effective registry service to the community.
- Manage the resources allotted by Parliament efficiently.

ESTABLISHMENT

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* and began to exercise its jurisdiction on 1 February 1977. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy.

The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time.

FUNCTIONS AND POWERS

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts is available in the jurisdiction section of the Court's website www.fedcourt.gov.au.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Circuit Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's jurisdiction is described more fully in Part 3.

THE COURT'S OUTCOME AND PROGRAMME STRUCTURE

The Court's outcome and programme structure appears in Part 4 on page 48.

This report uses the outcome and programme structure to outline the Court's work and performance during 2013–14. Part 3 reports on these issues in detail.

JUDGES OF THE COURT

The Federal Court of Australia Act provides that the Court consists of a Chief Justice and other judges as appointed. The Chief Justice is the senior judge of the Court and is responsible for managing the business of the Court.

Judges of the Court are appointed by the Governor-General by commission and may not be removed except by the Governor-General on an address from both Houses of Parliament in the same session. All judges must retire at the age of seventy.

Judges, other than the Chief Justice, may hold more than one judicial office. Most judges hold other commissions and appointments.

At 30 June 2014 there were forty-seven judges of the Court. They are listed below in order of seniority with details about any other commissions or appointments held on courts or tribunals. Of the forty-seven judges, there were two whose work as members of other courts or tribunals occupied all, or most, of their time.

JUDGES OF THE COURT (AS AT 30 JUNE 2014)

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
Chief Justice The Hon James Leslie Bain ALLSOP AO	Sydney	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon John Ronald MANSFIELD AM	Adelaide	Supreme Court of the ACT – Additional Judge Supreme Court of the NT – Additional Judge Australian Competition Tribunal – Part-time President Administrative Appeals Tribunal – Presidential Member Aboriginal Land Commissioner – Part-time
The Hon John Alfred DOWSETT AM	Brisbane	Supreme Court of the ACT – Additional Judge
The Hon Susan Coralie KENNY	Melbourne	Administrative Appeals Tribunal – Presidential Member

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Peter Michael JACOBSON	Sydney	Supreme Court of Norfolk Island – Chief Justice Australian Competition Tribunal – Part-time Deputy President
The Hon Annabelle Claire BENNETT AO	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member Copyright Tribunal – President
The Hon Antony Nicholas SIOPIIS	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Steven David RARES	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Berna COLLIER	Brisbane	Australian Law Reform Commission – Part-time Commissioner Supreme and National Courts of Justice of Papua New Guinea – Judge
The Hon Anthony James BESANKO	Adelaide	Supreme Court of the ACT – Additional Judge Supreme Court of Norfolk Island – Judge
The Hon Christopher Neil JESSUP	Melbourne	
The Hon Richard Ross Sinclair TRACEY AM RFD	Melbourne	Australian Defence Force – Judge Advocate General Defence Force Discipline Appeal Tribunal – President
The Hon John Eric MIDDLETON	Melbourne	Australian Competition Tribunal – Part-time Deputy President Administrative Appeals Tribunal – Presidential Member Australian Law Reform Commission – Part-time Commissioner
The Hon Robert John BUCHANAN	Sydney	Supreme Court of the ACT – Additional Judge Supreme Court of Norfolk Island – Judge
The Hon John GILMOUR	Perth	Supreme Court of the ACT – Additional Judge

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Michelle Marjorie GORDON	Melbourne	
The Hon John Alexander LOGAN RFD	Brisbane	Administrative Appeals Tribunal – Presidential Member Defence Force Discipline Appeal Tribunal – Member Supreme and National Courts of Justice of Papua New Guinea – Judge
The Hon Geoffrey Alan FLICK	Sydney	
The Hon Neil Walter McKERRACHER	Perth	
The Hon John Edward REEVES	Brisbane	Supreme Court of the NT – Additional Judge
The Hon Nye PERRAM	Sydney	Copyright Tribunal – Deputy President Australian Law Reform Commission – Part-time Commissioner Administrative Appeals Tribunal – Presidential Member
The Hon Jayne Margaret JAGOT	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member Copyright Tribunal – Deputy President
The Hon Lindsay Graeme FOSTER	Sydney	Supreme Court of the ACT – Additional Judge Australian Competition Tribunal – Part-time Deputy President
The Hon Michael Laurence BARKER	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon John Victor NICHOLAS	Sydney	
The Hon David Markey YATES	Sydney	
The Hon Mordecai BROMBERG	Melbourne	
The Hon Anna Judith KATZMANN	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Alan ROBERTSON	Sydney	

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Bernard MURPHY	Melbourne	
The Hon Iain James Kerr ROSS AO	Melbourne	Fair Work Australia – President
The Hon John Edward GRIFFITHS	Sydney	
The Hon Duncan James Colquhoun KERR Chev LH	Hobart	Administrative Appeals Tribunal – President
The Hon Lucy Kathleen FARRELL	Sydney	
The Hon Tony PAGONE	Melbourne	
The Hon Jennifer DAVIES	Melbourne	
The Hon Debra Sue MORTIMER	Melbourne	
The Hon Darryl Cameron RANGIAH	Brisbane	
The Hon Richard Conway WHITE	Adelaide	
The Hon Michael Andrew WIGNEY	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Melissa Anne PERRY	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Jacqueline Sarah GLEESON	Sydney	
The Hon Jonathan BEACH	Melbourne	

The Chief Justice was absent on the following dates during the year. Acting Chief Justice arrangements during these periods were as follows:

22 December 2013 – 26 January 2014
The Hon Justice Marshall

15–21 April 2014
The Hon Justice North

17–30 May 2014
The Hon Justice Marshall

23–27 June 2014
The Hon Justice North

Most of the judges of the Court devote some time to other courts and tribunals on which they hold commissions or appointments. Judges of the Court also spend a lot of time on activities related to legal education and the justice system. More information about these activities is set out in Part 3 and Appendix 8.

Erratum:

This page has been updated to correct an error in the printed version of the Annual Report. Justice Wigney was accidentally omitted from the list of judges appointed to the Court during the reporting period.

APPOINTMENTS AND RETIREMENTS DURING 2013–14

During the year eight judges were appointed to the Court:

- **The Honourable Justice Jennifer Davies** (resident in Melbourne) was appointed on 4 July 2013.
- **The Honourable Justice Debra Mortimer** (resident in Melbourne) was appointed on 12 July 2013.
- **The Honourable Justice Darryl Rangiah** (resident in Brisbane) was appointed on 13 August 2013.
- **The Honourable Justice Richard White** (resident in Adelaide) was appointed on 31 August 2013.
- **The Honourable Justice Michael Wigney** (resident in Sydney) was appointed on 3 September 2013.
- **The Honourable Justice Melissa Perry** (resident in Sydney) was appointed on 23 September 2013.
- **The Honourable Justice Jacqueline Gleeson** (resident in Sydney) was appointed on 15 April 2014.
- **The Honourable Justice Jonathan Beach** (resident in Melbourne) was appointed on 30 June 2014.

During the year four judges retired from the Court:

- **The Honourable Justice Bruce Thomas Lander** resigned his commission as a judge of the Court with effect from 31 August 2013.
- **The Honourable Justice Terence John Higgins** retired upon reaching the compulsory retirement age for federal judges on 12 September 2013.
- **The Honourable Justice Dennis Antill Cowdroy** retired upon reaching the compulsory retirement age for federal judges on 15 March 2014.
- **The Honourable Justice Julie Anne Dodds-Streeton** resigned her commission as a judge of the Court with effect from 1 April 2014.

Other appointments, awards, resignations and retirements during the year included:

- **Justice Perram** was appointed a Presidential Member of the Administrative Appeals Tribunal on 2 July 2013.
- **Justice Bennett** was appointed President of the Copyright Tribunal of Australia for a period of three years with effect from 25 July 2013.
- **Justice Besanko** was appointed a Judge of the Supreme Court of Norfolk Island with effect from 5 August 2013.
- **Justice Wigney** was appointed an Additional Judge of the Supreme Court of the Australian Capital Territory with effect from 9 December 2013.
- **Justice Tracey** was made a Member of the Order of Australia (AM) in the Australia Day Honours Awards.
- **Justice Perry** was appointed an Additional Judge of the Supreme Court of the Australian Capital Territory with effect from 14 May 2014.

FEDERAL COURT REGISTRIES

REGISTRAR

Mr Warwick Soden is the Registrar of the Court. The Registrar is appointed by the Governor-General on the nomination of the Chief Justice. The Registrar has the same powers as the Head of a Statutory Agency of the Australian Public Service in respect of the officers and staff of the Court employed under the *Public Service Act 1999* (section 18Q of the Federal Court of Australia Act).

PRINCIPAL AND DISTRICT REGISTRIES

The Principal Registry of the Court, located in Sydney, is responsible for the overall administrative policies and functions of the Court's registries and provides policy advice, human resources, financial management, information technology support, library services, property management and support to the judges' committees.

There is a District Registry of the Court in each capital city. The District Registries provide operational support to the judges in each state, as well as registry services to legal practitioners and members of the public. The registries receive court and related documents, assist with the arrangement of court sittings and facilitate the enforcement of orders made by the Court.

The Registry of the Copyright Tribunal is located in the New South Wales District Registry. The Victorian Registry is the Principal Registry for the Defence Force Discipline Appeal Tribunal. The South Australia Registry is the Principal Registry for the Australian Competition Tribunal. Most other District Registries are also registries for these two Tribunals. The Queensland, South Australia, Western Australia and Northern Territory District Registries are registries for the High Court. The Tasmania District Registry provides registry services for the Administrative Appeals Tribunal.

The registries of the Court are also registries for the Federal Circuit Court in relation to non-family law matters.

More information on the management of the Court is outlined in Part 4.

OFFICERS OF THE COURT

Officers of the Court are appointed by the Registrar under section 18N of the Federal Court of Australia Act and are:

- (a) a District Registrar for each District Registry
- (b) Deputy Registrars and Deputy District Registrars
- (c) a Sheriff and Deputy Sheriffs
- (d) Marshals under the *Admiralty Act 1988*

The registrars must take an oath or make an affirmation of office before undertaking their duties (section 18Y of the Federal Court of Australia Act). Registrars perform statutory functions assigned to them by the Federal Court of Australia Act, Federal Court Rules 2011, Federal Court (Bankruptcy) Rules 2005 and the Federal Court (Corporations) Rules 2000. These include issuing process, taxing costs and settling appeal indexes. They also exercise various powers delegated by judges under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Circuit Court of Australia Act 1999*. Appendix 4 on page 134 lists the registrars of the Court.

STAFF OF THE COURT

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs and Marshals) are appointed or employed under the Public Service Act. On 30 June 2014 there were 472 staff employed under the Public Service Act. Generally, judges have two personal staff members. More details on Court staff are set out in Part 4 and Appendix 9.

PART 2

THE YEAR IN REVIEW

Gudjala People #2

Queensland

Western Yalanji People #4

Ewamian People #3

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Ewamian People #2

Gudjala People

Warrungu People #2

Mamu People

THE YEAR IN REVIEW

INTRODUCTION

During the year under review the Court continued to seek to achieve its objective of promptly, courteously and effectively deciding disputes according to law, in order to fulfil its role as a court exercising the judicial power of the Commonwealth under the Constitution. The Court's innovative approach to managing its work, and the way it operates as an organisation, brought continuing recognition of its leading role.

During 2013–14 the Court maintained its commitment to achieving performance goals for its core work, while also developing and implementing a number of key strategic and operational projects. These are discussed separately below.

SIGNIFICANT ISSUES AND DEVELOPMENTS

NATIVE TITLE CONSENT DETERMINATIONS

The design of this annual report is intended to acknowledge, in a graphic way, the continuing acceleration of native title consent determinations during the reporting year. The Court commenced the acceleration of consent determinations following the creation of the priority list of claims in 2010. The rate of acceleration was further increased and has been sustained since the transfer of responsibility for mediation from the National Native Title Tribunal (NNTT) to the Court in 2012. In the years preceding the transfer of responsibility the average number of annual consent determinations was nine. Since taking on the responsibility, the Court has achieved an average annual consent determination of forty-three. During the reporting year sixty consent determinations were reached and it is expected that seventy-nine additional consent determinations will be made in the next two years.

These outstanding outcomes have been achieved through a combination of specialist case management techniques being applied by judges managing native title actions together with focussed mediations conducted primarily by highly skilled specialist native title deputy registrars of the Court. The deputy registrars work very closely with judges on the issues to be included in either the mediation or case management processes. This targeted approach has enabled the key issues to be resolved allowing agreement to be achieved, often culminating in a formal consent determination of native title.

ELECTRONIC COURT FILE

During the reporting year the Court also focussed on the major development work concerning the introduction of the electronic court file (ECF). It is proposed to implement the ECF from mid July 2014 with a rollout across the Court by the end of calendar year 2014. It is described as the 'quiet revolution' taking place within the Court. The project has been staged over a number of years without the need to request any additional funding and has been successfully undertaken in a reducing budget environment.

The ECF completely replaces the paper file, and will be the official Court record. The Court has quietly, and in close consultation with the legal profession, undertaken the necessary rule or practice changes to establish the environment in which the transformation from the paper file to the ECF will be effectively introduced. Over a number of years the Court has undertaken 'proof of concept' initiatives, including electronic filing projects, development of the eLodgment application, eCourtroom pilots and electronic trials. All of these initiatives have been undertaken under an umbrella framework of an eServices strategy. The strategy included principles such as data being captured at its source (most often the office of a legal practitioner), data entered only once (to avoid the paper system of the same information being collected by many people, and

often re-keyed into information systems), and both judges and legal practitioners having instant access to the documents on a particular file, at the same time if necessary. The logic of this approach is known as ‘my files’ in the Court’s eServices strategy.

While the ECF will be introduced in July 2014, it does not mean that courtrooms will instantly transform to electronic hearings. The shift to a paperless courtroom will certainly start very quickly in 2014 with many judges and practitioners enthusiastic about the efficiency opportunities available through the use of electronic documents with related high speed searching applications. On the other hand, while the ECF will be introduced for all new court files there will be many existing paper based files and it is expected that the complete transition from paper to electronic court files will take some time. In the meantime, the Court will again continue with its very successful proof of concept approach and will take initiatives in relation to how the electronic court file could be used in the courtroom for electronic hearings. In the early stages following implementation, it is expected that almost all of the work undertaken by registrars in the courtroom will rely on only the electronic court file. Those procedures will also include the electronic production of signed and sealed court orders, delivered to the parties electronically.

The Court has produced a short video which highlights the changes likely to occur. That video and further information about the ECF can be found on the Court’s website <http://www.fedcourt.gov.au/law-and-practice/electronic-court-file>.

PERFORMANCE AGAINST TIME GOALS

The Court maintains three time goals for the performance of its work, two of which were put in place over fourteen years ago when the majority of the Court’s work was less complex. Notwithstanding the increased complexity, the Court has maintained these time goals. The first goal concerns the time taken from filing a case to completion, the second goal concerns the time taken to deliver reserved judgments and the third goal concerns the time taken to complete migration appeals. The goals do not determine how long all cases will take, as some are very long and complex and others will, necessarily, be very short.

Time goal 1: Eighty-five per cent of cases completed within eighteen months of commencement

During the reporting year, the Court completed ninety-two per cent of cases in less than eighteen months, which is in keeping with the previous year. As shown in Figure A5.5 and Table A5.5 in Appendix 5 on page 144, over the last five years the Court has consistently exceeded its benchmark of eighty-five per cent, with the average over the five years being ninety-one per cent.

Time goal 2: Judgments to be delivered within three months

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and the pressure of other business upon the Court. During 2013–14 the Court handed down 1630 judgments for 1365 court files (some files involve more than one judgment being delivered e.g. interlocutory decisions and sometimes, one judgment will cover multiple files). The data indicates that eighty-seven per cent of appeals (both full court and single judge) were delivered within three months (a slight increase from eighty-five per cent in 2012–13) and eighty-four per cent of judgments at first instance were delivered within three months of the date of being reserved (the same as in 2012–13).

Time goal 3: Disposition of migration appeals and related applications within three months

Most matters commenced in the Federal Court from decisions arising under the Migration Act are appeals and related applications.

The majority of these cases are heard and determined by a single judge exercising the appellate jurisdiction of the Court. The Court's goal for disposing of migration appeals and related applications is three months from the date of commencement.

The Court applies a number of initiatives to assist in achieving the goal, including special arrangements to ensure that all appeals and related applications are listed for hearing in the Full Court and Appellate sitting periods as soon as possible after filing. Additional administrative arrangements are also made to streamline the pre-hearing procedures.

The Court carefully monitors the achievement of the three-month goal in order to ensure that there are no delays in migration appeals and related applications, and that delay is not an incentive to commencing appellate proceedings.

In the period covered by this report, 270 migration appeals and related applications from the Federal Circuit Court (FCC) or the Court were filed and finalised. This is a twenty-three per cent increase in the number of migration appeals and related applications finalised compared with 219 in 2012–13.

Of the 270 migration appeals and related applications finalised, the average time from filing to final disposition was 104 days and the median time from filing to final disposition was 106 days. The time taken to hear and dispose of some matters was impacted by decisions pending in the Court or the High Court including challenges to the validity of some legislative amendments.

WORKLOAD

In 2013–14 the total number of filings (including appeals) in the Federal Court decreased by almost fourteen per cent to 5009. Filings in the Court's original jurisdiction (excluding appeals) decreased by seventeen per cent. The decrease in filings can be attributed to corporations matters including winding up applications, the majority of which are dealt with by registrars. Filings of many other matters including appeals, intellectual property and taxation increased during the reporting period. In the five-year period since 2009–10 the Court's workload has increased by thirty-seven per cent.

Further information about the Court's workload, including the management of appeals, can be found in Part 3 on page 21.

The Federal Court's registries also undertake registry services for the FCC. The overall workload has grown since 2000, when the Federal Magistrates Court (as it was then known) was established. In 1999–2000 the combined filings in the general federal law jurisdiction of the FMC and the original jurisdiction (i.e. not including appeals) of the Federal Court were 5885, compared with 12 946 this year. During the reporting year the combined workload of the two courts increased by seven per cent compared with 2012–13.

It should be noted that Federal Court registrars hear and determine a substantial number of cases in the FCC. In the bankruptcy jurisdiction Federal Court registrars dealt with, and disposed of, 3832 FCC bankruptcy matters which equates to ninety-one per cent of the FCC's bankruptcy caseload.

FINANCIAL MANAGEMENT AND ORGANISATIONAL PERFORMANCE

As a result of a decrease in filings by corporations and public authorities, Court fees received in the period January to June 2014 were \$8.324 million less than the fees received in the period July to December 2013 and \$5.210 million less than the fees received in the period January to June 2013.

The Court had already reduced its forecast of fees received in the 2014–15 financial year in the 2014 Portfolio Budget Statement by \$6.857 million when compared to the forecast in the 2013 Portfolio Budget Statement. If the trend in the reduction of filings in the last six months of the reporting year continues into the 2014–15 financial year there could be a further decrease of approximately \$4.7 million in fees received. This trend would be reversed by a reduction (to harmonise with State jurisdictions) of fees charged.

The Court's appropriation includes funding for the operations of the NNTT. The financial figures outlined in this report are for the consolidated results of both the Federal Court and the NNTT. Information about the NNTT's budget is included in Part 5 on page 74.

The Court's budget position continues to be affected by the Government's tight fiscal position.

During the financial year expenditure was closely monitored to ensure that savings were realised wherever possible. As a result, the Court achieved an operating surplus before depreciation and asset revaluations of \$1.564 million.

Notwithstanding the ability to achieve a surplus in 2013–14, in the next three-year budget cycle the Court will continue to manage limited parameter adjustment funding increases together with escalating costs and is predicting a balanced budget through the forward estimates period. The fixed nature of sixty per cent of the Court's costs (such as judges and their direct staff) severely limits the Court's ability to reduce overarching costs. These fixed costs also mean that, in effect, the impact of the efficiency dividend on the Court's remaining costs is more than doubled. That is, it can only be applied to forty per cent of the Court's appropriation and the bulk of that forty per cent includes the cost of wages for Court employees.



PART 3

THE WORK OF THE C IN 2013-

De Rose Hill Compensation Claim

South Australia

Far West Coast

ARK COURT 14

Dieri #2

Adnyamathanha #1

Tjayiwara Unmuru

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THE WORK OF THE COURT IN 2013–14

INTRODUCTION

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

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

MANAGEMENT OF CASES AND DECIDING DISPUTES

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

THE COURT'S JURISDICTION

The Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary and indictable criminal matters. It also has jurisdiction to hear and determine any matter arising under the Constitution through the operation of s 39B of the *Judiciary Act 1903*.

Central to the Court's civil jurisdiction is s 39B(1A)(c) of the *Judiciary Act*. This jurisdiction includes cases created by federal statute, and extends to matters in which a federal issue is properly raised as part of a claim or of a defence and to matters where the subject matter in dispute owes its existence to a federal statute.

Cases arising under Part IV (restrictive trade practices) and Schedule 2 (the Australian Consumer Law) of the *Competition and Consumer Act 2010* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. See Figure A5.8 on page 147 for comparative statistics regarding consumer law matters. Since late 2009 the Court has also had jurisdiction in relation to indictable offences for serious cartel conduct.

In addition, the court has jurisdiction under the *Judiciary Act* to hear applications for judicial review of decisions by officers of the Commonwealth. Many cases also arise under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act), which provides for judicial review of most administrative decisions made under Commonwealth enactments on grounds relating to the legality, rather than the merits, of the decision. The Court hears appeals on questions of law from the Administrative Appeals Tribunal.

The Court hears taxation matters on appeal from the Administrative Appeals Tribunal. It also exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation. Figure A5.13 on page 152 shows the taxation matters filed over the last five years.

The Court shares first instance jurisdiction with the Supreme Courts of the States and Territories in the complex area of intellectual property (copyright, patents, trademarks, designs and circuit layouts). All appeals in these cases, including appeals from the Supreme Courts, are to a full Federal Court. Figure A5.14 on page 153 shows the intellectual property matters filed over the last five years.

Another significant part of the Court's jurisdiction derives from the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications and to be responsible for their mediation, to hear and determine revised native title determination applications, compensation applications, claim registration applications, applications to remove agreements from the Register of Indigenous Land Use Agreements and applications about the transfer of records. The Court also hears appeals from the National Native Title Tribunal (NNTT) and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 26.

A further important area of jurisdiction for the Court 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 Marshals made twelve arrests. See Figure A5.10 on page 149 for a comparison of Admiralty Act matters filed in the past five years.

The Court's jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* covers a diversity of matters ranging from the appointment of provisional liquidators and the winding up of companies, to applications for orders in relation to fundraising, corporate management and misconduct by company officers. The jurisdiction is exercised concurrently with the Supreme Courts of the States and Territories. See Figure A5.7 on page 146 for a comparison of corporations matters filed in the last five years.

The Court exercises jurisdiction under the *Bankruptcy Act 1966*. It has power to make sequestration (bankruptcy) orders against persons who have committed acts of bankruptcy and to grant bankruptcy discharges and annulments. The Court's jurisdiction includes matters arising from the administration of bankrupt estates. See Figure A5.6 on page 145 for a comparison of bankruptcy matters filed in the last five years.

The Court has jurisdiction under the *Fair Work Act 2009*, *Fair Work (Registered Organisations) Act 2009* and related industrial legislation (including matters to be determined under the *Workplace Relations Act 1996* in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*). Workplace relations and Fair Work matters filed over the last five years are shown in Figure A5.12 on page 151.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court, and from the Federal Circuit Court (FCC) in non-family law matters and from other courts exercising certain federal jurisdiction. In recent years a significant component of its appellate work has involved appeals from the FCC concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in this Part on page 26. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's appellate jurisdiction is discussed on page 25. Figure A5.15 on page 154 shows the appeals filed in the Court since 2009–10.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction in addition to the jurisdiction vested under the Constitution through s 39B of the Judiciary Act are listed on the Court's website at www.fedcourt.gov.au.

CHANGES TO THE COURT'S JURISDICTION IN 2013–14

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

- *Court Security Act 2013*
- *Major Sporting Events (Indicia and Images) Protection Act 2014*
- *Public Interest Disclosure Act 2013*

AMENDMENTS TO THE FEDERAL COURT OF AUSTRALIA ACT

During the reporting year there were no amendments to the Federal Court Act.

The substantive provisions of the *Trans-Tasman Proceedings Act 2010* and the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010*, which implement the 'Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement' signed on 24 July 2008, commenced on 11 October 2013.

FEE REGULATIONS

During the reporting period there were no amendments to the Federal Court and Federal Circuit Court Regulation 2012 (the Regulation). However, the items in Schedule 1 of the Regulation relating to the filing of an application under the *Trans-Tasman Proceedings Act* commenced on 11 October 2013.

Most of the filing and other fees set out in Schedule 1 of the Regulation will be increased from 1 July 2014 in accordance with the formula for biennial adjustment in fees set out in Regulation 2.20.

FEDERAL COURT RULES

The judges are responsible for making the Rules of Court under the Federal Court 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 Legislative Instruments.

The Rules are kept under review. New and amending rules are made to ensure that the Court's procedures are current and responsive to the needs of modern litigation. They also provide the framework for new jurisdiction conferred upon the Court. A review of the Rules is often undertaken as a consequence of changes to the Court's practice and procedure described elsewhere in this report. Proposed amendments are discussed with the Law Council of Australia and other relevant organisations as considered appropriate.

During the reporting year two amendments were made to the Federal Court Rules 2011: Federal Court Amendment (Electronic Court File Measures No. 1) Rules 2013, which commenced on 26 November 2013, and Federal Court Amendment (Costs and Other Measures) Rules 2013, which commenced on 3 January 2014.

The first amendment was to support the initial stage of the implementation in the Federal Court of an electronic court file. It is proposed that this implementation will be effected through a gradual transition over several stages. During the transition, the Court's rules must support both the existing paper based and the new electronic court file. The amendments accommodated changes to such things as the use of stamps and seals; preparing and lodging of documents; redacting, amending and removing documents; and producing documents for inspection or in compliance with a subpoena.

The second amendment made changes to:

- Sub rules 8.02(3) and 5.03(3) limiting the length of an applicant's genuine steps statement filed under rule 8.02 and a respondent's genuine steps statement filed under rule 5.03 to no more than 2 pages.
- Rule 10.04 to correct a grammatical error.
- Schedule 3 to adjust the quantum of costs allowable for work and services provided by lawyers in proceedings in the Court on and from 1 January 2014 to give effect to a recommendation made in the Sixth Report of the Joint Costs Advisory Committee.

APPROVED FORMS

Approved Forms are available on the Court's website. Any document that is filed in a proceeding in the Court must be in accordance with any approved form (see rule 2.11). The Chief Justice may approve a form for the purposes of the Federal Court Rules (see sub rule 1.52(2)).

Two of the Court's Approved Forms were amended by the Chief Justice during the reporting year.

- Form 21 Opt Out Notice was amended on 28 October 2013 to insert an address to which the completed form should be sent.
- Form 127 Bill of Costs was amended on 9 October 2013 to rectify an error in a column heading in the costs table of the bill so that it correctly makes reference to Schedule 3 of the Federal Court Rules.

PRACTICE NOTES

Practice Notes supplement the procedures set out in the Rules of Court and are issued by the Chief Justice upon the advice of the judges of the Court under rules 2.11, 2.12 and 2.21 of the Federal Court Rules and the Court's inherent power to control its own processes.

The Chief Justice issued the following revised Practice Notes:

- Practice Note ADM1 – Admiralty and Maritime work in the Federal Court of Australia, effective from 1 July 2013
- Practice Note APP 2 – Content of appeal books and preparation for hearing, issued on 22 November 2013
- Practice Note CM 17 – Representative proceedings commenced under Part IVA of the *Federal Court of Australia Act 1976*, issued on 9 October 2013
- Practice Note CORP 2 – Cross-border Insolvency – Cooperation with Foreign Courts or Foreign Representatives, issued on 9 October 2013.

In addition, Administrative Notices are issued by each District Registrar at the request, or with the agreement, of judges in the District Registry to which the notice relates. These notices deal with local matters, such as arrangements for the duty judge and the listing of particular types of matters (for example in a subpoena or corporations list).

The Victoria District Registrar issued a new Administrative Notice on 11 November 2013, namely:

- Administrative Notice VIC 3 – Allocation of matters in the Victoria District Registry.

The New South Wales District Registrar revised an Administrative Notice on 21 May 2014, namely:

- Administrative Notice NSW 2 – Corporations Matters.

Practice Notes and Administrative Notices are available through District Registries and on the Court's website. They are also available in loose-leaf legal services.

OTHER RULES

There was one amendment to the Federal Court (Bankruptcy) Rules 2005 commencing on 19 September 2013 consequential on the enactment of the *Federal Circuit Court of Australia Legislation Amendment Act 2013*. This Amending Act, amongst other things, changed the name of the Federal Magistrates Court to the Federal Circuit Court of Australia and its judicial officers to Chief Judge and Judges.

There were no amendments to the Federal Court (Corporations) Rules 2000.

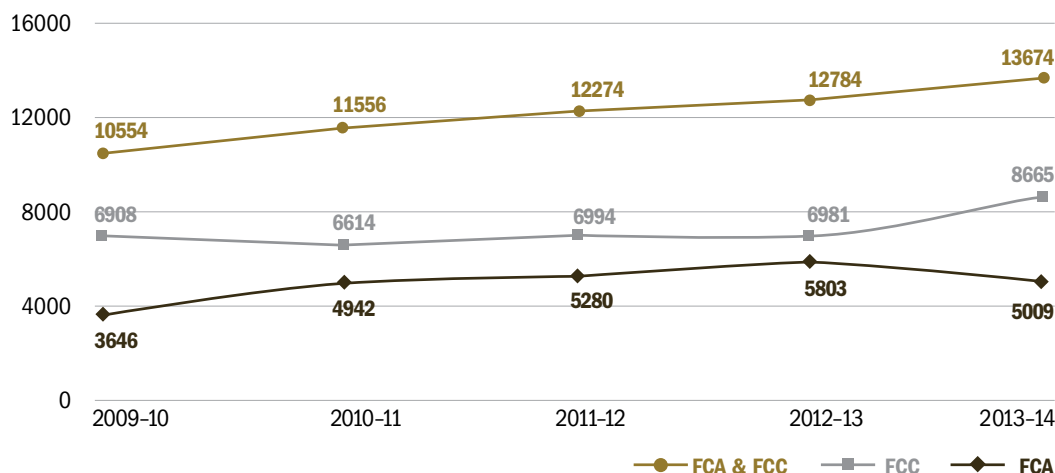
WORKLOAD OF THE FEDERAL COURT AND FEDERAL CIRCUIT COURT

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

Figure 3.1 below shows a continued increase in the combined filings of the two courts since 2009–10.

In 2013–14, a total of 13 674 matters were filed in the two courts. In 1999–2000 there were 6276 filings in the two courts. The overall growth in the number of filings since 2000 has had a considerable impact on the Federal Court's registries, which process the documents filed for both courts and provide the administrative support for each matter to be heard and determined by the relevant court.

Figure 3.1 – Filings to 30 June 2014 Federal Court of Australia (FCA) and Federal Circuit Court (FCC)



CASE FLOW MANAGEMENT OF THE COURT'S JURISDICTION

As noted in Part 2, the Court has adopted as one of its key case flow management principles the establishment of time goals for the disposition of cases and the delivery of reserved judgments. The time goals are supported by the careful management of cases through the Court's Individual Docket System, and the implementation of practices and procedures designed to assist with the efficient disposition of cases according to law.

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

Disposition of matters other than native title

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

Notwithstanding the time goal, the Court expects that most cases will be disposed of well within the eighteen-month period, with only particularly large and/or difficult cases requiring more time. Indeed, many cases are urgent and need to be disposed of quickly after commencement. The Court's practice and procedure facilitates early disposition when necessary.

During the five-year period from 1 July 2009 to 30 June 2014, ninety-two per cent of cases (excluding native title matters) were completed in less than eighteen months, eighty-seven per cent in less than twelve months and seventy-five per cent in less than six months (see Figure A5.4 on page 143). Figure A5.5 on page 144 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2013–14, almost ninety-three per cent of cases were completed within eighteen months.

Delivery of judgments

In the reporting period, 1630 judgments were delivered. Of these, 496 judgments were delivered in appeals (both single judge and full court) and 1134 in first instance cases. These figures include both written judgments and judgments delivered orally on the day of the hearing, immediately after the completion of evidence and submissions.

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

Appendix 7 on page 159 includes a summary of decisions of interest delivered during the year and illustrates the Court's varied jurisdiction.

WORKLOAD OF THE COURT IN ITS ORIGINAL JURISDICTION

Incoming work

In the reporting year, 4281 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.2 on page 139.

Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

- *Judiciary Act 1903*, s 44
- Cross-vesting Scheme Acts
- *Corporations Act 2001*
- *Federal Circuit Court of Australia Act 1999*

During the reporting year, twenty-seven matters were remitted or transferred to the Court:

- four from the High Court
- eleven from the Federal Circuit Court
- eight from the Supreme Courts
- four from other courts

Matters may be transferred from the Court under:

- *Federal Court of Australia (Consequential Provisions) Act 1976*
- *Jurisdiction of Courts (Cross-vesting) Act 1987*
- *Administrative Decisions (Judicial Review) Act 1977*
- *Bankruptcy Act 1966*
- *Corporations Act 2001*
- *Administrative Appeals Tribunal Act 1975*

During 2013–14, twenty-three matters were transferred from the Court:

- twenty to the Federal Circuit Court
- two to Supreme Courts
- one to other courts

Matters completed

Table A5.2 on page 139 shows a comparison of the number of matters commenced in the Court's original jurisdiction and the number completed. The number of matters completed during the reporting year was 4912 against 4905 in the previous reporting year.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2044 (see Table A5.2), compared with 2675 in 2012–13.

Age of pending workload

The comparative age of matters pending in the Court's original jurisdiction (against all major causes of action, other than native title matters) at 30 June 2014 is set out in Table 3.1 below.

Native title matters are not included in Table 3.1 because of their complexity, the role of the National Native Title Tribunal and the need to acknowledge regional priorities.

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

	UNDER 6 MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Cause of Action						
Administrative Law	91	1	4	–	4	100
Admiralty	33	2	3	–	2	40
Bankruptcy	87	6	2	2	4	101
Competition Law	7	3	–	–	6	16
Corporations	419	23	16	18	26	502
Fair Work/Workplace Relations	154	13	8	–	5	180
Human Rights	27	3	1	–	4	35
Intellectual Property	116	16	13	9	23	177
Migration	16	–	–	–	–	16
Miscellaneous	69	7	2	4	4	86
Taxation	131	5	21	8	20	185
Trade Practices	129	21	19	25	34	228
Total	1279	100	89	66	132	1666
% of Total	76.8%	6.0%	5.3%	4.0%	7.9%	100.0%
Running Total	1279	1379	1468	1534	1666	
Running %	76.8%	82.8%	88.1%	92.1%	100.0%	

The Court experienced a fifty-three per cent decrease in the number of matters over eighteen months old in 2013–14. Table 3.1 shows that at 30 June 2014 there were 198 first instance matters over eighteen months old compared with 423 in 2013 (not including native title matters). The large decrease in matters in this category is due to the resolution of a number of lengthy corporations, consumer law (misleading and deceptive conduct), intellectual property and taxation matters. The length of time it takes to finalise these matters is indicative of their complexity both for the parties in preparing the matters for hearing and the judge in hearing and deciding the case.

Table 3.2 – Age of current native title matters (excluding appeals)

	UNDER 6 MONTHS	6-12 MONTHS	12-18 MONTHS	18-24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Native Title Action	55	21	11	34	257	378
% of Total	14.6%	5.6%	2.9%	9.0%	68.0%	100.0%
Running Total	55	76	87	121	378	
Running %	14.6%	20.1%	23.0%	32.0%	100.0%	

The number of native title matters over eighteen months old decreased by twenty per cent from 368 in 2013 to 291 at 30 June 2014. The number of native title matters over two years old decreased from 320 at 30 June 2013 to 257 at 30 June 2014, a clear indication that the innovative case management strategies being employed in this area are working. Further information about the Court's native title workload can be found on page 26.

The Court will continue to focus on reducing its pending caseload and the number of matters over eighteen months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 5 commencing on page 137.

THE COURT'S APPELLATE JURISDICTION

The appellate workload of the Court constitutes a significant part of its overall workload. While most of the appeals arise from decisions of single judges of the Court or the FCC, some are in relation to decisions by State and Territory courts exercising certain federal jurisdiction.

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

Subject to ss 25(1), (1AA) and (5) of the Federal Court Act, appeals from the FCC, and courts of summary jurisdiction exercising federal jurisdiction, may be heard by a Full Court of the Federal Court or by a single judge in certain circumstances. All other appeals must be heard by a Full Court, which is usually constituted by three, and sometimes five, judges.

The Court publishes details of the four scheduled Full Court and appellate sitting periods to be held in February, May, August and November of each year. Each sitting period is up to four weeks in duration.

In the 2014 calendar year, Full Court and appellate sitting periods have been scheduled for Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin. Once an appeal is ready to be heard, it can usually be listed for the next scheduled Full Court and appellate sittings in the capital city where the matter was heard at first instance.

When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court which may, if necessary and appropriate, use videoconferencing facilities or hear the appeal in a capital city other than that in which the case was originally heard.

In 2013–14 the Court specially fixed 32 Full Court or appellate matters for early hearing outside of the four scheduled sitting periods compared with 15 matters in the previous reporting year. Hearing these matters involved a total of 31 sitting days.

THE APPELLATE WORKLOAD

During the reporting year 890 appellate proceedings were filed in the Court. They include appeals and related actions (728), cross appeals (25) and interlocutory applications such as applications for security for costs in relation to an appeal, for a stay of an appeal, to vary or set aside orders or various other applications (137).

The FCC is a significant source of appellate work accounting for fifty-six per cent (501) of the total number of appeals and related actions, cross appeals and other interlocutory applications (890) filed in 2013–14. The majority of these proceedings continue to be heard and determined by single judges exercising the Court's appellate jurisdiction. Further information on the source of appeals and related actions is set out in Figure A5.16 on page 155.

The above figures indicate that there was an overall increase of thirteen per cent in the Court's appellate workload in 2013–14 (890) compared with 2012–13 (787). During the reporting year the number of appellate migration matters filed increased by eighteen per cent from 333 in 2012–13 to 393 in 2013–14 and the number of appellate non-migration matters filed increased by nine per cent from 454 in 2012–13 to 496.

As shown by Table 3.4, this workload is subject to fluctuation due to changes that may occur in government policy or the impact of decisions of the Full Court of the Federal Court or the High Court.

In the reporting year 699 appeals and related actions, 24 cross appeals and 135 interlocutory applications were finalised. At 30 June 2014, there were 401 current matters including appeals and related actions (317), cross appeals (20) and interlocutory applications (64). The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2014 is set out in Table 3.3 below.

At 30 June 2014 there were four matters that are eighteen months or older. These matters are either awaiting the outcome of decisions in the Federal Court (e.g. following the conclusion of High Court proceedings in one matter) or the matter involves the pursuit of a negotiated outcome in a complex native title appeal.

Table 3.3 – Age of current appeals and related actions, cross appeals and interlocutory appellate applications as at 30 June 2014

CURRENT AGE	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Appeals and related actions, cross appeals and interlocutory appellate applications	294	79	24	2	2	401
% of Total	73.3%	19.7%	6.0%	0.5%	0.5%	100%

MANAGING MIGRATION APPEALS

In 2013–14 twenty-three migration cases filed in the Court's appellate jurisdiction related to judgments of single judges of the Court exercising the Court's original jurisdiction and 370 migration cases related to judgments of the FCC. These 393 cases include 378 appeals, cross appeals and related actions and fifteen interlocutory applications.

Table 3.4 shows the number of appellate proceedings involving the Migration Act as a proportion of the Court's overall appellate workload since 2009–10. The Court continues to apply a number of procedures to streamline the preparation and conduct of these appeals and applications and to facilitate the expeditious management of the migration workload.

Initially, the Court applies systems to assist with identifying matters raising similar issues and where there is a history of previous litigation. This process allows for similar cases to be managed together resulting in more timely and efficient disposal of matters. Then, all migration related appellate proceedings (whether to be heard by a single judge or by a Full Court) are listed for hearing in the next scheduled Full Court and appellate sitting period. Fixing migration related appellate proceedings for hearing in the four scheduled sitting periods has provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same sitting period.

Where any migration related appellate proceeding requires an expedited hearing, the matter is allocated to a docket judge or duty judge (in accordance with local practice) or referred to a specially convened Full Court.

Table 3.4 – Appellate proceedings concerning decisions under the Migration Act as a proportion of all appellate proceedings (including appeals and related actions, cross appeals and interlocutory applications)

APPELLATE PROCEEDINGS	2009–10	2010–11	2011–12	2012–13	2013–14
Migration Jurisdiction	392	269	338	333	393
% of total	46%	32%	43%	42%	44%
Total Appellate Proceedings	860	837	797	787	890

Information about the Court's time goal for the disposition of migration appeals can be found in Part 2 at page 14.

THE COURT'S NATIVE TITLE JURISDICTION

The reporting period saw significant inroads being made into the Court's outstanding native title caseload. At the commencement of 2013–14 there were 410 native title determination, non claimant and compensation applications. During the course of the year forty new applications were filed while the overall number of applications was reduced to 368.

In 2013–14 there were sixty consent determinations of which, fifty-two finally resolved the particular application. Seven matters were finalised through determinations made by the Court following a litigated hearing. A further fifty-three applications were otherwise resolved including by discontinuance or dismissal. In many instances matters are discontinued or dismissed by consent following the agreement of the parties to resolve the application by means other than a determination of native title.

A number of significant outcomes were achieved in native title matters in the reporting year. The De Rose compensation application in South Australia became the first compensation application in Australia to be resolved by consent. The parties in that matter were able to reach agreement following Court referral of the matter to a specialist mediator from the Court's native title mediator list. The Goldfields region of Western Australia saw its first positive determination of native title in the Esperance Nyungars matter. This consent determination was made by the Court and gave effect to the agreement of the parties reached at mediation conducted by the Court's specialist native title registrars. In New South Wales the resolution of the Bandjalang matters following intensive case management by the Court's native title registrars marked the first consent determinations in that State in six years. In the Bularnu, Waluwarra and Wangkayujuru Peoples claims in Queensland, intensive case management was employed to resolve all issues but one which was subsequently resolved following a short targeted hearing. Focused case management by the Court in the Northern Territory saw continued strong progress of the resolution of all claims over the northern pastoral estate.

The significant results that continued to be achieved through the year can be attributed to numerous initiatives. In 2009 the *Native Title Act 1993* was amended to expand the mediation referral options available to the Court from only the National Native Title Tribunal (NNTT) to also include registrars of the Court and other suitably qualified mediators. This amendment was followed in 2010 by the creation of the Court's list of specialist native title mediators and the Court's priority list of native title claims for resolution, both of which continue to be updated and published on the Court's website. In 2012 the government introduced institutional reforms which included the transfer of responsibility for the mediation of claims and associated resources from the NNTT to the Federal Court.

Since the institutional reforms the Court has reviewed all claims in intensive case management processes to identify outstanding issues and explore options, including but not limited to mediation, for the resolution of those issues. In 2013–14 the Court continued to work with the parties to identify priority claims for resolution in the coming twelve to eighteen months. The identification and publication of these claims on the Court's website allows the resources and

coordinated efforts of all parties to be appropriately focused on the resolution of identified outstanding issues in these claims. There are currently 180 matters on the Court's priority list. It is anticipated that approximately half of these matters will be resolved in 2014–15.

This year the Court continued to identify systemic issues affecting the timely resolution of native title applications. The significant resources and time expended by the parties to identify, collate and analyse tenure documents formed the particular focus of discussions with parties at regional user group forums and at regional directions hearings held during the reporting period. The Court continues to encourage the parties to formulate flexible and innovative approaches to tenure analysis and is working closely with the NNTT on a pilot project in a New South Wales matter that aims to significantly streamline current processes.

ASSISTED DISPUTE RESOLUTION (ADR)

Since its establishment in 1987, the Court's ADR programme has expanded from a small number of referrals to mediation to a routine way in which the Court facilitates the quick, inexpensive and efficient resolution of disputes. The capacity for a judge to refer a matter to arbitration, mediation or another ADR process is enshrined in the Federal Court of Australia Act, supplemented by the Rules of the Court. In practice, parties to matters before the Court are required to give consideration to possible referral to mediation as part of their preparation of a matter for hearing.

The majority of court ordered mediations are conducted by registrars who are all trained and accredited under the National Mediator Accreditation Scheme. In the native title jurisdiction the Court maintains a list, available on its website, of specialist mediators who have current experience in the resolution of complex Indigenous land management disputes. In some circumstances the parties may employ the services of a private mediator following a Court ordered referral to mediation.

Since the 2010–11 reporting period the Court has provided comprehensive statistical information about referrals to ADR and the outcomes of ADR processes held during the relevant reporting period. In doing so the Court is best able to assess the performance of its ADR programme across years and to provide academics and policy makers with data upon which they may base their work. As in previous years the data below should be considered in light of a number of factors. Firstly, referrals to mediation or other types of ADR may occur in a different reporting period to the conduct of that mediation or ADR process. Secondly, not all referrals to mediation or the conduct of mediation occur in the same reporting period as a matter was filed. This means that comparisons of mediation referrals or mediations conducted as a proportion of the number of matters filed in the Court during the reporting period are indicative only. Thirdly, the data presented on referrals to ADR and outcomes of mediations conducted during the reporting period does not include information about ADR processes that may have been engaged in by parties before the matter is filed in the Court, or all of the matters where a private mediator is used during the course of the litigation. Similarly, the statistics provided below do not include instances where judges of the Court order experts to confer with each other to identify areas where their opinions are in agreement and disagreement without the supervision of a registrar.

Table 3.5 – ADR referrals in 2013–14 by type and Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Mediation	136	275	81	26	3	23	6	17	567
Arbitration	–	–	–	–	–	–	–	–	–
Early neutral evaluation	–	–	–	–	–	–	–	–	–
Conference of experts	–	–	–	5	–	–	–	–	5
Court appointed experts	–	–	–	–	–	–	–	–	–
Referee	–	–	–	–	–	–	–	–	–
Total	136	275	81	31	3	23	6	17	572

Table 3.6 shows the referrals to mediation by matter type and registry. Consistent with previous years corporations law, industrial, consumer law and intellectual property are the most frequently referred matter types nationally; however, variation exists across registries as to the types of matters most frequently referred. As in previous years industrial matters continue to be the most usual type of matter referred to mediation in Victoria followed by consumer law matters. In New South Wales intellectual property and corporations law matters were the matter types most frequently referred to mediation.

Table 3.6 – Mediation referrals in 2013–14 by Cause of Action (CoA) and Registry

COA	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Administrative Law	6	6	–	2	–	–	–	–	14
Admiralty	5	–	7	–	–	–	–	–	12
Appeals	–	3	1	–	–	–	–	–	4
Bankruptcy	3	5	–	–	–	–	–	–	8
Competition Law	1	1	1	–	–	2	–	–	5
Consumer Law	16	46	16	1	–	4	6	3	92
Corporations	20	36	25	6	–	4	–	7	98
Costs	16	–	–	–	–	–	–	–	16
Human Rights	4	12	2	2	–	3	–	3	26
Industrial	18	118	15	5	1	4	–	4	165
Intellectual Property	26	38	3	7	–	1	–	–	75
Migration	–	–	–	–	–	–	–	–	–
Native Title	5	–	8	3	2	5	–	–	23
Taxation	16	10	3	–	–	–	–	–	29
Total	136	275	81	26	3	23	6	17	567

Table 3.7 shows the number of mediation referrals during the reporting period as a proportion of the total filings in the Court. The proportion of total filings that are referred to mediation remains consistent with previous years. When the total filings figures are adjusted to remove those matter types whose characteristics mean that referrals to mediation are rare, e.g. migration appeals and applications to wind up corporations that are dealt with by registrars of the Court, a truer illustration of referral rates is possible. While only 11% of total filings were referred to mediation, the rate of referral of applicable filings is actually 23% (see Table 3.9).

The term 'applicable filings' has been used to refer to matter types that are more commonly referred to mediation notwithstanding that the Federal Court Act and the Rules do not exclude any matter type from potential referral.

Table 3.7 – Mediation referrals as a proportion of total filings by financial year

	2009 -10	2010 -11	2011 -12	2012 -13	2013 -14
Referrals	476	610	583	602	567
Total Filings	3646	4941	5277	5802	5009
Proportion %	13%	12%	11%	10%	11%

Table 3.8 shows the applicable filings as a proportion of the total filings in the Court by registry during the reporting period.

Table 3.8 – Total filings and suitable filings (excluding non-mediation CoAs, e.g. migration appeals) by Registry in 2013-14

COA	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Applicable Filings	1054	666	199	295	31	155	13	83	2496
Total Filings	2026	1146	464	798	43	380	34	118	5009
Proportion %	52%	58%	43%	37%	72%	41%	38%	70%	50%

Table 3.9 – Mediation referrals as a proportion of applicable filings, by Registry in 2013-14

COA	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total Referrals	136	275	81	26	3	23	6	17	567
Applicable Filings	1054	666	199	295	31	155	13	83	2496
Proportion %	13%	41%	39%	9%	10%	15%	46%	20%	23%

Table 3.10 shows mediation referrals by matter type to both internal and external mediators. Consistent with previous years, referrals to internal mediation conducted by registrar mediators were made significantly more frequently than referrals to external mediators. Table 3.11 shows internal and external referrals to mediation as a percentage of applicable filings.

Table 3.10 – Internal and external mediation referrals by CoA in 2013–14

COA	INTERNAL	EXTERNAL
Administrative Law	11	3
Admiralty	7	5
Appeals	4	–
Bankruptcy	8	–
Competition Law	4	1
Consumer Law	79	13
Corporations	84	14
Costs	16	–
Human Rights	26	–
Industrial	162	3
Intellectual Property	75	–
Migration	–	–
Native Title	16	7
Taxation	20	9
Total	512	55

Table 3.11 – Internal and external mediation referrals as a proportion of applicable filings in 2013–14

	INTERNAL	EXTERNAL
Total Referrals	512	55
Applicable filings	2496	2496
Percentage	21%	2%

MEDIATIONS HELD IN 2013–14

Table 3.12 shows the outcomes of mediations conducted during the reporting period by registrars of the Court by matter type. The percentage of matters mediated by a registrar of the Court that either settled in full or in part was sixty-seven per cent, an increase of six per cent on the previous reporting period. Table 3.13 shows the outcome of mediations held during the reporting period by registry. Table 3.14 shows mediations held as a proportion of applicable filings. The proportion of seventeen per cent for this reporting period is consistent with the previous reporting period.

Table 3.12 – Mediation Outcomes by CoA in 2013-14

COA	RESOLVED	RESOLVED IN PART	NOT RESOLVED	TOTAL	PROPORTION RESOLVED/IN PART (%)
Administrative Law	4	–	4	8	50%
Admiralty	2	1	1	4	75%
Appeals	3	–	–	3	100%
Bankruptcy	5	–	3	8	63%
Competition Law	1	–	2	3	33%
Consumer Law	50	4	16	70	77%
Corporations	46	2	27	75	64%
Costs	4	–	4	8	50%
Human Rights	15	1	14	30	53%
Industrial	79	2	52	133	61%
Intellectual Property	37	2	18	57	68%
Migration	–	–	–	–	–
Native Title	13	3	1	17	94%
Taxation	13	4	–	17	100%
Total	272	19	142	433	67%

Table 3.13 – Mediation outcomes by Registry in 2013-14

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Resolved	42	161	36	7	–	12	2	12	272
Resolved in part	1	7	1	5	2	1	–	2	19
Not Resolved	25	74	18	10	1	6	4	4	142
Total	68	242	55	22	3	19	6	18	433
Proportion Resolved/ in part (%)	63%	70%	67%	55%	67%	6%	33%	78%	67%

Table 3.14 – Mediations held as a proportion of applicable filings, by Registry in 2013-14

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total held	68	242	55	22	3	19	6	18	433
Applicable filings	1054	666	199	295	31	155	13	83	2496
Proportion (%)	6%	36%	28%	7%	10%	12%	46%	22%	17%

MANAGEMENT OF CASES AND DECIDING DISPUTES BY TRIBUNALS

The Court provides operational support to the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal. This support includes the provision of registry services to accept and process documents, collect fees, list matters for hearings and 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 functions of each tribunal and the work undertaken by it during the reporting year is set out in Appendix 6 on page 156.

IMPROVING ACCESS TO THE COURT AND CONTRIBUTING TO THE AUSTRALIAN LEGAL SYSTEM

INTRODUCTION

The following section reports on the Court's work during the year to improve the operation and accessibility of the Court, including reforms to its practices and procedures, enhancements in the use of technology and improvements to the information about the Court and its work.

This section also reports on the Court's work during the year to contribute more broadly to enhancing the quality and accessibility of the Australian justice system, including the participation of judges in bodies such as the Australian Law Reform Commission, the Australian Institute of Judicial Administration and in other law reform and educational activities.

eSERVICES STRATEGY

The Court's eServices strategy aims to utilise technology to maximise the efficient management of cases, by increasing online accessibility for the legal community and members of the public, as well as assisting judges in their task of deciding cases according to law quickly, inexpensively and as efficiently as possible.

The Court has been progressively implementing a series of electronic initiatives to make use of technological opportunities to improve our services to Court users. The primary objective of the Court's eServices strategy is to create an environment where actions are commenced, case managed and heard by filing documents electronically. The result will be that the Court's official record will be an electronic court file.

Paper documents may be relied upon during case management, trials or appeals. But these documents will emanate from an electronic file and they will not form part of the Court Record. Over time it is likely that the extent of paper documents will reduce, with people becoming accustomed to relying on the information in electronic form.

During the reporting period the Court completed development of the document management system which forms the basis of the electronic court file (ECF). Work on the ECF Project moved to the implementation phase with an emphasis on development of training materials (both for Court personnel and Court users).

Over a period of six weeks the Court offered an extensive training and education programme for Court users called 'Working with the Court electronically'. The programme had two elements, hands-on training with the eLodgment system and information sessions about the changes to the Court's eServices. Over 650 Court users nationally took up this opportunity to learn more about the Court's electronic services with most of the sixty-five hands-on training sessions being booked out. In response to the success of this programme, additional sessions will be run through the rest of 2014.

A staged rollout of the ECF will take place in the second half of 2014 commencing in South Australia on 14 July. More information about this project can be found in Part 2 of this Report at page 12.

As noted above, while developing the ECF, the Court has continued to promote the use of its electronic filing application, eLodgment. eLodgment was significantly enhanced during the reporting year in response to feedback from Court users and in preparation for the ECF. The enhancements included:

- Increasing the size limit for documents from 10mb to 30mb.
- Reducing the 'lock-out' period for forgotten passwords from 30 minutes to 5 minutes.
- Development of information for users of eLodgment about the most effective ways to prepare their documents for electronic lodgment, including information about reducing the size of large documents without compromising quality.

In 2013–14 the number of active users of eLodgment increased by thirty-five per cent to 7412 and over 64 000 documents were electronically lodged. This equates to forty-eight per cent of all documents filed during the year in both the Federal Circuit Court and the Federal Court. Over fifty-six per cent of Federal Court documents are now filed electronically.

During the reporting year 765 matters were commenced in eCourtroom. The majority of these were applications for sub service heard by the Court's registrars. These matters are ordinarily dealt with entirely in eCourtroom saving the parties time and cost in attending Court and the Court costs in setting up courtrooms. Most matters in eCourtroom are completed within two weeks of the eCourtroom commencing.

PRACTICE AND PROCEDURE REFORMS

The National Practice Committee is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee dealt with a range of matters including:

- The Productivity Commission's Inquiry into access to justice arrangements.
- Considering the 2013 Joint Costs Advisory Committee recommendation to increase the quantum of costs for work done and services provided by lawyers.
- Assistance available for self represented litigants.
- Differences in approach adopted by court users in exhibiting rather than annexing documents to affidavits.
- Lengthy genuine steps statements.
- Preparation of a guide for court users to the operation of the Court's Individual Docket System.
- Class actions.
- Ongoing monitoring of the impact of increased filing, setting down and hearing fees, particularly following the introduction of structural and other changes in fees from 1 January 2013.
- Legislative changes to improve court efficiency.

The Committee also considered proposed legislative changes and reform in the areas of intellectual property, establishment of a framework of standard regulatory powers and civil penalties enforcement provisions, migration and the establishment of an independent statutory agency to investigate misconduct and corruption in Commonwealth departments.

Liaison with the Law Council of Australia

Members of the National Practice Committee met during the reporting year with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure. These included:

- the electronic court file
- specialist panels and guide to the individual docket system
- impact of fee increases/changes in the Federal Court
- Case Management Handbook
- developments with arrangements for providing assistance to self represented litigants in the Court
- performance and funding review of the federal courts
- consistency in Federal Court practice.

ASSISTANCE FOR SELF REPRESENTED LITIGANTS

The Court delivers a wide range of services to self represented litigants. These services have been developed to meet the needs of self represented litigants for information and assistance concerning the Court's practice and procedure.

During the reporting year the Government provided funding to Queensland Public Interest Law Clearing House (QPILCH), Justice Connect, JusticeNet SA and Legal Aid Western Australia to provide basic legal information and advice to self represented litigants in the Federal Court and Federal Circuit Court. The service began in Queensland in March

2014 and is expected to commence progressively in all other Federal Court registries, to be operating nationally by late 2014. While the service is independent of the courts, facilities are provided within court buildings to enable meetings to be held with clients.

Tables 3.15, 3.16 and 3.17 below provide some broad statistics about the number of self represented litigants appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of self represented litigants is not a mandatory field in the Court's case management system statistics shown in the Tables are indicative only. In the reporting year, 408 people who commenced proceedings in the Court were identified as self represented. The majority were appellants in migration appeals.

Table 3.15 – Actions commenced by Self Represented Litigants (SRLs) during 2013–14 by Registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	7	199	–	43	36	–	91	32	408
%Total	2%	49%	–	11%	9%	–	22%	8%	100%

The 408 SRLs in 2013–14 were applicants in 406 proceedings, as a proceeding can have more than one applicant. The following table breaks down these proceedings by major CoA.

Table 3.16 – Proceedings commenced by SRLs in 2013–14 by CoA

COA	TOTAL ACTIONS	% OF TOTAL
Administrative Law	47	12%
Admiralty	–	–
Appeals and related actions	254	63%
Bankruptcy	31	8%
Bills of Costs	–	–
Competition Law	–	–
Consumer Protection	7	2%
Corporations	11	3%
Cross Claim	–	–
Fair Work/Workplace Relations	10	2%
Human Rights	6	1%
Industrial	1	–
Intellectual Property	5	1%
Migration	13	3%
Miscellaneous	16	4%
Native Title	1	–
Taxation	4	1%
Total	406	100%

Table 3.17 – Appeals commenced by SRLs in 2013–14 by type of appeal

COA	TOTAL ACTIONS	% OF TOTAL
Administrative Law	18	7%
Admiralty	1	–
Bankruptcy	26	10%
Competition Law	–	–
Consumer Protection	11	4%
Corporations	–	–
Fair Work/Workplace Relations	7	3%
Human Rights	4	2%
Industrial	1	–
Intellectual Property	1	–
Migration	180	71%
Miscellaneous	3	1%
Native Title	2	1%
Taxation	–	–
Total	254	100%

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 to provide professional interpreter services to people who need those services but cannot afford to pay for them. In general, the Court's policy is to provide these services for litigants who are unrepresented and who do not have the financial means to purchase the services, and for litigants who are represented but are entitled to an exemption from payment of court fees, under the Federal Court and Federal Circuit Court Regulation (see below).

COURT FEES AND EXEMPTION

Under the Federal Court and Federal Circuit Court Regulation 2012 fees are charged for filing documents; setting a matter down for hearing; hearings and mediations; taxation of bills of costs; and for some other services in proceedings in the Court. The rate of the fee that is payable depends on whether the party liable to pay is a publicly listed company; a corporation or public authority; or a person, small business or not-for-profit association.

Some specific proceedings are exempt from all or some fees. These include:

- Human Rights applications (other than an initial filing fee of \$55)
- some Fair Work applications (other than an initial filing fee of \$67.20 [with effect from 1 July 2014])
- appeals from a single judge to a Full Court in Human Rights and some Fair Work applications
- an application by a person to set aside a subpoena
- an application for an extension of time
- a proceeding in relation to a case stated or a question reserved for the consideration or opinion of the Court

- a proceeding in relation to a criminal matter
- setting-down and hearing fees in proceedings under the Bankruptcy Act
- setting-down fees for an interlocutory application.

A person is entitled to apply for a general exemption from paying court fees in a proceeding if that person:

- has been granted Legal Aid
- has been granted assistance by a registered body to bring proceedings in the Federal Court under Part 11 of the Native Title Act or has been granted funding to perform some functions of a representative body under section 203FE of that Act
- is the holder of a health care card, a pensioner concession card, a Commonwealth seniors health card or another card certifying entitlement to Commonwealth health concessions
- is serving a sentence of imprisonment or is otherwise detained in a public institution
- is younger than 18 years
- is receiving youth allowance, Austudy or ABSTUDY benefits.

Such a person can also receive, without paying a fee, the first copy of any document in the court file or a copy required for the preparation of appeal papers.

A corporation which had been granted Legal Aid or funding under the Native Title Act had the same entitlements.

A person (but not a corporation) is exempt from paying a court fee that otherwise is payable if a registrar or an authorised officer is satisfied that payment of that fee at that time would cause the person financial hardship. In deciding this, the registrar or authorised officer must consider the person's income, day-to-day living expenses, liabilities and assets. Even if an earlier fee has been exempted, eligibility for this exemption must be considered afresh on each occasion a fee is payable in any proceeding.

More comprehensive information about filing and other fees that are payable, how these are calculated (including definitions used, for example 'not-for-profit association', 'public authority', 'publicly listed company' and 'small business') and the operation of the exemption from paying the fee is available on the Court's website www.fedcourt.gov.au. Details of the fee exemptions during the reporting year are set out in Appendix 1 on page 129.

WEBSITE

The Federal Court website is the main source of public information and a gateway to the Court's suite of online services such as eLodgment, eCourtroom and the Commonwealth Courts Portal. It provides access to a range of information including court forms and fees, guides for court users, daily court listings and judgments. In recent years it has also been used to publish selected court documents in representative proceedings and cases of high public interest; these were previously only available to interested parties by visiting the registry in which the matter was filed.

There are two subscription services offered on the Court website: Practice News, which communicates changes to the Court's practice and procedure and the Daily Court Lists, which provides details of hearings listed the next business day. There are currently 4644 subscribers to these services. RSS feeds (Rich Site Summary feeds) have also been implemented for judgments and news items.

A redesigned website was launched in 2012 and continues to generate positive feedback from the legal profession, the general public as well as other courts locally and internationally. The website generated close to 2.5 million hits during the reporting period.

REQUESTS FOR INFORMATION

In 2013–14 approximately 400 emails were received by the Court through the website's email account: query@fedcourt.gov.au. Frequent questions are received from students, researchers and members of the public who are interested in the role of the Court, its jurisdiction, practice and procedure and at times particular cases of interest. Staff ensure they respond to the queries in a comprehensive and timely fashion.

Some enquiries concern legal advice. Whilst court staff cannot provide legal advice, they endeavour to assist all enquirers by referring them to reliable sources of information on the internet or to community organisations such as legal aid agencies and libraries.

The number of queries received dropped by almost twenty per cent compared with the 2012–13 financial year. Anecdotal evidence suggests that the redesign of the website has led to a drop in general queries. The information being sought is easier to locate on the website and thus there is no longer any need to contact the Court directly.

PUBLISHED INFORMATION

The Court publishes a range of information on aspects of its work including: a guide for witnesses appearing in the Court; information on procedures in appeals, bankruptcy, native title and human rights cases; and information on the Court's use of mediation. In addition, during the reporting year the Court developed comprehensive information about changes to the eLodgment system and the introduction of the electronic court file. This information is downloadable from the Court's website, www.fedcourt.gov.au.

FREEDOM OF INFORMATION

Information Publication Scheme

Agencies subject to the *Freedom of Information Act* 1982 (FOI Act) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Court's plan is accessible from the Court's website at <http://www.fedcourt.gov.au/ips>. The NNTT's plan can be found at <http://www.nntt.gov.au/News-and-Communications/Freedom-of-Information/Pages/Informationpublicationscheme.aspx>.

The availability of some documents under the FOI Act will be affected by s 5 of that Act, which states that the Act does not apply to any request for access to a document of the Court unless the document relates to matters of an administrative nature. Documents filed in Court proceedings are not of an administrative nature; however, they may be accessible by way of the Federal Court Rules.

ACCESS TO JUDGMENTS

When a decision of the Court is delivered, a copy is made available to the parties and published on the Federal Court and AustLII websites for access by the media and the public. Judgments of public interest are published within an hour of delivery and other judgments within a few days. The Court also provides copies of judgments to legal publishers and other subscribers.

INFORMATION FOR THE MEDIA AND TELEVISED JUDGMENTS

The Court's Director Public Information responds to enquiries regarding cases from journalists throughout Australia and, on occasion, from overseas. These often relate to how to access files and judgments.

For matters of particularly high public interest the Court may establish an online file to enable easy access to publicly available documents. Just before the conclusion of the reporting year an online file was created for *Essendon v Australian Sports Anti-Doping Authority* (ASADA) and *Hird v ASADA*.

In the first fourteen days of the file's existence (corresponding with the end of the reporting year) it had been accessed more than 4000 times. The Court also allowed ABC Television to feed a live televised broadcast of the first directions hearing for this matter which was shared by other major media outlets. This drew a very positive response.

During the reporting year the Director of Public Information oversaw the production of two DVDs: the first concerned the electronic court file and is available on the Court's website. The second DVD is a training video about mediation which was prepared to assist the Indonesian judiciary as part of the Australian Indonesia Judicial Partnership.

COMMUNITY RELATIONS

The Court engages in a wide range of activities with the legal profession, including regular user group meetings. The aim of user groups is to provide a forum for Court representatives and the legal profession to discuss existing and emerging issues, provide feedback to the Court and act as a reference group. Seminars and workshops on issues of practice and procedure in particular areas of the Court's jurisdiction are also regularly held.

In 2013–14 members of the Court were involved in:

- Organising the International Commercial Law and Arbitration Conference. Sponsored by the Court and the Federal Litigation and Business Law Sections of the Law Council of Australia, the conference featured speakers from around Australia and internationally. The keynote address *International Commercial Dispute Resolution and the Place of Judicial Power* was given by the Hon Robert French AC, Chief Justice of the High Court of Australia. The focus of the Conference was on international aspects of commercial law and arbitration, with particular reference to the Australasian/Asia/Pacific region.

- Presenting seminars which were viewed simultaneously via videoconference in each of the Court's registries. Two seminars covering Commercial Law and Taxation were organised and hosted by judges in the Court's registry in Victoria.
- Giving presentations and hands-on training to court users about working with the Court electronically.

The Court also engages in a range of strategies to enhance public understanding of its work, and the Court's registries are involved in educational activities with schools and universities and, on occasion, with community organisations which have an interest in the Court's work. The following highlights some of these activities during the year.

In 2013–14 judges and registrars in the New South Wales Registry hosted an admiralty user group meeting along with user groups focusing on general Federal Court practice and procedure. Senior registry staff participated in user group meetings hosted by the Federal Circuit Court on the migration jurisdiction and FCC practice and procedure. The Registry also held a number of seminars and lectures on constitutional law, practice and procedure, arbitration, and hosted law moots and bar reader courses. The District Registrar delivered an information session about working with the Court electronically and hands-on training on the Court's eLodgment system was provided to court users. Information sessions were conducted for lawyers new to practice and presentations about mediation in the Federal Court were given to a range of organisations. Numerous high school work experience students and two students from the University of Wollongong were hosted by the Registry through the year. In December 2014 the Principal Registrar hosted a connections event for the Australian Government Leadership Network on *The electronic court file – a quiet revolution*.

The Court's facilities in Sydney were made available for many events during the reporting year including: the Council of Australasian Tribunal's annual Whitmore lecture *Forewarned and Four-Armed – Administrative Law Values and the Fourth Arm of Government*; the 2013 Australian Maritime and Transport Arbitration Commission (AMTAC) Annual Address *The elusive Panacea of uniformity: Is It worth Pursuing?*; the 2013 Tristan Jepson Memorial Foundation Annual Lecture *Leading Change in the Legal Profession*; the 12th Annual International Arbitration Lecture delivered by Chief Justice Allsop *The authority of the arbitrator – its sources, limits and importance*; the Third Mahla Pearlman Oration delivered by Adjunct Professor Rob Fowler; and a function to honour the late Professor Leslie Zines AO.

The Queensland Registry hosted the following events for the legal profession during the reporting period: the 2013 Richard Cooper Memorial Lecture, *Indigenous sea rights – the Grotius heritage*, presented by Ms Raelene Webb QC President of the NNTT and the launch of the Self Representation Service Queensland by the Commonwealth Attorney-General. In addition, an admiralty practitioners forum was held and consultations, information and training sessions were run about the Court's eServices.

The Registry's work with schools and universities continued through the year: six schools visited the Court for educational tours; work experience students were hosted and two university moot competitions were held at the Court.

On 23 December 2013 facilities in Queensland were provided to the Royal Commission into the Home Insulation Programme for its first public hearing.

The Victorian Registry hosts, on a quarterly basis, a Federal Court Users' Committee meeting chaired by Justice Tracey. The National Commercial Law Seminar Series is a joint initiative of the Federal Court, Monash University and the Victorian Bar. Four seminars were held in 2013–14 including: 'Current issues in the interpretation of Federal Legislation'; 'Unconscionability and good faith in business transactions'; 'Personal Property Securities Act: Beyond the Transitional Period'; and 'Things every commercial lawyer should know about judicial review'.

On 22 October 2013, the Victoria Registry Class Action Users' Group, together with the Commercial Bar Association, hosted a seminar given by Professor Samuel Issacharoff, Reiss Professor of Constitutional Law at New York University School of Law on *Class definition issues and a comparison of Australian developments to US developments in class action jurisprudence*.

On 13 February 2014, the Victoria Registry held an information session for members of the profession to provide an overview and update on the Court's electronic court file and a practical presentation on how to lodge documents electronically.

On 2 August 2013, a group of students undertaking architecture studies at the University of Melbourne visited the Victoria Registry.

On 16 September 2013 and 10 April 2014, the Victoria Registry hosted a group of practitioners undertaking the Bar Readers course. The Victorian Registry hosted a number of Moot Courts for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities. It also hosted Moot Court Competitions for the Victorian Bar Readers.

The Victorian Registry offered two internships as part of the Stepping into Law Programme and participated in the Indigenous Clerkship Programme run by the Victorian Bar. Three clerks participated in the programme with each clerk spending one week with each of the participating institutions: The Federal Court of Australia, The Supreme Court of Victoria and the Victorian Bar.

Several work experience students were hosted through the year and a two-week full-time professional placement provided to a library technician student from Swinburne University of Technology.

In 2013–14 the Western Australia Registry hosted four intellectual property seminars. A Deputy Registrar gave a presentation on the Court's use of assisted dispute resolution to the Institute of Arbitrators and Mediators Australia. Law students from Curtin University were provided with a presentation about the Court followed by a talk on taxation law by Justice McKerracher.

The grand final of the Murdoch Student Law Society Junior Trial Advocacy Competition was held in Courtroom 1 in Perth.

Judges and staff in South Australia hosted a new legal practitioners' information session and a presentation about working with the Court electronically. Three federal court liaison committee meetings were held during the year along with two bankruptcy user group meetings.

The District Registrar presented a course on bankruptcy for the South Australia Bar Readers programme.

In Tasmania the District Registrar participated in a court exercise for the University of Tasmania Centre for Legal Studies. Justice Kerr and the District Registrar hosted an information session on working with the Court electronically.

On 28 May 2014, in the Northern Territory, Justice Mansfield and District Registrar Bochner convened a biannual Native Title Planning Day involving the major native title stakeholders to map and plan progress of Native Title matters.

COMPLAINTS ABOUT THE COURT'S PROCESSES

During the reporting year, eleven 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, which may only be dealt with by way of appeal.

Information about the Court's feedback and complaints processes can be found at www.fedcourt.gov.au/feedback-and-complaints.

INVOLVEMENT IN LEGAL EDUCATION PROGRAMMES AND LEGAL REFORM ACTIVITIES

The Court is an active supporter of legal education programmes, both in Australia and overseas. During the reporting year the Chief Justice and many judges:

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

An outline of the judges' work in this area is included in Appendix 8 on page 178.

NATIONAL STANDARD ON JUDICIAL EDUCATION

In accordance with the National Judicial College of Australia's Report 'Review of the National Standard for Professional Development for Australian Judicial Officers', the following information is provided about participation by members of the Court in judicial professional development activities.

The national standard provides that each Judicial Officer should be able to spend at least five days each year on judicial professional development. Professional development has been defined to include participation in seminars, workshops, distance programmes, sessions at court and other conferences on judicial education topics as well as self-directed professional activities.

During 2013–14 the Court offered the following activities:

- A three-day criminal procedure workshop.
- Two education events were scheduled in August 2013 and March 2014 to coincide with the Court's biannual judges' meetings. Education sessions included a workshop on assisting self represented litigants in the courtroom; native title and corporations law; concurrent and expert evidence; and use of the electronic court file.
- Following the August 2013 Judges' meeting in Sydney, Judges were offered the opportunity to attend the International and Commercial Law and Arbitration conference hosted by the Court.

In addition to the above, judges undertook other education activities through participation in seminars and conferences, details of which can be found in Appendix 8 on page 178. In the period 1 July 2013 to 30 June 2014 on average the Standard was met. Seven judges were appointed during the course of the year such that it was not practical for the Standard to be met within the reporting period for those judges.

WORK WITH INTERNATIONAL JURISDICTIONS

INTRODUCTION

The International Programs Unit manages the Court's international development and cooperation programmes which partner with judiciaries around the world, with a focus on neighbouring judiciaries in the Asia-Pacific region. The Court's international engagement is based on the understanding that long-term links between the Court and the judicial systems in other countries are beneficial to the development of governance, access to justice mechanisms and the rule of law both in Australia and overseas. In 2013–14 the Court coordinated a number of international programmes, activities and visits.

MEMORANDUM OF UNDERSTANDING WITH THE SUPREME COURT OF INDONESIA

A five-year Memorandum of Understanding was first signed as a partnership between the *Mahkamah Agung Republik Indonesia* (Supreme Court of Indonesia) and the Federal Court in 2004. The longstanding relationship between the Courts has been extremely rewarding for those involved and has produced a number of tangible reforms and progress in many areas central to the *Mahkamah Agung* reform agenda.

During 2013, activities included a visiting delegation to the Victoria Registry in October to conduct a study of alternative dispute resolution processes in Australia, and, in particular, to acquire a better understanding of court-annexed alternative dispute resolution and its role within the Australian legal system. In December, Justice Murphy, Registrar Soden and District Registrar Lagos met with *Mahkamah Agung* representatives in Jakarta to discuss alternative dispute resolution, class actions and business process re-engineering.

On 24 June 2014 a new Memorandum of Understanding between the Courts was signed in Jakarta, as part of a five-day visit attended by Chief Justice Allsop, Registrar Soden and District Registrar Lagos. It was the tenth anniversary of the signing of the original Memorandum between the Courts.

The new Memorandum anticipates support for institutional developments to increase access to justice and strengthen the rule of law. The areas on which the Courts will continue to focus and to strengthen are: class actions; court-annexed alternative dispute resolution; business process re-engineering; and change management.

MEMORANDUM OF UNDERSTANDING WITH THE SUPREME AND NATIONAL COURTS OF PAPUA NEW GUINEA (PNG)

Pursuant to the Memorandum of Understanding between the Court and the Supreme and National Courts of PNG signed in 2009, the Courts have continued to work closely this year, particularly in areas associated with case management.

In September 2013 judges and staff from the Supreme and National Courts visited the New South Wales and Principal Registries to participate in discussions and to observe the judicial, administrative and information technology processes associated with the management of cases. Registry staff responsible for the human resource and financial management processes used by the Supreme and National Courts accompanied the delegation.

In November District Registrar Wall visited PNG to review case management processes and provide recommendations for strengthening related systems, processes and local capacity. In April 2014 a technical audit of the case management and data systems was completed and a report prepared.

The Court was honoured to host Chief Justice Sir Salamo Injia in February and May 2014. During both visits discussions took place to confirm current and planned activities and how they will contribute to realising the goals of the Memorandum of Understanding.

The steps to be taken to implement the recommendations in District Registrar Wall's report were also discussed. In June 2014 a delegation of judges and administrative staff visited the New South Wales and Principal Registries to build their knowledge and skills around implementing systems and processes to strengthen case management in line with the recommendations in the PNG Case Management Report.

MEMORANDUM OF UNDERSTANDING WITH THE SUPREME COURT OF VANUATU

A Memorandum of Understanding (MOU) on Judicial Cooperation with the Supreme Court of Vanuatu was signed at the end of 2012–13. This MOU establishes the foundation for ongoing cooperation between the two courts for the next five years. An Annex to the Memorandum set out the areas on which the Courts will collaborate, with a focus on case management.

During the reporting year, in accordance with the MOU, Deputy Registrar Mathieson led three exchanges with the Supreme Court in August, September and November 2013 to work with judges and staff to assess and strengthen case management processes and procedures. The Deputy Registrar was joined by Justice Buchanan during the November visit, to conduct workshops with members of Vanuatu's judiciary and legal profession to discuss a roadmap for procedural reform.

MEMORANDUM OF GUIDANCE WITH THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

On 28 March a Memorandum of Guidance with the Dubai International Financial Centre Courts (DIFC) was signed by Chief Justice Allsop and Chief Justice Michael Hwang SC of the DIFC in a ceremony held at the Court in Melbourne. The ceremony was also attended by Registrar Soden, former Federal Court Judge the Hon Roger Gyles AO QC of the DIFC and Mr Faisal Saif Salem Al Mazrouei, Third Secretary to the Ambassador for the United Arab Emirates. The Memorandum articulates the Courts' shared intention to promote mutual understanding about each Court's jurisdiction and judicial processes.

PACIFIC JUDICIAL DEVELOPMENT PROGRAM

Since mid-2010, the Court has managed Phase 2 of the Pacific Judicial Development Program funded by the New Zealand Ministry of Foreign Affairs and Trade. Currently mid-way through its 24-month extension which will end on 30 June 2015, the Program is designed to strengthen governance and the rule of law across fourteen Pacific countries by enhancing the professional competence of judicial and court officers along with the processes and systems that they use. The participating judiciaries are: Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

The Program delivers support through four thematic pillars: access to justice; governance; systems and processes; and professional development. Training workshops, meetings, and technical advice/assistance provided this year has aimed to strengthen judicial leadership along with the capacity of local administrative and managerial staff.

The Court has continued to actively engage with the region's judicial leadership through regular meetings of the Chief Justices. In October 2013 Chief Justice Allsop and Registrar Soden hosted a Chief Justices' Leadership Workshop at the Queensland Registry. The workshop was one of a series of regional governance and leadership workshops held in October, attended by judicial and administrative officers.

In July, the 2012 Court Performance Trend Report was published which, for the first time, provides court performance data against key indicators, enabling improvements to be measured in significant areas such as case management, cost, accessibility and complaint handling. The Program has also assisted with the collection, collation and presentation of data for seven Annual Reports from courts that have not previously published performance data.

The Program launched and began putting seven toolkits into practice and piloted a further six toolkits. The toolkits aim to provide partner courts with the resources and guidance required to achieve judicial development goals locally with minimal external support. The new toolkits focus on delay reduction, enabling rights, project management, complaint handling, decision making and judicial orientation training. The launched toolkits are available on the Court's website: <http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>.

A series of other regional and national training activities have also been delivered including; judicial decision making, judicial orientation, training-trainers, domestic violence and juvenile justice. The Program's small-grants fund has also supported eighteen activities in partner courts to respond to local priority development needs.

All of the Program's activities are designed and delivered by senior experts, from within and beyond the Court. In addition to the aforementioned Chief Justices' Leadership Workshop, judicial and senior administrative officers involved in this year's activities from within the Court are:

- Justice Barker who co-facilitated the Regional Decision-Making workshops in February 2014 in Vanuatu.
- Deputy District Registrar Ng visited Palau in January 2014 to conduct repeat mediation training for the judiciary and legal profession and to conduct co-mediations with local lawyer-mediators to help build on experience.
- Manager, Policy and Planning, Ms Connolly, visited the Republic of the Marshall Islands in May 2014 to assist the High Court to implement and measure its performance against the International Framework for Court Excellence.

VISITORS TO THE COURT

In addition to the aforementioned visits, the Court facilitated a number of visits over the year from international delegations and individuals interested in learning about the role of the Court and its systems and processes. The Court hosted delegations from:

Bangladesh: In August 2013 Justice Bennett and Registrar Soden hosted a six-member delegation of the Supreme Court of Bangladesh headed by Chief Justice Hossain. The delegation observed and discussed the Court's case management and administration systems.

Vietnam: The Victorian Registry hosted a five-member delegation from the Supreme People's Court of Vietnam, headed by Deputy Chief Justice Bui Ngoc Ho in August 2013. The visit featured discussion about procedural laws, regulations and practices particularly related to workloads, appeals and financial management. In September 2013 a delegation from the Judicial Reform Steering Committee of Vietnam led by Her Excellency Ms Le Thi Thu Ba, Minister, Deputy Permanent President of the Reform Committee visited the Victorian Registry to discuss the Court's jurisdiction, case management, structure and governance.

Cambodia: The Principal and New South Wales Registries hosted a delegation of fifteen judges and prosecutors from Cambodia in October 2013. The delegation attended Court, toured the Registry and discussed a variety of procedural elements related to both.

Kenya: Justice Wigney hosted a delegation of ten judicial officers from Kenya in May 2014. The delegation toured the Court and discussed the Australian legal system and the Court's case management practices.

Hong Kong: Judicial officers from the Hong Kong judiciary were hosted by Justices Jacobson, Perram, Foster, Yates and Farrell in May 2014. The meeting with judges of the Federal Court was requested by the Chief Judge of the High Court of Hong Kong to enable the Hong Kong delegation to learn from Australia's experience in the area of competition law.

United States of America: In June 2014, the New South Wales Registry hosted a group of law students from Santa Clara to discuss the division between state and federal jurisdiction.

India: Justice Bennett hosted a judge from the Supreme Court of India in June 2014 to discuss the Court's jurisdiction and facilities.



MANAGEMENT OF THE C

Northern Territory

Dry River Pastoral Lease

Kalkarindji



Wyworrie Pastoral Lease

Tarlee Pastoral Lease

FEDERAL COURT

Bushy Park

Cow Creek Pastoral Lease

Lakefield Pastoral Lease

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MANAGEMENT OF THE COURT

FEDERAL COURT GOVERNANCE

Since 1990 the Court has been self-administering, with a separate budget appropriation and reporting arrangement to the Parliament. Under the Federal Court of Australia Act, the Chief Justice of the Court is responsible for managing the Court's administrative affairs. The Chief Justice is assisted by the Registrar/Chief Executive Officer. The Act also provides that the Chief Justice may delegate any of his or her administrative powers to judges, and that the Registrar may exercise powers on behalf of the Chief Justice in relation to the Court's administrative affairs.

In practice, the Court's governance involves two distinct structures: the management of the Court through its registry structure; and the judges' committee structure which facilitates the collegiate involvement of the judges of the Court. Judges also participate in the management of the Court through formal meetings of all judges. The registries and the judges' committees are discussed in more detail below.

FEDERAL COURT REGISTRY MANAGEMENT STRUCTURE

As outlined in Part 1 of this report, the Court's administration is supported by a national registry structure, with a Principal Registry responsible for managing national issues and supporting the corporate services functions of the Court, and a District Registry in each State and Territory which supports the work of the Court at a local level. A diagram of the management structure of the Court is set out in Appendix 3 on page 133.

JUDGES' COMMITTEES

There are a number of committees of judges of the Court, which assist with the administration of the Court and play an integral role in managing issues related to the Court's administration, as well as its rules and practice.

An overarching Policy and Planning Committee provides advice to the Chief Justice on policy aspects of the administration of the Court. It is assisted by standing committees that focus on a number of specific issues in this area. In addition, other ad hoc committees and working parties are established from time to time to deal with particular issues.

An overarching National Practice Committee provides advice to the Chief Justice and judges on practice and procedure reform and improvement. There are also a small number of standing committees that focus on specific issues within the framework of the Court's practice and procedure.

All of the committees are supported by registry staff. The committees provide advice to the Chief Justice and to all judges at the bi-annual judges' meetings.

JUDGES' MEETINGS

There were two meetings of all judges of the Court during the year, which dealt with matters such as reforms of the Court's practice and procedure and amendments to the Rules of Court. Business matters discussed included the introduction of the electronic court file, management of the Court's finances and cost savings initiatives.

CORPORATE FUNCTIONS

The Corporate Services Branch in the Principal Registry is responsible for supporting the Court's national corporate functions. The following outlines the major corporate services issues during the reporting year.

NATIONAL NATIVE TITLE TRIBUNAL

From 1 July 2012 the corporate functions of the National Native Title Tribunal (NNTT) were transferred to the Court. The following information concerning the Court's corporate services should be read to include the NNTT unless otherwise stated. Specific references to the NNTT are also included in individual sections where required.

FINANCIAL MANAGEMENT

The Finance Committee, which is made up of judges from each of the registries, as well as the Registrar, oversees the financial management of the Court. The Corporate Services Branch supports the Committee. During 2013–14 the Committee met on two occasions.

FINANCIAL ACCOUNTS

During 2013–14 revenues from ordinary activities totalled \$129.598 million. Total revenue, in the main, comprised:

- An appropriation from Government of \$93.213 million
- \$20.145 million of resources received free of charge, including for accommodation occupied by the Court

- \$12.567 million of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges
- \$3.673 million from the sale of goods and services.

Pre-depreciation expenses of \$128.036 million in 2013–14 comprised: \$80.126 million in judges' and employees' salaries and related expenses; \$26.762 million in property related expenses; \$21.015 million in other administrative expenses; and \$0.133 million write-down of non-current assets.

- The net operating result from ordinary activities for 2013–14 was a surplus of \$1.564 million prior to depreciation expenses. This was primarily as a result of less than expected expenditure on:
 - judges' remuneration and judges' staff salaries (two judicial positions were vacant for most of the year)
 - native title mediation consultants
 - native title mediation salaries
 - travel
 - technology project costs.

When depreciation expenses of \$4.691 million are included, the Court's expenses for 2013–14 totalled \$132.727 million.

The Court increased its asset revaluation reserve by \$5.490 million after an independent valuation of the Court's non-financial assets was conducted during the financial year.

Equity increased from \$46.181 million in 2012–13 to \$51.708 million in 2013–14.

Table 4.1 – Expenses for Outcome 1

	BUDGET 2013–14 (\$'000)	ACTUAL EXPENSES 2013–14 (\$'000)	VARIATION (\$'000)
Outcome 1: Through its jurisdiction, the Court will apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and wellbeing of all Australians			
Programme 1.1 – Federal Court Business			
Administered Expenses	–	426	-426
Departmental Expenses			
Departmental Appropriation	96 246	95 324	922
Expenses not requiring appropriation in the budget year	36 674	37 403	-729
Total for Program 1.1	132 920	133 153	-233
Total expenses for Outcome 1	132 920	133 153	-233
		2012–13	2013–14
Average staffing level (number)		416	413

The Court's agency resource statement can be found at Appendix 2 on page 132.

AUDIT AND RISK MANAGEMENT

The Audit Committee met four times during 2013–14. The committee comprises an independent chairperson, four judges and the NSW District Registrar. The Registrar, the Executive Director, Corporate Services and Chief Financial Officer and representatives from the Court's internal auditors, O'Connor Marsden and Associates and the Australian National Audit Office (ANAO) attend committee meetings as observers.

O'Connor Marsden and Associates, conducted the following internal audits during 2013–14:

- Casetrack Migration Health check following the transfer of the Casetrack system from the Family Court to the Court.
- Electronic Court File Project 'Go Live' Readiness Review.
- NNTT Disaster Recovery Planning.

Staff of the ANAO inspected the Court's 2013–14 financial statements and provided an unqualified audit certificate.

The Chief Executive Officer is satisfied that:

- Fraud control plans and fraud risk assessments have been prepared that comply with the *Commonwealth Fraud Control Guidelines*.
- Appropriate fraud prevention, detection, investigation and reporting procedures and practices that comply with the *Commonwealth Fraud Control Guidelines* are in place.
- There have been no cases of fraud during 2013–14 to be reported to the Australian Institute of Criminology.

EXTERNAL SCRUTINY

The Court was not the subject of any reports by a Parliamentary committee or the Commonwealth Ombudsman. The Court was not the subject of any judicial decisions or decisions of administrative tribunals.

PURCHASING

The Court's procurement policies and procedures, expressed in the Court's Chief Executive Instructions, are based on the *Commonwealth Procurement Rules* and best practice guidance documents published by the Department of Finance. The Court achieves a high level of performance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes.

CONSULTANTS

During 2013–14, six new consultancy contracts were entered into involving total actual expenditure of \$360 198. In addition, four ongoing consultancy contracts were active during the 2013–14 year, involving total actual expenditure of \$930 591.

Table 4.2 below outlines expenditure trends for consultancy contracts over the three most recent financial years.

Table 4.2 – Expenditure trends for consultancy contracts 2011–12 to 2013–14

FINANCIAL YEAR	NEW CONTRACTS – ACTUAL EXPENDITURE	ONGOING CONTRACTS – ACTUAL EXPENDITURE
2013–14	\$ 360 198	\$ 930 591
2012–13	\$ 2 114 473	\$ 268 400
2011–12	\$ 439 015	\$ 88 000

INFORMATION ON CONSULTANCY SERVICES

The Court's policy on the selection and engagement of all contractors is based on the Australian Government's procurement policy framework as expressed in the Commonwealth Procurement Rules (CPR) and associated Finance Circulars and guidance documentation published by the Department of Finance.

The main function for which consultants were engaged related to the delivery of specialist and expert services, primarily in connection with the Court's information technology (IT) infrastructure, finance and business elements of the Court's corporate services delivery.

Selection of consultant services was made in accordance with the Guidelines, and was obtained by way of either an Open, Prequalified or Limited Tender process, which are defined as follows:

Open tender: involves publishing an open approach to market and inviting submissions.

Prequalified tender: involves publishing an approach to market inviting submissions from all potential suppliers on:

- (a) a shortlist of potential suppliers that responded to an initial open approach to market on AusTender;
- (b) a list of potential suppliers selected from a multi-use list established through an open approach to market; or
- (c) a list of all potential suppliers that have been granted a specific licence or comply with a legal requirement, where the licence or compliance with the legal requirement is essential to the conduct of the procurement.

Limited tender: involves either:

- (a) an agency approaching one or more potential suppliers to make submissions, where the process does not meet the rules for open tender or prequalified tender; or
- (b) for procurements at or above the relevant procurement threshold, limited tender can only be conducted in accordance with paragraph 10.3 of the CPR; or
- (c) where a procurement is exempt as detailed in Appendix A of the CPR.

Consultancy services are sought where either:

- (a) skills are not available in the agency; or
- (b) specialised or professional skills are needed; or
- (c) independent research or assessment is needed.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

COMPETITIVE TENDERING AND CONTRACTING

During 2013–14, there were no contracts let to the value of \$100 000 or more that did not provide for the Auditor-General to have access to the contractor's premises.

During 2013–14, there were no contracts or standing offers exempted by the Chief Executive Officer from publication in the contract reporting section on AusTender.

ADVERTISING AND MARKETING SERVICES

A total of \$22 916 was paid for recruitment advertising services in 2013–14. Payments to Adcorp on advertising for notification of native title applications, as required under the Native Title Act, totalled \$149 701 over the reporting year.

The Court did not undertake any advertising campaigns or use market research, polling, direct mail organisations or media advertising agencies in 2013–14.

HUMAN RESOURCES

During the reporting year, the Court's Human Resources Section continued to provide strategic, policy and operational support to the Court's registries and the National Native Title Tribunal (NNTT). Human Resources staff supported the Court and NNTT by providing advice on the full range of human resource activities including:

- managing organisational changes and the implementation of organisational reviews
- recruitment and selection activities
- workforce planning and organisation development
- learning and development
- workplace diversity
- workplace relations
- policy development
- remuneration policy
- payroll services
- workplace health and safety.

The year also saw the bedding down of three Machinery of Government (MOG) processes that took place in 2012–13 involving NNTT Corporate Services and mediation staff (1 July 2012), Family Court of Australia Library staff on 3 January 2013 and other NNTT staff (12 March 2013).

The Court's approach to human resources issues is characterised by transparency and consultation. Consistent with this, the Court's National Consultative Committee (NCC) continued to operate effectively through the year and now has a staff representative from the NNTT and an Indigenous representative. The Court's other consultative forums such as Regional Consultative Committees and the Work Health and Safety Committee also continued to operate, reporting to the NCC. Minutes from all committees are placed on the Court's intranet where they can be readily accessed by staff.

STAFFING PROFILE

At 30 June 2014, the Court employed 472 employees under the *Public Service Act 1999*, comprising: 275 ongoing full-time employees, 29 ongoing part-time employees and 168 non-ongoing employees. These numbers include staff who work in the NNTT. The high number of non-ongoing employees is due to the nature of the employment of judges' associates, who are typically employed for twelve months, as well as the employment of casual court officers. The Court had an average staffing level of 412.89 during the reporting period.

More detailed staffing statistics can be found in Appendix 9 on page 192.

WORKPLACE BARGAINING

During the reporting period, the Court relied on determinations under s 24 of the *Public Service Act* for setting the employment conditions of Senior Executive Service (SES) employees and Flexibility Agreements under the Court's Enterprise Agreement for non-SES employees. The Court now has no employees on Australian Workplace Agreements.

The Court also issued a Notice of Representational Rights to employees on 29 April 2014 to commence the bargaining process for its 2014 Enterprise Agreement. Negotiations with Bargaining Representatives were underway at 30 June 2014.

Performance pay

A performance bonus payment was made to one SES band 1 staff member under a common law contract previously negotiated by the NNTT with its SES staff.

Work health and safety

The Court continued to promote a proactive approach to work health and safety management including the steps detailed below. Average days of unplanned leave per staff member for 2013–14 was 5.98 days compared with 6.30 days in 2012–13. There were five claims for workers compensation in 2013–14 compared to one in 2012–13.

More generally, Court management actively worked with the Court's Work Health and Safety (WHS) Committee to promote health and safety in the workplace. A particular area of focus continued to be ensuring that the Court complies with its responsibilities under the *Work Health and Safety Act 2011* (WHS Act), with a particular focus on the Court's Admiralty Marshal activities. Other measures included:

- Arranging regular meetings of the National WHS Committee and other consultative forums such as the National Consultative Committee and Regional Consultative Committees, all of which have a significant WHS focus.
- Undertaking WHS Audits and follow-up audits annually.
- Providing annual health checks and influenza shots for all staff, consistent with Enterprise Agreement provisions.
- Providing access to eyesight testing and reimbursement for spectacles where needed for screen-based work.
- Providing access to the Court's Employee Assistance Program.
- Providing training to Admiralty Marshals in boarding and disembarking vessels, consistent with a risk assessment of the role.
- Undertaking medical fitness assessments of all Court staff undertaking Admiralty Marshal duties, consistent with a risk assessment of the role.
- Encouraging health and fitness-related activities (e.g. participation in community-based fitness events) by providing funding via the Court's Health and Fitness policy.

During the reporting year no provisional improvement notices were issued under s 90 of the WHS Act nor were any enforcement notices issued under Part 10. There were no incidents under ss 83–86 of the WHS Act (whereby any employee may cease to work due to a reasonable concern that to carry out the work would expose the employee to serious risk). There were no incidents that required a notice under s 38 of the WHS Act.

The Court continued to manage its workers compensation cases proactively throughout the reporting period and will be commencing a review of a number of longstanding cases in 2014–15.

In addition, following the MOG transfer of NNTT staff in March 2013, the Federal Court and NNTT WHS Committees have been combined.

WORKPLACE DIVERSITY

The Court remains strongly committed to diversity in the workplace and continued to use a range of flexible employment conditions to accommodate the needs of staff.

These measures have assisted the Court in attracting and retaining employees in key areas, for example legal staff. The Court's human resource policies foster a workplace that is free from discrimination and harassment and is characterised by high levels of employee engagement and consultation.

The Court continued to build upon strategies in its Workplace Diversity plan. The Court also continued to participate in the Australian Network on Disability's 'Stepping Into Law' programme, with three disabled law graduates working for the Court under the programme in 2013–14. Over a three-month period the interns worked for two days per week in Registry and chambers. The internship involved basic training in the Court's processes and jurisdiction, time spent with judges assisting with research, Court hearings and other matters in chambers and time spent assisting registrars in their lists and mediation work.

As noted, NNTT staff transferred to the Court in 2012–13 under Machinery of Government arrangements. This has seen the continuation

of a number of NNTT diversity initiatives within the Court including the NNTT's Indigenous Advisory Group and Reconciliation Action Plan. Activities under these initiatives are also available to Court staff who are not undertaking NNTT work. Further information about these initiatives can be found in Part 5 on page 65.

Workforce planning

In 2013–14 the Court focused on implementing its Workforce Plan. A particular emphasis was on ensuring managers are equipped to give effective feedback to staff, with the aim of ensuring the Court's Performance Management and Development programme, and the Capability Framework (to which it is linked) are implemented effectively. Specific areas of focus continue to be ensuring that Court employees have the technological skills needed to work in an eCourt environment and that the Court's organisational structures and work practices are developed in a way that complements its eServices initiatives.

Retention strategies

The Court has a range of strategies in place to attract and retain staff including flexible employment conditions and flexibility agreements under the Enterprise Agreement. The Court continued to refine and modify these through 2013–14 as required to meet specific issues and cases.

Work life balance

The Court's Enterprise Agreement 2011–14, and a range of other human resources policies, provide flexible working arrangements to help employees balance their work and other responsibilities, including young families and ageing parents. The conditions available include access to part-time work, job sharing, flexible leave arrangements and purchased leave.

The Court also provides a range of other family-friendly initiatives including improved parental and adoption leave arrangements and homework rooms or similar appropriate facilities for staff with school-aged children.

Reward and recognition

The Court encourages and recognises exceptional performance through its annual National Excellent Service Award. The award recognises the work of individual staff and teams and is presented by the Chief Justice each February to mark the anniversary of the Court's Foundation Day, 7 February 1977. This year's award had dual recipients – Angela Fassoulas and Lany Fernandez, the Court's website team. The award recognised both the work undertaken in redesigning the website and their ongoing excellent service in maintaining the Court's website and intranet. The redesigned website achieved international recognition from FACT (Forum on the Advancement of Court Technology) which noted the site's 'outstanding user interface as well as extensive electronic service offerings including eCourtroom'.

The NNTT's Annual Rewards and Recognition Program also continued to operate. Through this programme, the Tribunal acknowledges and rewards staff who have delivered excellent service during the reporting period. Awards were provided in the following categories:

- exemplifying Tribunal values: Barry Miller and Alex Ripper
- service improvement and/or innovation: Anthony Gordon
- leadership and management: Alison Warren
- new employee: Kate Madden
- outstanding Indigenous employee/outstanding team: the Indigenous Advisory Group, comprising Naomi Appleby, Tracey Jefferies, Donna Drew and Khara Edgar.

Training and development undertaken and its impact

During 2013–14 the Court and NNTT offered a range of development opportunities to assist employees develop and improve their skills and knowledge, assist them in meeting operational requirements and ensure they have the capabilities needed now and for the future.

The focus for the Court was on competency based training in the Information Technology area. Microsoft 2010 was rolled out nationally and a part of this rollout included training in an overview of changes from Microsoft 2003 and Microsoft 2010, with some additional targeted training in Microsoft Word and Excel 2010. The Court also took a blended learning approach to internal staff training on the electronic court file and changes to the Court's eServices; this included small group face to face information sessions, eLearning modules and peer mentoring (on the job training).

The Court also offered training opportunities to its in-house mediators, including sessions on 'Dealing with Parties from Culturally Diverse Backgrounds' and 'Dealing with Parties with High Conflict Personalities'.

The NNTT provided a range of technical, corporate and soft skills training for staff in four main areas: leadership practice; management expertise – which included mediation and conflict resolution training from the Association of Dispute Resolvers (LEADR); core skills – which included training in the APS Values and Code of Conduct for all staff; and foundation skills which included copyright training, training in the Tribunal's in-house database, (ICaFAMS), cultural change training and cultural awareness training (attended by all staff).

The Court and NNTT spent a combined figure of \$360 302 on external training during the reporting period. Other sessions offered to staff focused on personal development and included resilience training.

The Court's study assistance policy continued to operate and provided staff with leave and financial assistance to pursue approved tertiary studies. The NNTT continued to fund two semesters of the 'Indigenous Study Awards'. These awards included the payment of semester fees and text book/equipment costs along with providing study leave. During the reporting period \$67 918 was reimbursed to staff undertaking studies under the policies.

Disability reporting mechanisms

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010–11, departments and agencies have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a ten-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level two-yearly report will track progress against each of the six outcome areas of the Strategy and present a picture of how people with disability are faring. The first of these reports will be available in late 2014, and can be found at www.dss.gov.au.

AGENCY MULTICULTURAL PLAN

During the reporting year the Court developed and published on its website an Agency Multicultural Plan. The aim of the Plan is to ensure that no one's rights will be affected because of the inability of a party or a witness in a Court proceeding to speak or to hear the English language. All court users must have every reasonable means of understanding the course of court proceedings and be treated with due courtesy and respect.

Actions contained in the Plan that were progressed in 2013–14 include:

- Development of key performance indicators for the timely provision of interpreters.
- Reviewing and updating the Court's language allowance policy and skills register.
- Consultation with front-line staff (court officers and client service staff) to obtain their suggestions for actions that will assist culturally and linguistically diverse clients. As a result of these consultations the Court is developing a plain-English version of the migration form guide and affidavit guide for translation into relevant languages.
- Preparation and distribution within the Court of a Guide for presenting to a Culturally and Linguistically Diverse Group.

PROPERTY MANAGEMENT

The Court occupies law court buildings in every Australian capital city. With the exception of Sydney and Darwin, the purpose-built facilities within these Commonwealth-owned buildings are shared with other Commonwealth Court jurisdictions.

The Federal Court in Sydney is located in the Law Courts Building in Queens Square. This building is owned by a private company (Law Courts Limited), that is jointly owned by the Commonwealth and New South Wales governments. The Court pays no rent, outgoings or utility costs for its space in this building.

The Court's Darwin Registry is co-located in the Northern Territory Supreme Court building under the terms of a Licence to Occupy between the Court and the Territory Government.

From 1 July 2012 the Commonwealth Law Court buildings have been managed under revised 'Special Purpose Property' principles. Leasing arrangements are now governed by whether the space is designated as special purpose accommodation (courtrooms, chambers, public areas) or office accommodation (registry areas). An interim Memorandum of Understanding was signed by the Court with the Department of Finance for 2013–14 to formalise these arrangements, with negotiations continuing for a long-term agreement.

The following property works were undertaken during the reporting year.

Brisbane registry upgrade works: stages 1 and 2

This project is currently underway. Stage 1, which focused on improving the Court's mediation facilities, was completed in June 2014. It is expected that Stage 2, which involves refurbishment of the registry, will be completed in the first quarter of the 2014–15 financial year.

Darwin mediation space and minor registry upgrade works

A modest re-design of the registry to accommodate mediation and conference/meeting facilities was completed in the last quarter of the reporting period.

Perth NNTT – consolidation of principal registry

The consolidation and re-design of the registry, mediation, conference/meeting and staff facilities was completed in early 2014.

SECURITY

In the course of the year the Court continued to develop security policies and other documents that comply with its obligations under the Government's Protective Security Policy Framework. Specifically, in preparation for the introduction of the Court's electronic court file, the focus has been on information technology security.

With the introduction of the *Court Security Act 2013* the Court has formalised arrangements for the appointment of Security Officers and Authorised Court Officers within each registry. A number of training and policy initiatives have also been undertaken.

In relation to physical security a programme has commenced to upgrade and replace obsolete building security equipment including CCTV equipment and duress alarms. The Court has participated in the development of tender documents for a Security Guarding contract which is to be issued for tender and established in early 2014–15.

ENVIRONMENTAL MANAGEMENT

The Court provides the following information as required under s 516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The Court, together with other jurisdictions in shared premises, seeks to reduce the impact of its operations on the environment through the following measures:

- Environmental Management Systems are in place in all buildings to minimise the consumption of energy, water and waste.
- The Court has developed a National Environmental Initiative Policy which encourages staff to adopt water and energy savings practices.

TECHNOLOGY SERVICES

During the reporting year, in addition to supporting the Court's current technology environment, the Information Technology (IT) team focused on three areas of project activity.

The first, and major, area was the infrastructure preparations to support the electronic court file (ECF). The second was improvements to the Court's disaster recovery and back-up arrangements. Underpinning all of these was a continuing programme of infrastructure modernisation and cost optimisation.

More information about the three programmes, which are inter-related and will continue through 2014–15, is set out below.

ECF preparations

A key prerequisite to the ECF programme was the relocation of the Court's case management system, Casetrack from the Family Court's Canberra data centre to the Court's Sydney data centre. The relocated system was cutover into active service in early December 2013. Since that time, IT has provided the Casetrack service to the Court and to the general federal law jurisdiction of the FCC with minimal system downtime.

For the remainder of the year, the IT ECF programme focused on establishing the various test and production environments required by the software development teams to prepare the ECF applications. A review and upgrade of end computing and network arrangements was also conducted to better align with the functionality of the ECF.

In preparation for the ECF, the Court has sought to increase the use of its electronic lodgment facility. A survey of key practitioners identified a number of application issues and support processes that are being progressively addressed in parallel with the ECF preparations. This will be an ongoing process through 2014–15.

Disaster Recovery

Reflecting the Court's increasing reliance on IT services, there was a focus on improving and expanding the Court's IT readiness for disaster events. This included the establishment of a 'copy' of the Casetrack system in a separate data centre. The processes and technologies to failover to this copy, along with failover of other key applications, were successfully tested in November 2013 in the lead-up to the relocation of Casetrack to the Court's technology environment.

In parallel with this, IT reviewed and improved configuration and documentation of the production environment including back-up arrangements. The aim of this review was to improve the resilience and reliability of the core production data centre.

IT Infrastructure Modernisation

The Court continues to modernise its IT environment through normal lifecycle replacement of aged infrastructure. The bulk of the infrastructure for this modernisation was established in 2012–13 and the programme in 2013–14 targeted migration of workloads and simplifying arrangements to improve reliability and cost effectiveness. Cost optimisation will continue to be a focus through 2014–15 as the court realises the savings projected to flow from its earlier investments.

Key modernisation and cost optimisation activities for this year include:

- Upgrade of server operating systems to maintain currency in Microsoft product lifecycle.
- Continuing programme of server virtualisation and consolidation.
- Preparation for new Secure Internet Gateway.
- Audit of licences and suppliers to identify areas of over-servicing.
- Implementation of a new system monitoring and telemetry application.
- Refresh of smartphone fleet.

IT security

Technology Services are currently implementing the Australian Signals Directorate's Top Four strategy to mitigate Cyber Intrusions. The Cyber Security Operations Centre estimates that at least eighty-five per cent of cyber intrusion techniques could be mitigated by implementing this strategy.

Business continuity is an essential component of good public sector governance, and it is part of the Court's overall approach to effective risk management. As such, in 2013–14 the Court reviewed its Business Continuity practices and Policy with each registry updating Crisis Management and Business Continuity Plans.

The Court is currently undertaking an annual security assessment against the mandatory requirements detailed within the Protective Security Policy Framework (PSPF), and will report against these requirements to the Auditor-General.

During the reporting year an IT Security Web Page was created for the Court's Intranet. It includes presentations given to staff by the Court's IT security manager, security awareness newsletters and brief videos about IT security.

IT Security Awareness presentations have taken place at various Federal Court registries throughout the year.

The Court has tested and is about to roll out the email protective marking system recommended by the Information Security Manual.

An automated desktop and server patching strategy has been implemented to protect the Court's assets against data loss and malware. IT Security vulnerability scanning has been introduced on the Court's IT equipment to enable preventative controls to be put in place before a compromise can be achieved.

LIBRARY AND INFORMATION SERVICES

The Court continues to provide a national library service to the judges and staff of the Federal Court as well as the Family Court of Australia, the Federal Circuit Court of Australia, and the National Native Title Tribunal.

The last twelve months has seen a consolidation of the services provided to the Courts and the Tribunal and a steady and sustained increase in the usage of the combined library service. Feedback from library users has been very positive about the changes.

Consortium for shared library management system

The Federal Court has entered a consortium arrangement with the High Court for a shared library management system.

The consortium will see the High Court Library migrate their holdings to the Federal Court's existing library system. The benefits to the Federal Court include: access to the latest library management system software; cost savings; and greater sharing of resources, collections, knowledge and expertise between the libraries.



NATIONAL NATIVE TRIBUNE REPORT



NATIONAL NATIVE TITLE Tribunal

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REPORT OF THE NATIONAL NATIVE TITLE TRIBUNAL, 2013–14

OVERVIEW OF THE TRIBUNAL ESTABLISHMENT

The *Native Title Act 1993* (Cth) (the Act) establishes the National Native Title Tribunal (Tribunal) as an independent body with a wide range of functions. The Preamble to the Act describes it as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders (Indigenous Australians). The Act is also intended to advance the process of reconciliation among all Australians.

The Act creates an Australia-wide native title scheme, the objectives of which include:

- (a) to provide for the recognition and protection of native title
- (b) to establish a mechanism for determining claims to native title
- (c) to establish ways in which future dealings affecting native title (future acts) may proceed.

The Act provides that the Tribunal must carry out its functions in a fair, just, economical, informal and prompt way. In carrying out those functions, the Tribunal may take account of the cultural and customary concerns of Indigenous Australians.

FUNCTIONS AND POWERS

Under the Act the Tribunal, comprising the President and Members, has specific functions in relation to:

- upon referral by the Federal Court of Australia (Federal Court), mediating in native title proceedings
- arbitrating objections to the expedited procedure in the future act scheme
- mediating in relation to certain proposed future acts on areas where native title exists or might exist
- where parties cannot agree, arbitrating applications for a determination of whether a future act can be undertaken and, if so, whether any conditions will apply
- assisting people to negotiate Indigenous Land Use Agreements (ILUAs), and helping to resolve any objections to registration of area or alternative procedure ILUAs
- assisting with negotiations to settle applications that relate to native title, and with statutory access agreement negotiations
- providing assistance under s 203BK of the Act to representative bodies in performing their dispute resolution functions
- reconsidering decisions of the Native Title Registrar (Registrar), or of the Registrar's delegate, not to accept a native title determination application (claimant application) for registration
- upon referral by the Federal Court, conducting reviews on whether there are native title rights and interests
- conducting native title application inquiries as directed by the Federal Court
- conducting special inquiries under Ministerial direction.

The President may delegate to a Member or Members all or any of the President's powers under the Act, and may arrange through the Registrar of the Federal Court (Federal Court Registrar) for the engagement of consultants in relation to any assistance, mediation or review that the Tribunal provides.

The President is responsible for managing the administrative affairs of the Tribunal with the assistance of the Federal Court Registrar, who is empowered by the Act to delegate his responsibilities under laws including the Act, the *Public Service Act 1999* and the *Financial Management and Accountability Act 1997* to the Registrar, Deputy Registrars and staff assisting the Tribunal. The President may direct the Federal Court Registrar regarding the exercise of his power to assist the President in managing the administrative affairs of the Tribunal.

The Act gives the Registrar specific responsibilities, including:

- assisting people to prepare applications and to help them, at any stage of a proceeding, in matters relating to the proceeding
- help other people, at any stage of a proceeding, in matters relating to the proceeding
- considering claimant applications for the purposes of registering those applications which meet prescribed statutory conditions on the Register of Native Title Claims
- giving notice of applications to individuals, organisations, governments and the public in accordance with the Act

- registering ILUAs that meet the registration requirements of the Act
- maintaining the Register of Native Title Claims, the National Native Title Register (the register of determinations of native title) and the Register of Indigenous Land Use Agreements.

The Registrar may delegate to the Deputy Registrars, or to the members of the staff assisting the Tribunal, all or any of the Registrar's powers. The President may direct the Registrar regarding the exercise of the Registrar's powers to conduct certain searches and to keep and make available public records and information.

THE PRESIDENT, MEMBERS AND THE NATIVE TITLE REGISTRAR

Members of the Tribunal are appointed by the Governor-General for specific terms of not longer than five years. The Act sets out the qualifications for membership and defines members' responsibilities. The Act also prescribes the conditions of appointment and the responsibilities of the Registrar.

Mr James McNamara was appointed a full-time member of the Tribunal for a five-year term on 31 March 2014; Registrar Stephanie Fryer-Smith was reappointed for one year and her renewed term ends on 19 October 2014. The position of Native Title Registrar was advertised nationally at the end of June 2014.

The table below outlines the terms of the Tribunal's current statutory office-holders.

NAME	TITLE	APPOINTED	TERM	LOCATION
Raelene Webb QC	President	1 April 2013	Five years	Perth
Helen Shurven	Member	Reappointed 29 November 2012	Five years	Perth
Dr Valerie Cooms	Member	4 February 2013	Five Years	Brisbane
James McNamara	Member	31 March 2014	Five years	Brisbane
Stephanie Fryer-Smith	Registrar	Reappointed from 20 October 2013 to 19 October 2014	One Year	Perth

The members and staff of the Tribunal were deeply saddened by the untimely passing of Member Daniel O'Dea on 27 August 2013.

OFFICE LOCATIONS

The Tribunal provides services and native title assistance in all Australian States and Territories from offices in Perth, Sydney, Melbourne, Brisbane and Cairns.

The offices of the President and the Registrar are currently located in Perth.

THE YEAR IN REVIEW

20-YEAR ANNIVERSARY, 1 JANUARY 2014

The Tribunal commenced operations in Sydney on 1 January 1994, but subsequently its Principal Registry was established in Perth. The date 1 January 2014 marked 20 years of operation for the Tribunal and a number of events around the country were held to mark this milestone.

The Chief Justice of the High Court of Australia, the Hon Robert French AC addressed all members and staff in a national videoconference held on 18 December 2013. His Honour, who was the President of the Tribunal for five years during the period 1994 to 1999, noted the changing role of the Tribunal within the native title system during its history to date.

The early years saw the Tribunal manage substantial parts of the native title process, and in the first five years of its operation the Tribunal had control over native title proceedings until such time as the Tribunal sought consent orders or, where agreement could not be reached, a determination from the Federal Court. Significant events within this period included the first mainland consent determination relating to the claim of the Dughutti People in New South Wales, and the landmark consent determination at Hopevale, North Queensland.

Following a decision of the Full Court of the Federal Court in *Fourmile v Selpam Pty Ltd* (1998) 80 FCR 151 which held that aspects of the original scheme of the Act were invalid, the *Native Title Amendment Act 1998* shifted the responsibility for making determinations of native title and compensation to the Federal Court, while the Tribunal had power to make determinations about whether certain future acts could be done and whether certain agreements concerning native title were covered by the Act as well as undertaking mediation in native title matters. The 1998 amendments also introduced the registration test for claimant applications, the application of which resulted in a reduction in the amount of overlapping claims, and the combination, removal or dismissal of many claims.

The effect of those amendments and subsequent judicial decisions established a strict legal framework in which native title was to be determined. In this environment, agreement making has often been the preferred way to resolve native title issues. Through mediation, the Tribunal has assisted parties to build relationships, develop a wider understanding of and respect for different people's links to land and resolve issues.

Recent years have seen the increasing use of Indigenous Land Use Agreements (ILUAs). The Tribunal's assistance to parties negotiating ILUAs has brought about enduring agreements, with many ILUAs linked to determinations that native title exists, while others have been made and are made before native title has been proved to exist.

In 2007 and again in 2009 further, far-reaching amendments were made to the Act. Key changes in the amending legislation, in both cases, related to the discharge of the claimant application mediation function.

On 1 July 2012, the Federal Court assumed responsibility for the corporate administration of the Tribunal, with funding for the Tribunal now contained within a dedicated sub-programme of the Federal Court. The Tribunal and the Federal Court entered into a Memorandum of Understanding which preserves the operational independence of the Tribunal.

Amendments to the Act which came into effect in March 2013 gave legislative effect to the Machinery of Government changes which had occurred administratively in the Tribunal and Federal Court the previous year.

SIGNIFICANT DEVELOPMENTS

Vision: shared country, shared future

In September 2013 the President articulated a new Vision for the Tribunal, *Shared country, shared future*. This Vision encompasses the President's vision of an organisation which:

- solves problems, working towards a *Shared country, shared future* for all Australians – an organisation which looks for ways to do and to achieve things
- is outward looking and expansive in its thinking
- focuses on developing its staff and members, creating succession plans and career pathways
- motivates individuals and teams to strive for innovative and ground-breaking solutions that enhance the way we do things and create opportunities for growth
- is collegiate, and in which genuine respect for others – internally and externally – is always shown.

The President's vision is for a Tribunal of excellence, with three broad dimensions:

- predictable, just decisions
- procedural justice
- delivery of a fair and efficient dispute resolution service.

The President's vision is also one where professionalism is evident in all of the Tribunal's work – where all members and staff are, and are seen to be:

- competent
- reliable
- honest
- have integrity
- showing respect for others

President's Review

In April 2014 the President announced that she would lead a steering committee to undertake an organisational review, which is intended to revitalise and re-energise the Tribunal; to have skilled people performing at the best of their ability; and to build the reputation of the Tribunal. Consultants Growth Partners International were retained and consulted widely with staff and external stakeholders. The review continued during the reporting period with recommendations expected to be presented early in July 2014.

Client and stakeholder engagement

A key strategic priority during the reporting period was to engage as fully as possible with clients and stakeholders in order to provide maximum support and assistance to participants in the native title system.

The President delivered a number of conference papers and participated in other presentations including:

- *Indigenous Sea Rights – the Grotius Heritage, The Annual Richard Cooper Memorial Lecture*
- *Agreement making in Indigenous contexts, World Indigenous Legal Conference*
- *Mining, native title and the impacts on Indigenous Australians: when the mining stops, Environmental Law conference.*

A full list of those papers and presentations is annexed to this report.

During the reporting period Member Helen Shurven gave a number of presentations, including *Future Act Determinations, Consent Determinations, and Mediation* to the North Queensland Land Council. Member Dr Valerie Cooms co-presented in the *Partnerships for Managing Country: ILUAs* session at the annual Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) native title conference. Among a number of other external engagements, Member James McNamara addressed an Indigenous community meeting in Western Australia on the *Native Title Legal Framework*.

An important aspect of the Tribunal's client engagement has been to build the capacity of clients to be effective participants in native title processes. During the reporting period Tribunal capacity-building took a variety of forms including:

- the establishment by Geospatial Services of its own data download page, and increasing the availability of geospatial data through Open Geospatial Consortium, the release of a new Determined Outcomes dataset and by implementing an 'open data' policy
- the conduct by the Perth and Brisbane Offices of Future Act Workshops for clients, supported by law firm King & Wood Mallesons
- the development by Geospatial Services in conjunction with the Sydney Office, the Federal Court, the State of New South Wales and the representative body, of a new mapping product. This product has been designed for one particular native title claimant application with a view to it being utilised for all matters in New South Wales which, it is anticipated, will progress to consent determination.
- an ILUA Resources Project, the aim of which was to produce plain English fact sheets in relation to ILUAs, with a particular focus on agreement making, the authorisation process making an application for registration, objections and registration. These fact sheets are available to the public through the website <http://www.nntt.gov.au/News-and-Publications/Pages/Forms-and-Publications>.

Website Redevelopment

In September 2013 a redevelopment of the Tribunal's website commenced, with a launch of the new website scheduled for July 2014. The principal aims of the website redevelopment were to upgrade the Tribunal's website to the Sharepoint 2010 operating system, to improve website navigation and content and to commence the development of a range of online services.

The upgrade to the Sharepoint 2010 system will ensure the future compatibility of the Tribunal's website with the Federal Court's IT operating system, as well as provide a suitable platform for the delivery of online services. As part of the redevelopment, a new design for the website was created, and the structure of the website revised to improve navigation and to place greater focus on the work and functions of the Tribunal and Registrar. The process included revision of the content of all web pages and publications to ensure they contain up to date information relevant to key clients and stakeholders. A number of significant new information products were developed as part of the revision of content, such as the production of the twelve new ILUA fact sheets noted above.

The website redevelopment project represents the first phase in the Tribunal's development of online services. New features that have been developed include online access to the National Native Title Register and the Register of Native Title Claims (the Register of Indigenous Land Use Agreements was already accessible online), improved search pages for native title applications and future act applications, and up to date statistics on native title applications and processes. The development of additional online services will occur through a separate phase of the website project to be commenced in the 2014–15 financial year.

Audits

The Operations Section conducted an audit to streamline the Tribunal's Policies and Procedures Library (an electronic library of documents). All documents were reviewed, revised and consolidated where appropriate and in some instances removed and archived. The audit resulted in the reduction of more than 600 documents to approximately 300. This project remains on foot, with a view to further reducing the number of documents in the Policies and Procedures Library.

An audit and cataloguing of 279 research reports was also undertaken during the reporting period. Those reports had been produced by Tribunal research officers during the first sixteen years of the Tribunal's operation.

Diversity Initiatives

The Tribunal continues to deliver a range of diversity initiatives. In the reporting period these included:

- **The Indigenous Advisory Group:** The Tribunal's Indigenous Advisory Group (IAG) is convened by the Registrar and comprises Aboriginal and Torres Strait Islander staff of the Tribunal and of the Federal Court. Member Dr Valerie Cooms also participates in IAG meetings. During 2013–14 the IAG met quarterly via teleconference. Members also met in Brisbane for a two-day workshop in June 2014. The IAG provides advice to the Tribunal's Executive on policy issues as they relate to Indigenous staff members and is an important reference point for a broad range of matters within the Tribunal.
- **The Reconciliation Action Plan 2013–15:** During the reporting period the Tribunal reviewed its Reconciliation Action Plan 2013–15 (RAP) as part of the activities which had been undertaken at the IAG Workshop in March 2013. The RAP, which was approved by Reconciliation Australia on 8 July 2013, establishes a range of actions supported by measurable targets to enhance relationships and cultural understanding and to foster respect for Aboriginal and Torres Strait Islander peoples. Another key focus of the RAP is to provide development and professional opportunities for Indigenous staff members. An annual review of the RAP benchmarks the Tribunal's achievements towards its specific objectives as well as the broader goal of reconciliation. In the annual review process IAG members identify opportunities and risks as well as achievements, and these will inform a review of the RAP in 2015.
- Staff in each Tribunal office engaged in specially-tailored, cross-cultural 'immersion' experiences, each of which was conducted by Indigenous Australians and sought to impart knowledge and enhance cross-cultural understanding and competence.

THE WORK OF THE TRIBUNAL IN 2013–14

GENERAL OVERVIEW

Note: the information below provides a general outline of the work of the various offices and sections during the reporting period. Detailed information about statutory functions and trends, together with quantitative data for deliverables achieved by the Tribunal and the Registrar respectively, is set out on pages 66–71.

Perth Office: the management of future act work across the country was consolidated in the Perth Office during the reporting period, with a view to increasing national consistency in approach. Claims and ILUA Unit staff processed new and amended native title determination applications, ILUAs, provided extensive assistance and conducted several capacity-building initiatives. Support was provided to the President in respect of Court-ordered mediation involving fifteen applications (claimant and compensation).

Sydney Office: staff in the Sydney Office deliver services to clients in New South Wales and South Australia. In respect of New South Wales, the Sydney Office received claimant, amended application and non-claimant applications, and future act determination applications during the reporting period. In respect of South Australia, the Sydney Office received claimant applications and one non-claimant application as well as ILUA applications. Assistance requests from both jurisdictions were received and actioned.

Melbourne Office: staff in the Melbourne Office provide services to clients in Victoria and in the Northern Territory (and in Tasmania if required). During the reporting period ILUAs (both area agreements and body corporate agreements) were lodged in Victoria. In respect of the Northern Territory, claimant applications and a non-claimant application were filed. A variety of assistance requests were also received and actioned.

Cairns Office: staff in the Cairns Office provide services in northern Queensland, Cape York, Gulf of Carpentaria and Torres Strait regions. The Cairns Office received new claimant and non-claimant applications and dealt with a range of assistance requests during the reporting period, including for dispute resolution under s 203BK of the Act. ILUA-related activity remained very high in the northern Queensland region, as it has in previous years, with more than half the total number of applications received by the Tribunal to register ILUAs during the reporting period originating from this region.

National Registration Section: under delegations made by the Registrar, the National Registration Section considers claims made in claimant applications, for registration. Staff in the Registration Section are also responsible for decisions as to whether ILUAs must be notified and registered on the Register of Indigenous Land Use Agreements. Staff also provide assistance by way of preliminary comments upon native title applications and ILUAs for the purposes of registration on the Register of Native Title Claims or the Register of Indigenous Land Use Agreements respectively.

Geospatial Services: during the reporting period the demand for the Tribunal's geospatial products and services steadily increased. The number of external users registering for access to the Tribunal's online mapping and visualisation tool, Native Title Vision (NTV) increased by more than a third. Geospatial Services continued to develop and improve NTV to facilitate more efficient case management. The geospatial production teams dealt with a significant increase in workload during the reporting period.

Operations: the Operations Section consolidated the future act policies and procedures through the development of a concise and informative set of six Future Act Handbooks. Operations continued to refine the Tribunal's key business system, the Integrated Case and Future Act Management System (ICaFAMs). The Section has also delivered specialised training on the ICaFAMs, the new Future Act Handbooks and the changes to the Policy and Procedure Library, while also being extensively involved in the redevelopment of the Tribunal's website.

FUNCTIONS OF THE TRIBUNAL

FUTURE ACTS

Overview

A key function of the Tribunal, under Subdivision P of the Act, is the resolution by mediation or arbitration of issues involving certain proposed future acts (primarily, in practice, the grant of exploration and mining tenements) on land where native title has been determined to exist or where native title might exist.

As with previous years, most future act activity occurred in Western Australia, and almost all of the remaining future act activity occurred in Queensland.

A future act which is governed by Subdivision P can only be done if the relevant government complies with the notification requirements set out in s 29(2) of the Act (a 'section 29' notice).

Expedited procedure objection applications and inquiries

A government party might assert, pursuant to s 29 (7) of the Act, that the proposed future act is an act which attracts the expedited procedure i.e. that it is an act which will have minimal impact on native title and, as such, does not give rise to the procedural right for native title party/parties to negotiate. If a native title party considers that the expedited procedure does not apply to the proposed future act, it may lodge an expedited procedure objection application (objection application) with the Tribunal.

A total of 1395 objection applications were lodged during the reporting period, approximately ninety per cent of which were lodged in Western Australia. This number, which was approximately nine per cent lower than in the previous year, is consistent with a reduction in the number of notices given during the reporting period asserting that the expedited procedure applied.

Although fewer objection applications were lodged than in the previous reporting period, a higher number were finalised (a total of 1544) than had been finalised in the previous year (a total of 1407). This outcome represents the clearing by the Tribunal of a backlog of objection applications.

The number of objection applications proceeding to inquiry and determination before a Tribunal member increased significantly during the reporting period. A total of ninety-nine determinations in respect of objection applications were made during the reporting period, twice the number of the previous year. This trend reflects the adoption of more rigorous processes within the Tribunal for the management and progressing of objection applications.

During the reporting period almost 500 tenement applications, in respect of which objection applications had been made, were withdrawn by the proponent. This is a much higher number than in previous years, and apparently reflects global market conditions for Australian mineral resources.

Future act determination applications, negotiation and good faith requirements and inquiries

If a proposed future act does not attract the expedited procedure, the parties proceed to negotiate the doing of that future act, either without conditions or subject to conditions. During the reporting period seventy new requests for the Tribunal mediation assistance in negotiating future acts were made, which number was similar to the previous reporting period. Approximately one third of mediations resulted in agreements being made.

The Act prescribes a six months negotiation period, at the expiry of which, absent agreement having been reached, any party to the negotiation may lodge a future act determination application. During the reporting period, forty future act applications, counted by tenement, were lodged. This was twice the number of applications which had been lodged in the previous year.

The Act requires that negotiations about a proposed future act must occur in good faith. If there has been a failure to negotiate in good faith by a party, other than a native title party, the Tribunal has no power to make a determination on the application. If any party asserts that negotiations in good faith have not occurred, the Tribunal will hold a preliminary inquiry to establish whether or not that is the case. During the reporting period the Tribunal made four 'good faith' determinations. In three cases, the Tribunal determined that the parties had negotiated in good faith; in the fourth, the Tribunal found that good faith negotiations had not occurred. The parties to that matter were directed to negotiate further, prior to the matter being substantively dealt with by the Tribunal upon a further future act determination application.

Twenty-three future act determination applications were finalised during the reporting period. Ten of those twenty-three were finalised by determination, and eight of those ten were finalised by consent determination. Those outcomes are consistent with the Tribunal's emphasis on facilitating outcomes through agreements. The remaining thirteen future act determination applications were withdrawn or dismissed.

Consistent with the trend from previous years, ninety per cent of future act determination applications finalised in the reporting period were finalised within six months of lodgement.

OTHER INQUIRIES

In September 2013 the Hon Justice John Dowsett of the Federal Court directed the Tribunal to hold a native title application inquiry pursuant to Subdivision AA of Division 5, Part 6 of the Act. This is the first time that an order has been made for the Tribunal to hold such an inquiry.

The President is conducting the inquiry, which, at the end of the reporting period, was still on foot.

COURT-ORDERED MEDIATION

As at the end of the reporting period, a total of fifteen applications filed pursuant to s 61 of the Act were in mediation with the Tribunal. This total included four matters that were referred for mediation during the reporting period. The fifteen matters involve land and waters located in the south-west of Western Australia, which area is subject to the South-West Settlement Negotiations, and include three compensation applications. The President is the mediator of the fifteen matters.

ASSISTANCE IN NEGOTIATING INDIGENOUS LAND USE AGREEMENTS

During the reporting period the President and Member James McNamara provided assistance in negotiating two ILUAs in far north Queensland, pursuant to s 24BF (body corporate agreements) and s 24CF (area agreements) respectively of the Act.

The President also held preliminary discussions concerning assistance with a possible ILUA process for fisheries reforms in the Torres Strait and for a proposed ILUA template for Land Tenure reforms in Queensland.

ASSISTANCE TO REPRESENTATIVE BODIES IN DISPUTE RESOLUTION

During the reporting period Member Valerie Cooms provided dispute resolution assistance to a native title representative body in the Cairns region pursuant to s 203BK of the Act.

FUNCTIONS OF THE NATIVE TITLE REGISTRAR

CLAIMANT AND AMENDED APPLICATIONS: ASSISTANCE AND REGISTRATION

Sections 190A – 190C of the Act confer upon the Registrar the responsibility of considering claims made in claimant applications, and claims made in amended applications, for registration on the Register of Native Title Claims. To that end, the Federal Court Registrar provides the Registrar with a copy of such applications and accompanying documents, which have been filed in the Federal Court.

Officers in the Registration Section, under delegations made by the Registrar, consider the relevant claims in the applications. Those delegates also undertake preliminary assessments of such applications, and on draft applications, by way of assistance provided pursuant to s 78(1)(a) of the Act.

During the reporting period the Registrar received thirty-four claimant applications, eight fewer than in the previous reporting period, and twenty-eight amended applications, which was the same number as the year before. The majority of those applications had been filed in the Northern Territory, Queensland and Western Australia.

The Registrar's delegates considered sixty-seven applications during the reporting period. Thirty applications were accepted for registration and twenty applications were not accepted for registration following consideration of the claim in the application pursuant to s 190A of the Act. Seventeen amended applications were considered and accepted for registration pursuant to the more limited test prescribed by s 190A(6A) of the Act.

Excluding decisions made under s 190A(6A), ninety-four per cent of the applications were considered for registration within six months of receipt. The average time taken to test an application was less than three months.

The delegates also provided preliminary assessments of sixteen applications during the reporting period.

INDIGENOUS LAND USE AGREEMENTS: ASSISTANCE AND REGISTRATION

Under the Act, parties to an ILUA (whether a body corporate agreement, area agreement or an alternative procedure agreement) must apply to the Registrar in order to have the ILUA registered on the Register of Indigenous Land Use Agreements. Each registered ILUA, in addition to taking effect as a contract among the parties to the ILUA, binds all persons who hold native title in relation to any of the land or waters in the area covered by the ILUA.

A majority of ILUAs currently on the Register of Indigenous Land Use Agreements were made in Queensland. In the past three years there has been an increase in the lodgment of ILUAs that provide for the exercise of native title rights and interests over pastoral leases, which stem from the Queensland Pastoral ILUA negotiations facilitated by the Tribunal during the 2011–12 reporting period.

Other registered ILUAs deal with native title related matters in connection with local government matters, mining, State-protected areas and community infrastructure such as social housing.

Under ss 24BG(3), 23CG(4) and 24DH(3) of the Act, the Registrar can provide assistance in the preparation of applications to register ILUAs. Often, this assistance takes the form of pre-lodgement comments upon the draft ILUA and the application for registration.

During the reporting period a total of 135 ILUAs (sixty-seven body corporate agreements and sixty-eight area agreements) were lodged with the Tribunal for registration. In the case of area agreements, this was eighteen less than in the previous reporting period; in the case of body corporate agreements, this was sixteen more than in the previous reporting period. The latter reflects the steadily increasing number of determinations of native title which are being made (body corporate agreements can only be made where there is registered native title body corporate in relation to all of the agreement area).

During the reporting period seventy-three of the 135 applications to register ILUAs covered land and waters in northern Queensland and accordingly were received in and managed by staff in the Cairns Office.

Sixty-five body corporate ILUAs and fifty-four area agreement ILUAs were accepted for registration and entered upon the Register of Indigenous Land Use Agreements during the reporting period. One ILUA was not accepted for registration. The number of ILUA registration decisions is similar to that of the previous reporting period.

The average time taken to register an area agreement was less than five months; the average time taken to register a body corporate agreement was less than three months.

On fifty-one occasions during the reporting period the Registrar's delegates provided assistance in the form of comments on draft ILUAs.

NOTIFICATION

During the reporting period a total of thirty-six native title determination applications were notified, which compares with thirty-three in the previous reporting period. Twenty-seven claimant applications were notified, compared with twenty-six in the previous year. Six non-claimant applications were notified, the same number as in the previous reporting period. Three compensation applications were notified during the reporting period, compared to one in the previous reporting period.

In addition the Registrar gave notice in respect of three amended applications in Queensland.

OTHER FORMS OF ASSISTANCE

Assistance in relation to applications and proceedings

Section 78(1) of the Act provides for the Registrar to give such assistance as the Registrar thinks reasonable to help people prepare applications and to help them at any stage of the proceeding; it also provides that the Registrar may help other people in relation to a proceeding. During the reporting period staff of the Tribunal provided assistance pursuant to s 78 of the Act on 299 occasions. Consistent with previous years most requests were for the provision of geospatial products.

Assistance in relation to ILUA applications

During the reporting period the Tribunal provided mapping assistance and related information pursuant to s 24BG(3) and s 24CG(4) respectively of the Act, in order to assist parties to prepare applications to register ILUAs, on ten occasions.

Searches of registers

Pursuant to s 78(2) of the Act, Tribunal staff members conducted 1495 searches of registers and other records to assist applicants and respondents during the reporting period.

THE REGISTER OF NATIVE TITLE CLAIMS

Section 185(2) of the Act vests responsibility in the Registrar for establishing and keeping a Register of Native Title Claims. This register records the details of claimant applications that have met the statutory conditions for registration prescribed by s 190A – 190C of the Act.

As at 30 June 2014 there was a total of 288 claimant applications on the Register of Native Title Claims. This number, which represents a decrease of thirty-eight applications from the previous reporting period, is to be understood in the context of the increase in the number of native title determinations which were made in 2013–14: see below.

THE NATIONAL NATIVE TITLE REGISTER

Under s 192(2) of the Act, the Registrar must establish and keep a National Native Title Register, on which register approved determinations of native title made by the Federal Court in particular matters are registered. During the reporting period a total of sixty-four determinations of native title were registered on the National Native Title Register, a significant increase from the previous reporting period. As at 30 June 2014 a total of 291 determinations were registered on this register: 232 determinations that native title exists, and fifty-nine determinations that native title does not exist.

A map of registered native title determinations as at 30 June 2014 is set out on page 72.

THE REGISTER OF INDIGENOUS LAND USE AGREEMENTS

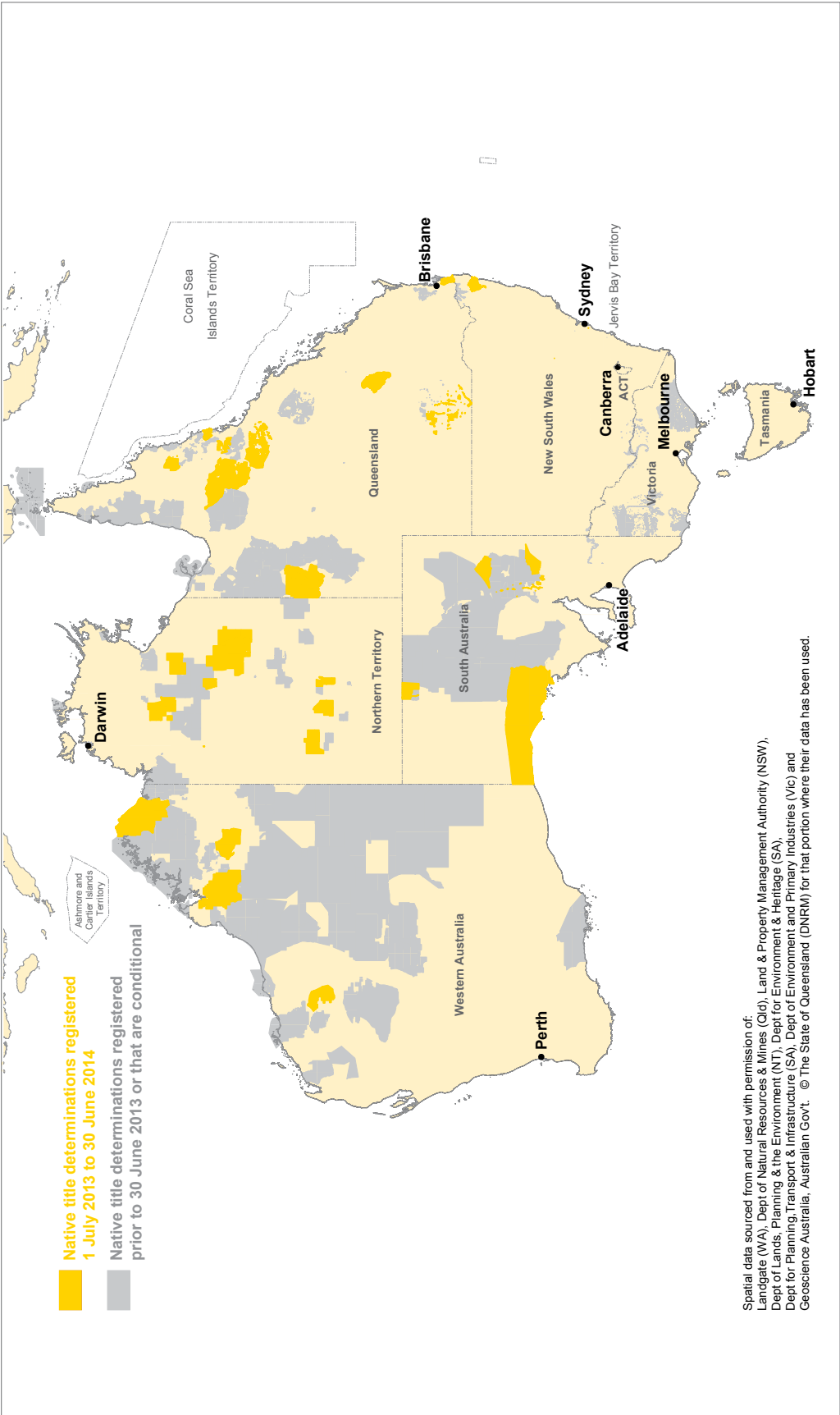
Under s 199A(2) of the Act, the Registrar must establish and keep a National Native Title Register, on which area agreement, body corporate and alternative procedure ILUAs are registered. During the reporting period 118 new ILUAs were registered, and two were removed from the Register of Indigenous Land Use Agreements. At 30 June 2014, there was a total of 884 ILUAs registered on the Register of Indigenous Land Use Agreements. A map of registered ILUAs as at 30 June 2014 is set out on page 73.

MAPS

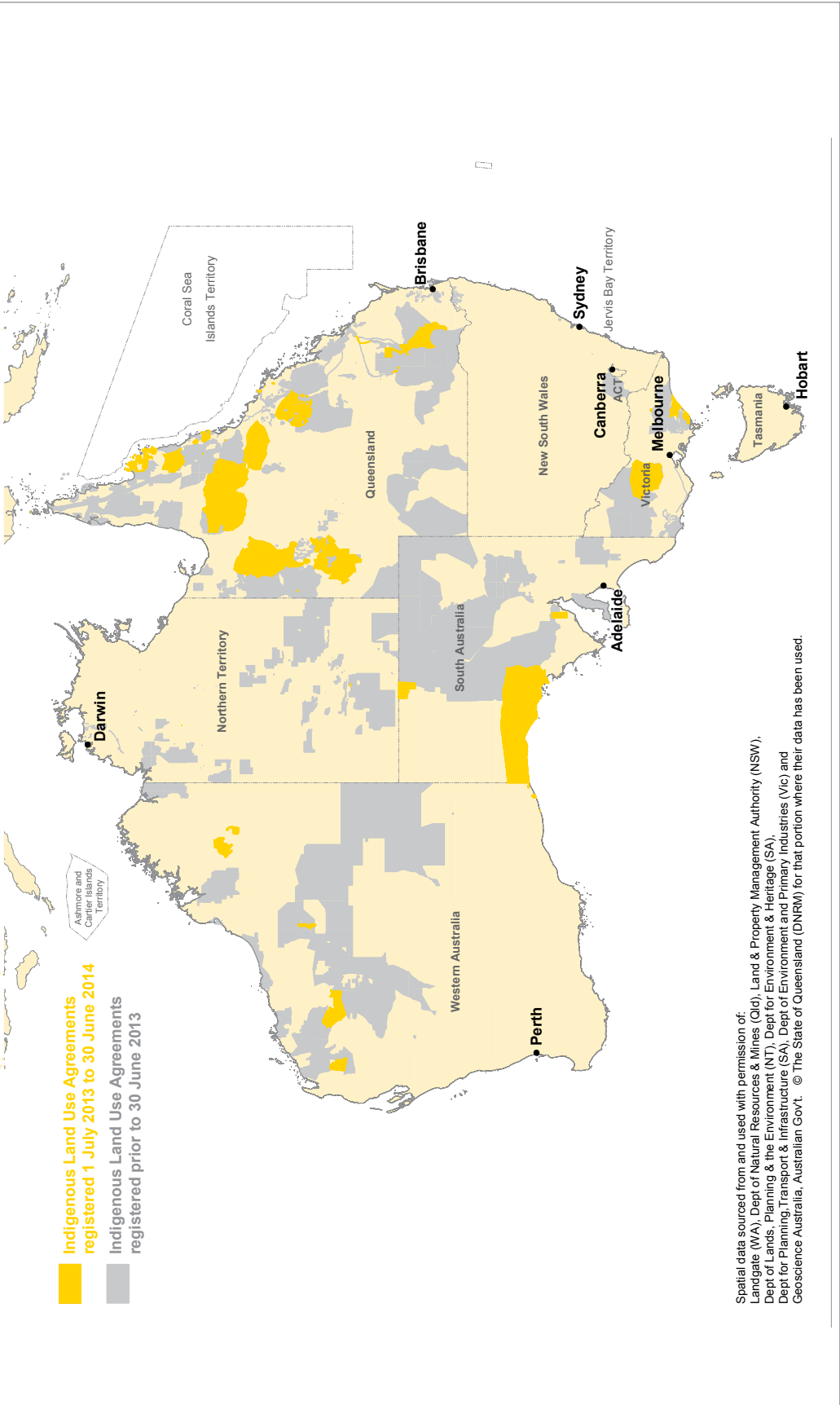
The 291 registered determinations as at 30 June 2014 covered a total area of about 1,955,956 sq km or 25.4 per cent of the land mass of Australia. Five conditional consent determinations (two in Queensland and three in Western Australia) were still awaiting registration at 30 June 2014. Upon registration, these applications will increase the area to about 2,044,938 sq km or 26.6 per cent of the land area: see Map 1.

Registered ILUAs covered about 1,948,854 sq km or 25.3 per cent of the land mass of Australia and approximately 6,067 sq km of sea (below the high water mark): see Map 2.

Map 1: Map of registered native title determinations as at 30 June 2014



Map 2: Map of ILUAs as per the Register of Indigenous Land Use Agreements at 30 June 2014



MANAGEMENT OF THE TRIBUNAL

TRIBUNAL GOVERNANCE

The Tribunal retained the same governance structure in 2013–14 as it had in the previous reporting period.

The President and Members met regularly in Members' Meetings.

The Executive (comprising the Registrar and the Deputy Registrars) met regularly, usually each fortnight, with the Federal Court's Senior Accountant, Human Resources Manager and other managers in attendance as required. The Executive deals with the Tribunal's operational, budgetary and corporate matters.

Once each month the Registrar met with the Deputy Registrars and the managers of each office and section, in the Offices and Sections Group meetings.

FINANCIAL MANAGEMENT

The Tribunal is sub-programme 1.1.2 of the Federal Court's Portfolio Budget Statement.

\$11.149 million was allocated for the Tribunal's operations in 2013–14. The Tribunal managed its financial resources carefully throughout the reporting period and at 30 June 2014 recorded a substantial surplus, most of which related to savings in staff salaries.

EXTERNAL SCRUTINY

JUDICIAL DECISIONS

During the reporting period there were no judicial decisions, decisions of administrative tribunals, or decisions by the Australian Information Commissioner, that have had, or may have, a significant impact on the operation of the Registrar's responsibilities or on the Tribunal during the reporting period.

FREEDOM OF INFORMATION

During the reporting period, five formal requests were made under the *Freedom of Information Act 1982* (Cth) (FOI Act) for access to documents, of which three requests were withdrawn. The Tribunal complies with FOI Act requirements regarding publishing a disclosure log on its website. The disclosure log lists the information which has been released in response to FOI access requests.

ACCOUNTABILITY TO CLIENTS

The Tribunal maintains a Client Service Charter to ensure that service standards meet client needs. No complaints that required action under the Charter were received during the reporting period.

MEMBERS' CODE OF CONDUCT

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. Tribunal Members are not subject to the APS Code of Conduct, except where they may be, directly or indirectly, involved in the supervision of staff.

Tribunal members have voluntarily adopted a code of conduct, procedures for dealing with alleged breaches of the members' voluntary code of conduct and an expanded conflict of interest policy. During the reporting period, there were no complaints under either document.

ONLINE SERVICES

The Tribunal maintains a website at www.nntt.gov.au

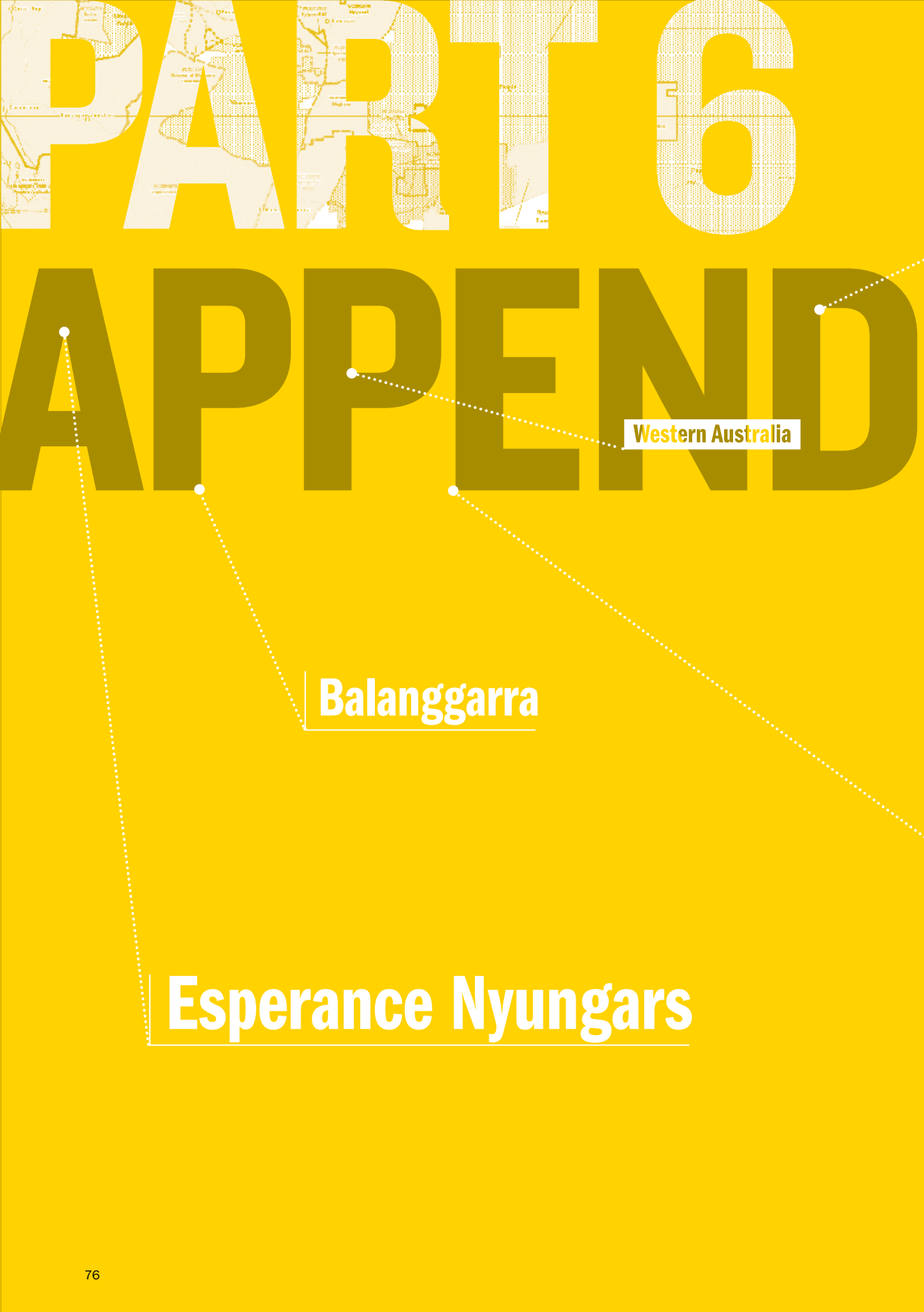
AUSTRALIAN HUMAN RIGHTS COMMISSION

Under s 209 of the Act, the Aboriginal and Torres Strait Islander Social Justice Commissioner must report annually on the operation of the Act and its effect on the exercise and enjoyment of human rights by Aboriginal peoples and Torres Strait Islanders. The Commissioner has invited the Tribunal to comment upon matters relating to native title determinations made during the reporting period; however, the Tribunal has referred the Commissioner to the Federal Court in this respect. The Commissioner has also invited the Tribunal to put forward any other information, or comment on trends.

ANNEXURE

PRESIDENT'S PRESENTATIONS 1 JULY 2013 TO 30 JUNE 2014

DATE	TITLE	EVENT	ORGANISERS
18 July 2013	Assisting Indigenous people in native title cases to include an update on native title law	Indigenous Justice Conference: Current issues in delivering Indigenous justice – challenges for the courts	AIJA
2 August 2013	Perspective on native title tenure process	Native title User Group Meeting	FCA
17 Sept 2013	Native title disputes? – Hold the line please	'kon gres 2013	LEADR
24 Sept 2013	Indigenous Sea Rights – the Grotius Heritage	Annual Richard Cooper Memorial Lecture (2013)	TC Beirne School of Law, University of Queensland
24 Jan 2014	Indigenous Sea Rights – Compromise to Maximise	Indigenous Sea forum	Torres Strait Regional Board (TSRB)
4 March 2014	What can anthropological research bring to the future act process?	YMAC Heritage workshop	Yamatji Marlpa Aboriginal Corporation (YMAC)
20 March 2014	To explore options for NNTT assistance to the Court in the resolution of native title claims	Judicial Education Sessions	Meeting of the Native Title Practice Committee, FCA
8 April 2014	Indigenous Land Use Agreements	Twilight Seminar	Herbert Smith Freehills
15 April 2014	Convene/chair a session on The Merits of Decisions by the Disability Insurance Agency	Conference	Australian Institute of Judicial Administration (AIJA)
14 May 2014	Shared country, shared future: Native title and the role of the National Native Title Tribunal (NNTT)	CPD Seminar	Queensland Bar Association
15 May 2014	Law and Indigenous peoples: Indigenous sea rights	Law Lecture	TC Beirne School of Law, University of Queensland
28 May 2014	Geospatial Services and Mapping – Interactive discussions	Internal Planning Day	Federal Court of Australia (FCA) NT
30 May 2014	Mining, native title and the impacts on Indigenous Australians: when the mining stops	Environmental Law conference	Environmental Defenders Office, NT (EDONT)
27 June 2014	Agreement making in Indigenous contexts	World Indigenous Legal Conference	Queensland Law Society



PART 6

APPEND

Western Australia

Balanggarra

Esperance Nyungars



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INDEPENDENT AUDITOR'S REPORT

To the Attorney General

I have audited the accompanying financial statements of Federal Court of Australia for the year ended 30 June 2014, which comprise: a Statement by the Registrar and Chief Financial Officer; Statement of Comprehensive Income; Statement of Financial Position; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Administered Schedule of Comprehensive Income; Administered Schedule of Assets and Liabilities; Administered Reconciliation Schedule; Administered Cash Flow Statement; Schedule of Administered Commitments; Schedule of Administered Contingencies; and Notes comprising a Summary of Significant Accounting Policies and other explanatory information.

Registrar's Responsibility for the Financial Statements

The Registrar of the Federal Court of Australia is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as is necessary to enable the preparation of financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Federal Court of Australia preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Federal Court of Australia internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Registrar of the Federal Court of Australia as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Opinion

In my opinion, the financial statements of the Federal Court of Australia:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders, including the Federal Court of Australia's financial position as at 30 June 2014 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



Kristian Gage
Acting Executive Director
Delegate of the Auditor-General
Canberra
2 September 2014

STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

FEDERAL COURT OF AUSTRALIA

STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

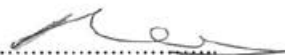
In our opinion, the attached financial statements for the year ended 30 June 2014 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Signed

Warwick Soden
Registrar and Chief Executive Officer

/ September 2014



Signed

Peter Bowen
Chief Finance Officer

/ September 2014

STATEMENT OF COMPREHENSIVE INCOME

FOR THE PERIOD ENDED 30 JUNE 2014

	NOTES	2014 \$'000	2013 \$'000
NET COST OF SERVICES			
Expenses			
Judge benefits	3A	34,105	29,926
Employee benefits	3A	46,023	43,872
Suppliers	3B	47,730	46,714
Depreciation and amortisation	3C	4,691	4,265
Finance costs	3D	45	72
Write-down and impairment of assets	3E	133	560
Losses from asset sales	3F	–	–
Total expenses		132,727	125,409
Own-Source Income			
Own-source revenue			
Sale of goods and rendering of services	4A	3,673	3,341
Total own-source revenue		3,673	3,341
Gains			
Other gains	4B	32,712	30,901
Total gains		32,712	30,901
Total own-source income		36,385	34,242
Net cost of services		(96,342)	(91,167)
Revenue from Government	4C	93,213	89,020
(Deficit)		(3,129)	(2,147)
OTHER COMPREHENSIVE INCOME			
Items not subject to subsequent reclassification to net cost of services			
Changes in asset revaluation surplus		5,490	–
Total other comprehensive income		5,490	–
Total comprehensive income		2,361	(2,147)

The above statement should be read in conjunction with the accompanying notes.

STATEMENT OF FINANCIAL POSITION

AS AT 30 JUNE 2014

	NOTES	2014 \$'000	2013 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	6A	576	279
Trade and other receivables	6B	46,387	47,702
Total financial assets		46,963	47,981
Non-Financial Assets			
Land and buildings	7A	16,320	11,999
Property, plant and equipment	7B	7,489	7,966
Intangibles	7C	4,883	2,851
Other non-financial assets	7E	956	522
Total non-financial assets		29,648	23,338
Total Assets		76,611	71,319
LIABILITIES			
Payables			
Suppliers	8A	1,407	1,895
Other Payables	8B	2,772	2,269
Total payables		4,179	4,164
Interest Bearing Liabilities			
Leases	9	409	812
Total interest bearing liabilities		409	812
Provisions			
Judge and employee provisions	10A	20,061	19,910
Other provisions	10B	254	252
Total provisions		20,315	20,162
Total Liabilities		24,903	25,138
Net Assets		51,708	46,181
EQUITY			
Contributed equity		38,534	35,368
Reserves		7,074	1,584
Retained surplus		6,100	9,229
Total Equity		51,708	46,181

The above statement should be read in conjunction with the accompanying notes.

STATEMENT OF CHANGES IN EQUITY

FOR THE PERIOD ENDED 30 JUNE 2014

	RETAINED EARNINGS		ASSET REVALUATION SURPLUS		CONTRIBUTED EQUITY/ CAPITAL		TOTAL EQUITY	
	2014 \$'000	2013 \$'000	2014 \$'000	2013 \$'000	2014 \$'000	2013 \$'000	2014 \$'000	2013 \$'000
Opening balance	9,229	11,376	1,584	1,584	35,368	19,727	46,181	32,687
Comprehensive Income								
Other Comprehensive Income	–	–	5,490	–	–	–	5,490	–
(Deficit) for period	(3,129)	(2,147)	–	–	–	–	(3,129)	(2,147)
Total comprehensive income	(3,129)	(2,147)	5,490	–	–	–	2,361	(2,147)
Transactions with owners								
Contributions by owners								
Restructuring	–	–	–	–	–	11,972	–	11,972
Departmental Capital Budget	–	–	–	–	3,166	3,669	3,166	3,669
Total transactions with owners	–	–	–	–	3,166	15,641	3,166	15,641
Closing balance as at 30 June	6,100	9,229	7,074	1,584	38,534	35,368	51,708	46,181
Closing balance attributable to the Australian Government	6,100	9,229	7,074	1,584	38,534	35,368	51,708	46,181

The above statement should be read in conjunction with the accompanying notes.

CASH FLOW STATEMENT

FOR THE PERIOD ENDED 30 JUNE 2014

	NOTES	2014 \$'000	2013 \$'000
OPERATING ACTIVITIES			
Cash received			
Appropriations		96,437	89,880
Sale of goods and rendering of services		3,272	3,441
Receipts from Government		35	48
Net GST received		3,057	2,230
Total cash received		102,801	95,599
Cash used			
Judges and employees		67,550	64,197
Suppliers		27,799	26,161
Borrowing costs		46	72
Net GST paid		2,951	2,740
Section 31 receipts transferred to OPA		3,546	3,596
Total cash used		101,892	96,766
Net cash from / (used by) operating activities	12	909	(1,167)
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		–	–
Total cash received		–	–
Cash used			
Purchase of property, plant and equipment		2,482	2,267
Purchase of intangibles		2,725	1,020
Total cash used		5,207	3,287
Net cash (used by) investing activities		(5,207)	(3,287)
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		4,998	3,756
Total cash received		4,998	3,756
Cash used			
Payment of finance lease liabilities		403	376
Total cash used		403	376
Net cash from financing activities		4,595	3,380
Net increase / (decrease) in cash held		297	(1,074)
Cash at the beginning of the reporting period		279	1,353
Cash at the end of the reporting period	6A	576	279

The above statement should be read in conjunction with the accompanying notes.

SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2014

	2014 \$'000	2013 \$'000
BY TYPE		
Commitments receivable		
Net GST recoverable on commitments	251	176
Total commitments receivable	251	176
Commitments payable		
Capital commitments		
Property, plant and equipment ¹	123	10
Total capital commitments	123	10
Other commitments		
Operating leases ²	2,318	1,830
Other ³	314	92
Total other commitments	2,632	1,922
Total commitments payable	2,755	1,932
Net commitments by type	2,504	1,756
BY MATURITY		
Commitments receivable		
Within 1 year	166	118
Between 1 and 5 years	85	58
Total commitments receivable	251	176
Commitments payable		
Capital commitments		
Within 1 year	123	10
Total capital commitments	123	10
Operating lease commitments		
Within 1 year	1,386	1,189
Between 1 and 5 years	932	641
Total operating lease commitments	2,318	1,830
Other commitments		
Within 1 year	311	92
Between 1 and 5 years	3	–
Total other commitments	314	92
Net Commitments by Maturity	2,504	1,756

NB: Commitments are GST inclusive where relevant.

SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2014

1. Plant and equipment commitments are primarily contracts for the purchase of furniture and fittings.

Nature of leases/General description

2. Operating leases included are effectively non-cancellable and comprise:

Leases for judicial and other accommodation.

These commitments are mainly for rental of special purpose court buildings which are occupied by the Court's registries. The court buildings are owned by the Commonwealth of Australia, except for the New South Wales court building, which is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments. In the Northern Territory, space is leased from the Northern Territory Government. The Court also leases commercial premises in Brisbane and Cairns for the National Native Title Tribunal.

As at 30 June 2014, the Court had no signed leases for the Commonwealth Law Courts Buildings and therefore has no commitment for future expenditure for these premises.

Agreements for the provision of motor vehicles to judges and senior officers.

The Court leased motor vehicles from Lease Plan under the terms of a contract that was operative until January 2013. From February 2013 vehicles are leased from sgFleet under contractual terms. These vehicles are leased under individual operating leases.

3. Other commitments – The Court has entered into commitments for the provision of information technology and library goods and services.

The above schedule should be read in conjunction with the accompanying notes.

SCHEDULE OF CONTINGENCIES

AS AT 30 JUNE 2014

There were no contingent losses or gains as at 30 June 2014 (2013: nil).

The above schedule should be read in conjunction with the accompanying notes.

ADMINISTERED SCHEDULE OF COMPREHENSIVE INCOME FOR THE PERIOD ENDED 30 JUNE 2014

	NOTES	2014 \$'000	2013 \$'000
NET COST OF SERVICES			
Expenses			
Write-down and impairment of assets	17	426	(180)
Total expenses		426	(180)
Income			
Revenue			
Non-taxation Revenue			
Fees (filing and hearing fees)	18	18,776	16,966
Fines	18	696	147
Other revenue	18	186	125
Total non-taxation revenue		19,658	17,238
Total revenue		19,658	17,238
Net contribution by services		19,232	17,418
OTHER COMPREHENSIVE INCOME			
Total comprehensive income		19,232	17,418

This schedule should be read in conjunction with the accompanying notes.

ADMINISTERED SCHEDULE OF ASSETS AND LIABILITIES AS AT 30 JUNE 2014

	NOTES	2014 \$'000	2013 \$'000
ASSETS			
Financial assets			
Cash and cash equivalents	19A	29	40
Receivables	19B	1,926	2,903
Total assets administered on behalf of Government		1,955	2,943
LIABILITIES			
Payables			
Other payables	20A	132	304
Total payables		132	304
Total liabilities administered on behalf of Government		132	304
Net assets		1,823	2,639
ADMINISTERED RECONCILIATION SCHEDULE			
Opening assets less liabilities as at 1 July		2,639	569
Net contribution by services			
Income		19,658	17,238
Expenses		(426)	180
Transfers to/from the Australian Government:			
Administered assets and liabilities appropriations		420	290
Transfers to OPA		(20,468)	(15,638)
Closing assets less liabilities as at 30 June		1,823	2,639

This schedule should be read in conjunction with the accompanying notes.

ADMINISTERED CASH FLOW STATEMENT

FOR THE PERIOD ENDED 30 JUNE 2014

	NOTES	2014 \$'000	2013 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees		19,514	15,371
Fines		739	147
Other		195	130
Total cash received		20,448	15,648
Cash used			
Refund of court fees and fines		411	290
Total cash used		411	290
Net cash from operating activities		20,037	15,358
Net increase in cash held	21	20,037	15,358
Cash at the beginning of the reporting period		40	30
Cash from Official Public Account			
Appropriations		420	290
		420	290
Cash to Official Public Account		(20,468)	(15,638)
		(20,468)	(15,638)
Cash at the end of the reporting period	19A	29	40
Schedule of Administered Commitments as at 30 June 2014			
There were no Administered commitments as at 30 June 2014. (2013: nil)			
Schedule of Administered Contingencies as at 30 June 2014			
There were no Administered contingent losses or gains as at 30 June 2014. (2013: nil)			

This schedule should be read in conjunction with the accompanying notes.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 1	Summary of Significant Accounting Policies
NOTE 2	Events After the Reporting Period
NOTE 3	Expenses
NOTE 4	Own-Source Income
NOTE 5	Fair Value Measurements
NOTE 6	Financial Assets
NOTE 7	Non-Financial Assets
NOTE 8	Payables
NOTE 9	Interest Bearing Liabilities
NOTE 10	Provisions
NOTE 11	Restructuring
NOTE 12	Cash Flow Reconciliation
NOTE 13	Senior Executive Remuneration
NOTE 14	Remuneration of Auditors
NOTE 15	Financial Instruments
NOTE 16	Financial Assets Reconciliation
NOTE 17	Administered – Expenses
NOTE 18	Administered – Income
NOTE 19	Administered – Financial Assets
NOTE 20	Administered – Payables
NOTE 21	Administered – Cash Flow Reconciliation
NOTE 22	Administered Financial Instruments
NOTE 23	Administered Financial Assets Reconciliation
NOTE 24	Appropriations
NOTE 25	Special Accounts and FMA Section 39 Investments
NOTE 26	Compensation and Debt Relief
NOTE 27	Reporting of Outcomes
NOTE 28	Net Cash Appropriation Arrangements

NOTE 1: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

1.1 OBJECTIVES OF THE COURT

The Federal Court of Australia is an Australian Government controlled entity. The Court is a not for profit entity. The objectives of the Court are to:

- decide disputes according to law promptly, courteously and effectively; and in so doing to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the Constitution;
- provide an effective registry service to the community; and
- manage the resources allotted by Parliament efficiently.

The Court is structured to meet one Outcome:

Outcome: 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.

The Court's activities contributing toward this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenue and expenses controlled or incurred by the Court in its own right. Administered activities involve the management or oversight by the Court, on behalf of the Government, of items controlled or incurred by the Government.

The Court conducts the following administered activity on behalf of the Government: The collection of fees and fines.

The continued existence of the Court in its present form and with its present programmes is dependent on Government policy and on continuing appropriations by Parliament for the Court's administration and programmes.

The Australian Government continues to have regard to developments in case law, including the High Court's most recent decision in *Williams v Commonwealth* [2014] HCA 23, as they contribute to the larger body of law relevant to the development of Commonwealth programmes. In accordance with its general practice, the Government will continue to monitor and assess risk and decide on any appropriate actions to respond to risks of expenditure not being consistent with constitutional or other legal requirements.

1.2 BASIS OF PREPARATION OF THE FINANCIAL STATEMENTS

The financial statements are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997*.

The financial statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs), for reporting periods ending on or after 1 July 2011; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the statement of financial position when and only when it is probable that future economic benefits will flow to the Court or a future sacrifice of economic benefits will be required and the amounts of the assets

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

or liabilities can be reliably measured. However, assets and liabilities arising under executor contracts are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments and the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the Statement of Comprehensive Income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

1.3 SIGNIFICANT ACCOUNTING JUDGEMENTS AND ESTIMATES

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 CHANGES IN AUSTRALIAN ACCOUNTING STANDARDS

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. No new accounting standards, amendments to standards and interpretations issued by the Australian Accounting Standards Board that are applicable in the current period have had a material financial effect on the Court.

Future Australian Accounting Standard requirements

New standards, amendments to standards, and interpretations that are applicable to future periods have been issued by the Australian Accounting Standards Board.

The Court will adopt AASB 1055 'Budgetary reporting' from 1 July 2014. This standard will require the Court to disclose the original budget presented to Parliament, variances of actuals from budget and to explain major variances between actual and budgeted amounts.

1.5 REVENUE

Revenue from the sale of goods is recognised when:

- (a) the risks and rewards of ownership have been transferred to the buyer;
- (b) the entity retains no managerial involvement or effective control over the goods;
- (c) the revenue and transaction costs incurred can be reliably measured; and
- (d) it is probable that the economic benefits associated with the transaction will flow to the Court.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- (a) The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- (b) The probable economic benefits associated with the transaction will flow to the Court.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at the balance date. Allowances are made when collection of the debt is no longer probable.

Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Court gains control of the appropriation, except for certain amounts that relate to activities which are reciprocal in nature, in which case revenue has been recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

1.6 GAINS

Resources Received Free of Charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be

reliably determined and the services would have been purchased if they had not been donated. Use of these resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government entity as a consequence of a restructure of administrative arrangements.

Resources received free of charge are recognised as either revenue or gains depending on their nature.

Sale of Assets

Gains from disposal of non-current assets are recognised when control of the asset has passed to the buyer.

1.7 TRANSACTIONS WITH THE GOVERNMENT AS OWNER

Equity Injections

Amounts appropriated which are designated as 'equity injections' (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Other Distributions to owners

The FMO require that distributions to owners be debited to contributed equity unless it is in the nature of a dividend.

1.8 JUDGE AND EMPLOYEE BENEFITS

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

Other long term judge and employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the

reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Court is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken. This includes the Court's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The long service leave provision is based on the Court's estimated liability at balance date. Court staff employed under the *Public Service Act 1999* accrue 3 months long service leave after 10 years service, and proportionally thereafter. The estimate of the present liability takes into account attrition rates and pay increases through promotion and inflation. Judges accrue 6 months long leave after 5 years of service. In recognition of the nature of Judges' tenure, a provision is accrued from the first year of service.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Court recognises a provision for termination when it has developed a detailed formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of the Court are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap). Some staff members elect to have contributions made to another superannuation fund of their choice.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedule and notes.

The Court makes employer contributions to the employees' superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Court accounts for the contributions as if they were contributions to defined contribution plans. For those staff members who have elected to have contributions made to a scheme of their choice, the Court makes payments of the amount required under Commonwealth legislation.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

Judges' Pension

Under the *Judges' Pension Act 1968*, Federal Court Judges are entitled to a non-contributory pension upon retirement after 6 years service. Where entitlements are not available under the *Judges' Pension Act 1968*, entitlements are available under the *Superannuation (Productivity Benefit) Act 1988*. As the liability for these pension payments is assumed by the Australian Government, the Court has not recognised a liability for unfunded superannuation liability. The Court does, however, recognise an expense and a corresponding revenue item, "Liabilities assumed by other agencies", in respect of the notional amount of the employer contributions to Judges' pensions for the reporting period amounting to \$12,567,170 (2012–13: \$11,181,782). The contribution rate has been provided by the Australian Government Actuary.

1.9 LEASES

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the

risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 FAIR VALUE MEASUREMENT

The Court deems transfers between levels of the fair value hierarchy to have occurred when advised by an independent valuer of a change in the market for particular items.

1.11 CASH

Cash means notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.12 FINANCIAL ASSETS

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. The Court does not have any loans at 30 June 2014. Receivables are recognised at their nominal amount.

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial assets carried at cost* – If there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.13 FINANCIAL LIABILITIES

Supplier and other payables

Supplier and other payables are recognised at nominal cost. Liabilities are recognised to the extent that the goods or services have been received, irrespective of having been invoiced.

1.14 CONTINGENT LIABILITIES AND CONTINGENT ASSETS

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.15 ACQUISITION OF ASSETS

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In

the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

1.16 PROPERTY, PLANT AND EQUIPMENT

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the statement of financial position, except for purchases of:

- assets other than information technology equipment costing less than \$2,000; and
- information technology equipment costing less than \$1,500

which are expensed in the year of acquisition other than where they form part of a group of similar items, which are significant in total.

Revaluations

Following initial recognition at cost, buildings, infrastructure, plant and equipment were carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class previously recognised in the surplus/(deficit). Revaluation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the valuation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Court using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Depreciation and amortisation rates for each class of depreciable asset are based on the following useful lives:

	2014	2013
Leasehold improvements	10 to 20 years or Lease term	10 years or Lease term
Plant and equipment – excluding library materials	3 to 100 years	3 to 250 years
Plant and equipment – library materials	5 to 10 years	5 to 10 years

The change in the useful life terms in 2013–14 were done after a recommendation from an independent valuer engaged by the Court. This change led to a revaluation increment for leasehold improvements of \$4.822m.

Impairment

All assets are assessed for impairment at 30 June. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Court were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no future economic benefits are expected from its use or disposal.

1.17 INTANGIBLES

The Court's intangibles comprise externally and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment loss. Software is amortised on a straight line basis over its anticipated useful life of 5 years (2012–13: 5 years). All software assets were assessed for indications of impairment at 30 June 2014.

1.18 TAXATION

The Court is exempt from all forms of taxation except fringe benefits tax (FBT) and goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australia Taxation Office; and
- for receivables and payables.

1.19 RESOURCES PROVIDED FREE OF CHARGE

For the period 1 July 2013 to 30 June 2014, the Court provided \$9,770,598 worth of resources free of charge to the Federal Circuit Court. (2013: \$8,071,767).

1.20 REPORTING OF ADMINISTERED ACTIVITIES

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as the Court, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from Official Public Account (OPA)

Revenue collected by the Court for use by the Government rather than the Court is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Court on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

Revenue

All administered revenues are revenues relating to the course of ordinary activities performed by the Court on behalf of the Australian Government. As such, administered appropriations are not revenues of the Court.

Fees are charged for services provided by the Court to litigants under the Federal Court and Federal Magistrates Court Regulation 2012.

Revenue from fees is recognised at the time the services are performed. The services are performed at the same time as, or within two days of, the fees becoming due and payable. It is recognised at its nominal amount due less any provision for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Impairment allowances are made when collectability of the debt is judged to be less, rather than more, likely. Revenue from fines is recognised in the period in which the invoice for the fine is raised.

NOTE 2: EVENTS AFTER THE REPORTING PERIOD

DEPARTMENTAL

There was no subsequent event that had the potential to significantly affect the ongoing structure and financial activities of the Court.

ADMINISTERED

There was no subsequent event that had the potential to significantly affect the ongoing structure and financial activities of the Court.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 3: EXPENSES

NOTE 3A: JUDGE AND EMPLOYEE BENEFITS

	2014 \$'000	2013 \$'000
Judge remuneration	21,538	18,744
Judge notional superannuation	12,567	11,182
	34,105	29,926
Employee wage & salaries	35,419	34,005
Employee superannuation	6,099	5,469
Leave and other entitlements	3,436	3,720
Employee separation and redundancies	1,069	678
	46,023	43,872
Total judge and employee benefits	80,128	73,798

NOTE 3B: SUPPLIERS

	2014 \$'000	2013 \$'000
Goods and services supplied or rendered		
Property operating costs	2,506	2,480
Library purchases	4,080	2,873
Information technology expenditure	4,003	3,980
Travel expenditure	3,553	3,402
Contractors and consultants	2,524	2,555
Other goods and services	3,875	3,848
Total goods and services supplied or rendered	20,541	19,138
Goods and services supplied or rendered in connection with		
Provision of goods – external parties	2,777	2,148
Rendering of services – related entities	1,482	796
Rendering of services – external parties	16,282	16,194
Total goods and services supplied or rendered	20,541	19,138
Other suppliers		
Operating lease rentals in connection with external parties:		
Minimum lease payments	26,715	27,195
Workers compensation premiums	474	381
Total other supplier expenses	27,189	27,576
Total supplier expenses	47,730	46,714

NOTE 3C: DEPRECIATION AND AMORTISATION

	2014 \$'000	2013 \$'000
Depreciation:		
Buildings	2,022	1,954
Property, plant and equipment	1,588	1,324
Total depreciation	3,610	3,278
Amortisation:		
Intangibles	692	599
Leased plant and equipment	389	388
Total amortisation	1,081	987
Total depreciation and amortisation	4,691	4,265

NOTE 3D: FINANCE COSTS

	2014 \$'000	2013 \$'000
Finance leases	45	72
Total finance costs	45	72

NOTE 3E: WRITE-DOWN AND IMPAIRMENT OF ASSETS

	2014 \$'000	2013 \$'000
Financial assets		
Impairment on financial instruments	4	2
Non-financial assets		
Impairment on intangible assets	–	553
Impairment of property, plant & equipment	109	5
Revaluation decrements		
Property, plant and equipment	20	–
Total write-down and impairment of assets	133	560

NOTE 3F: SALE OF ASSETS

	2014 \$'000	2013 \$'000
Infrastructure, plant and equipment:		
Proceeds from sale	–	–
Carrying value of assets sold	–	–
Total losses from asset sales	–	–

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 4: OWN-SOURCE INCOME

Own-Source Revenue

NOTE 4A: SALE OF GOODS AND RENDERING OF SERVICES

	2014 \$'000	2013 \$'000
Rendering of services in connection with		
Related parties	863	1,060
External parties	2,810	2,281
Total sale of goods and rendering of services	3,673	3,341

Gains

NOTE 4B: OTHER GAINS

	2014 \$'000	2013 \$'000
Liabilities assumed by other agencies	12,567	11,182
Resources received free of charge	20,145	19,719
	32,712	30,901

Resources received free of charge includes an amount of \$9,291,420 (2012–13: \$9,214,540) in respect of rent and outgoings associated with the accommodation occupied by the Court in the Law Courts Building located in Sydney, New South Wales. This building is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments.

It also includes an amount in respect of rent and outgoings for Commonwealth Law Courts Buildings throughout Australia. The Court receives free rental and some outgoings for areas in Commonwealth Law Courts Buildings occupied by court rooms and judicial accommodation. These resources are provided by the Department of Finance. This arrangement commenced on 1 July 2012.

NOTE 4C: REVENUE FROM GOVERNMENT

	2014 \$'000	2013 \$'000
Appropriations:		
Departmental appropriations	93,213	89,020
Total revenue from Government	93,213	89,020

NOTE 5: FAIR VALUE MEASUREMENTS

NOTE 5A: FAIR VALUE MEASUREMENTS

	FAIR VALUE \$000	FAIR VALUE MEASUREMENTS AT THE END OF THE REPORTING PERIOD USING		
		LEVEL 1 INPUTS \$000	LEVEL 2 INPUTS \$000	LEVEL 3 INPUTS \$000
Leasehold Improvements	16,320	–	–	16,320
Plant and Equipment	7,489	–	4,077	3,412
	22,196	–	4,077	19,732

The Court's assets are held for operational purposes and not held for the purposes of deriving a profit. The current use of these assets is considered to be the highest and best use.

NOTE 5B: LEVEL 1 AND LEVEL 2 TRANSFERS FOR RECURRING FAIR VALUE MEASUREMENTS

There have been no transfers between the levels of the hierarchy during the year.

NOTE 5C: VALUATION TECHNIQUE AND INPUTS FOR LEVEL 2 AND LEVEL 3 FAIR VALUE MEASUREMENTS

	CATEGORY (LEVEL 2 OR LEVEL 3)	FAIR VALUE \$000	VALUATION TECHNIQUES ¹	INPUTS USED	RANGE (WEIGHTED AVERAGE) ²
Non-financial assets					
Leasehold improvements	3	16,320	Depreciated Replacement Cost (DRC)	Replacement Cost New	
				Consumed economic benefit /obsolescence of asset	5.00% – 10.00% (5.45%) per annum
Plant and equipment	2	4,077	Market approach	Adjusted market transactions	
	3	3,412	Depreciated Replacement Cost (DRC)	Replacement Cost New	
				Consumed economic benefit /obsolescence of asset	25.00% – 4.00% (5.70%) per annum

1. There have been no changes to valuation techniques

2. Significant unobservable inputs only. Not applicable for assets or liabilities in the Level 2 category.

There were no significant relationships between unobservable inputs that materially affect fair value.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Recurring and non-recurring level 3 fair value measurements – valuation processes

The Court procured the service of the Australian Valuation Office (AVO) to undertake a comprehensive valuation of all non-financial assets at 30 June 2014. The Court tests the procedures of the valuation model as an internal management review at least once every 12 months (with a formal revaluation undertaken once every 3 years). If a particular asset class experiences significant and volatile changes in fair value (i.e. where indicators suggest that the value of the class has changed materially since the previous reporting period), that class is subject to specific valuation in the reporting period, where practicable, regardless of the timing of the last specific valuation. The entity has engaged Australian Valuation Solutions (AVS) to provide written assurance that the models comply with AASB 13.

AVS confirmed that there is no change in the valuation technique since the prior year.

Significant Level 3 inputs utilised by the entity are derived and evaluated as follows:

Plant and Equipment – Consumed economic benefit / Obsolescence of asset

Assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the cost (Depreciated Replacement Cost or DRC) approach. Under the DRC approach the estimated cost to replace the asset is calculated and then adjusted to take into account its consumed economic benefit / asset obsolescence (accumulated Depreciation). Consumed economic benefit / asset obsolescence has been determined based on professional judgment regarding physical, economic and external obsolescence factors relevant to the asset under consideration.

The Court controls a variety of specialised assets (totalling 86% of their non-financial assets). These assets are used to deliver operational activities that support the FCA and are not actively traded.

The weighted average is determined by assessing the fair value measurement as a proportion of the total fair value for the class against the total useful life of each asset.

Recurring Level 3 fair value measurements – sensitivity of inputs

Plant and Equipment – Consumed economic benefit / Obsolescence of asset

The significant unobservable inputs used in the fair value measurement of the Court's plant and equipment asset classes relate to the consumed economic benefit / asset obsolescence (accumulated depreciation). A significant increase (decrease) in this input would result in a significantly lower (higher) fair value measurement.

NOTE 5D: RECONCILIATION FOR RECURRING LEVEL 3 FAIR VALUE MEASUREMENTS

	NON-FINANCIAL ASSETS		
	PROPERTY, PLANT AND EQUIPMENT	LEASEHOLD IMPROVEMENTS	TOTAL
	2014 \$'000	2014 \$'000	2014 \$'000
Opening balance	2,853	11,999	
Total gains/(losses) in accumulated depreciation	167	2,766	
Purchases	392	1,556	–
Sales	–	–	–
Transfers into Level 3	–	–	–
Transfers out of Level 3	–	–	–
Closing balance	3,412	16,321	19,732
Changes in unrealised gains/(losses) recognised in net cost of services for assets held at the end of the reporting period	–	–	–

There have been no transfers between the levels of the hierarchy during the year. The Court's policy for determining when transfers between levels are deemed to have occurred can be found in note 1.

NOTE 6: FINANCIAL ASSETS

NOTE 6A: CASH AND CASH EQUIVALENTS

	2014 \$'000	2013 \$'000
Cash on hand or on deposit	576	279
Total cash and cash equivalents	576	279

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 6B: TRADE AND OTHER RECEIVABLES

	2014 \$'000	2013 \$'000
Goods and services receivables in connection with		
External parties	765	583
Total goods and services receivable	765	583
Appropriations receivable		
Existing programmes – operating	43,959	43,637
Existing programmes – capital	755	2,587
Total appropriations receivable	44,714	46,224
Other receivables		
GST receivable from the Australian Taxation Office	911	898
Total other receivables	911	898
Total trade and other receivables (gross)	46,390	47,705
Less impairment allowance		
Goods and services	3	3
Total impairment allowance	3	3
Total trade and other receivables (net)	46,387	47,702
Receivables are aged as follows:		
Not overdue	46,370	47,678
Overdue by:		
Less than 30 days	2	15
31 to 60 days	2	8
61 to 90 days	1	1
More than 90 days	15	3
Total receivables (gross)	46,390	47,705
All receivables are expected to be recovered within 12 months. Credit terms are net 30 days (2013: 30 days).		
Reconciliation of the impairment allowance account:		
Opening balance	3	5
Amounts written off	(3)	–
Amounts recovered and reversed	–	(4)
Increase recognised in net surplus	3	2
Closing balance	3	3

The impairment allowance is all aged over 90 days.

NOTE 7: NON-FINANCIAL ASSETS

NOTE 7A: LAND AND BUILDINGS

	2014 \$'000	2013 \$'000
Leasehold improvements		
Fair value	16,523	16,064
Accumulated depreciation	(203)	(4,065)
Total leasehold improvements	16,320	11,999
Total land and buildings	16,320	11,999

No indications of impairment were found for land and buildings.

NOTE 7B: PROPERTY, PLANT AND EQUIPMENT

	2014 \$'000	2013 \$'000
Property, plant and equipment		
Fair value	8,948	11,396
Accumulated depreciation	(1,459)	(3,430)
Total property, plant and equipment	7,489	7,966
Total property, plant and equipment	7,489	7,966

All revaluations are conducted in accordance with the valuation policy stated in Note 1. In 2013–14, formal valuations were conducted by an independent valuer, Australian Valuation Solutions.

No indications of impairment were found for infrastructure, plant and equipment.

NOTE 7C: INTANGIBLE ASSETS

	2014 \$'000	2013 \$'000
Computer software at cost		
Internally developed – in progress	3,026	604
Internally developed – in use	2,763	2,763
Purchased – in use	1,680	1,378
Accumulated amortisation	(2,586)	(1,894)
Total intangibles	4,883	2,851

No indication of impairment was found for intangibles.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 7D: ANALYSIS OF INFRASTRUCTURE, PROPERTY, PLANT, AND EQUIPMENT

TABLE A – Reconciliation of the opening and closing balances of property, plant, and equipment (2013–14)

ITEM	LEASEHOLD IMPROVEMENT – TOTAL LAND AND BUILDINGS \$'000	INFRASTRUCTURE, PLANT AND EQUIPMENT \$'000	COMPUTER SOFTWARE – INTANGIBLES \$'000	TOTAL \$'000
As at 1 July 2013				
Gross book value	16,064	11,396	4,745	32,205
Accumulated depreciation/amortisation	(4,065)	(3,430)	(1,894)	(9,389)
Net book value 1 July 2013	11,999	7,966	2,851	22,816
Additions:				
Purchases	1,555	927	2,724	5,206
Revaluations recognised in comprehensive income	4,822	668	–	5,490
Revaluations recognised in net cost of services	–	(20)	–	(20)
Impairments recognised in net cost of services	(34)	(75)	–	(109)
Depreciation/amortisation expense	(2,022)	(1,977)	(692)	(4,691)
Disposals:				
Other disposals	–	–		
Net book value 30 June 2014	16,320	7,489	4,883	28,692
Net book value as of 30 June 2014 represented by:				
Gross book value	16,523	8,948	7,469	32,940
Accumulated depreciation/amortisation	(203)	(1,459)	(2,586)	(4,248)
	16,320	7,489	4,883	28,692

TABLE A – Reconciliation of the opening and closing balances of property, plant, and equipment (2012–13)

ITEM	LEASEHOLD IMPROVEMENT – TOTAL LAND AND BUILDINGS \$'000	INFRASTRUCTURE, PLANT AND EQUIPMENT \$'000	COMPUTER SOFTWARE – INTANGIBLES \$'000	TOTAL \$'000
As at 1 July 2012				
Gross book value	13,552	8,290	3,905	25,747
Accumulated depreciation/amortisation	(1,962)	(1,760)	(1,294)	(5,016)
Net book value 1 July 2012	11,590	6,530	2,611	20,731
Additions:				
By purchase	575	1,647	1,020	3,242
Finance Lease	–	5	–	5
Received from restructuring	1,788	1,543	372	3,703
Depreciation/amortisation expense	(1,954)	(1,712)	(599)	(4,265)
Impairments recognised in the operating result	–	(5)	(553)	(558)
Disposals:				
Other disposals	–	(42)	–	(42)
Net Book value 30 June 2013	11,999	7,966	2,851	22,816
Net book value as of 30 June 2013 represented by:				
Gross book value	16,064	11,396	4,745	32,205
Accumulated depreciation/amortisation	(4,065)	(3,430)	(1,894)	(9,389)
	11,999	7,966	2,851	22,816

NOTE 7E: OTHER NON-FINANCIAL ASSETS

	2014 \$'000	2013 \$'000
Prepayments	956	522
Total other non-financial assets	956	522
Total other non-financial assets are expected to be recovered in:		
No more than 12 months	941	522
More than 12 months	15	–
Total other non-financial assets	956	522

No indicators of impairment were found for other non-financial assets.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 8: PAYABLES

NOTE 8A: SUPPLIERS

	2014 \$'000	2013 \$'000
Trade creditors and accruals	1,407	1,895
Total supplier payables	1,407	1,895

All supplier payables are expected to be settled within 12 months.

All supplier payables are in connection with external parties.

Settlement is usually made net 30 days.

NOTE 8B: OTHER PAYABLES

	2014 \$'000	2013 \$'000
Salaries and wages	1,371	1,005
Unearned Income	75	219
Separation and redundancies	274	185
Superannuation	1,052	860
Total other payables	2,772	2,269

All other payables are expected to be settled within 12 months.

NOTE 9: INTEREST BEARING LIABILITIES

NOTE 9: LEASES

	2014 \$'000	2013 \$'000
Finance leases	409	812
Total finance leases	409	812
Leases expected to be settled		
Within one year:		
Minimum lease payments	385	448
Deduct: future finance charges	(17)	(45)
Between one and five years:		
Minimum lease payments	42	427
Deduct: future finance charges	(1)	(18)
Finance leases recognised on the balance sheet	409	812

Finance leases are for certain major IT equipment assets and some office equipment. The leases are non-cancellable and for fixed terms averaging four years, with a maximum of five years. The interest rate implicit in the leases averaged 4.31% (2013: 4.31%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 10: PROVISIONS

NOTE 10A: JUDGE & EMPLOYEE PROVISIONS

	2014 \$'000	2013 \$'000
Long Leave (Judges)	10,033	9,918
Leave	10,028	9,992
Total judge and employee provisions	20,061	19,910
Employee provisions are expected to be settled in:		
No more than 12 months	4,913	4,916
More than 12 months	15,148	14,994
Total judge and employee provisions	20,061	19,910

NOTE 10B: OTHER PROVISIONS

	2014 \$'000	2013 \$'000
Provision for restoration	254	252
Total other provisions	254	252
Other provisions are expected to be settled in:		
No more than 12 months	170	–
More than 12 months	84	252
Total other	254	252
Provision for Restoration		
Carrying Amount 1 July	252	–
Additional Provisions Made	2	252
Unwinding of discount or change in discount rate	–	–
Closing Balance 30 June	254	252

The Court has made provision to restore leased premises in Cairns and Brisbane to their original state at the end of the lease periods.

NOTE 11: RESTRUCTURING

	2014 \$'000	2013 NATIONAL NATIVE TITLE TRIBUNAL \$'000
FUNCTIONS ASSUMED		
Assets Recognised		
Appropriations receivable	-	13,599
Trade and other receivables	-	129
Cash	-	259
Property, plant and equipment	-	3,330
Intangibles	-	373
Prepayments	-	120
Total assets recognised	-	17,810
Liabilities recognised		
Suppliers	-	(436)
Wages and salaries	-	(435)
Superannuation	-	(64)
Separations and redundancies	-	(974)
Other payables	-	(141)
Leave	-	(3,436)
Other provisions	-	(352)
Total liabilities recognised	-	(5,838)
Net assets assumed	-	11,972

The Federal Court assumed responsibility for the operation of the National Native Title Tribunal from 1 July 2012. The net assets assumed from the Tribunal were \$11,972,000. All assets and liabilities were assumed from the Tribunal for no consideration.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 12: CASH FLOW RECONCILIATION

	2014 \$'000	2013 \$'000
Reconciliation of cash and cash equivalents as per Statement of Financial Position to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash Flow Statement	576	279
Statement of Financial Position	576	279
Difference	–	–
Reconciliation of net cost of services to net cash from operating activities:		
Net (cost of) services	(96,342)	(91,167)
Revenue from Government	93,213	89,020
Adjustments for non-cash items		
Depreciation/amortisation	4,691	4,265
Net write down of non-financial assets	129	558
Net Assets received from restructuring	–	8,269
Movements in assets and liabilities		
Assets		
(Increase) in net operating receivables	(516)	(16,857)
(Increase)/decrease in prepayments	(434)	21
Liabilities		
Increase/(decrease) in suppliers payables	(488)	1,088
Increase in judge and employee provisions	151	2,841
Increase in other provisions	2	252
Increase in other payables	503	543
Net cash from/(used by) operating activities	909	(1,167)

NOTE 13: SENIOR EXECUTIVE REMUNERATION

NOTE 13A: SENIOR EXECUTIVE REMUNERATION EXPENSE FOR THE REPORTING PERIOD

	2014 \$	2013 \$
Short term employee benefits:		
Salary (including annual leave taken)	2,587,063	2,806,678
Performance bonus	27,500	6,200
Motor vehicle and other allowances	238,482	244,123
Total Short-term employee benefits	2,853,045	3,057,001
Post-employment benefits:		
Superannuation	415,163	539,632
Total Post-employment benefits	415,163	539,632
Other long term employee benefits		
Annual leave accrued	217,646	228,847
Long service leave	71,304	73,229
Total other long term benefits	288,950	302,076
Termination benefits		
Redundancy payments	–	248,338
Total Termination Benefits	–	248,338
Total senior executive remuneration expenses	3,557,158	4,147,047

Note 13A is prepared on an accrual basis.

Note 13A excludes acting arrangements and part-year service where total remuneration expensed for a senior executive was less than \$195,000.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 13B: AVERAGE ANNUAL REPORTABLE REMUNERATION PAID TO SUBSTANTIVE SENIOR EXECUTIVES DURING THE REPORTING PERIOD

AVERAGE ANNUAL REPORTABLE REMUNERATION	NO OF SENIOR EXECUTIVES	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	BONUS PAID \$	TOTAL \$
2014						
Total remuneration (including part-time arrangements):						
Less than \$195,000	1	150,287	23,144	-	-	173,431
\$195,000 to \$224,999	1	171,424	26,399	20,734	-	218,557
\$225,000 to \$254,999	4	180,021	29,547	16,796	6,875	233,239
\$255,000 to \$284,999	4	229,243	35,535	15,352	-	280,130
\$285,000 to \$314,999	2	248,625	39,421	13,284	-	301,330
\$375,000 to \$404,999	1	289,947	49,592	62,587	-	402,126
Total	13					
2013						
Total remuneration (including part-time arrangements):						
Less than \$195,000	1	40,800	4,498	-	-	45,298
\$195,000 to \$224,999	2	170,053	25,235	3,723	3,100	202,111
\$225,000 to \$254,999	3	191,476	30,371	12,074	-	233,921
\$255,000 to \$284,999	5	222,239	42,028	16,812	-	281,079
\$285,000 to \$314,999	2	250,144	41,076	-	-	291,220
\$465,000 to \$494,999	1	283,100	143,283	61,115	-	487,498
Total	14					

Notes:

1. This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.
2. 'Reportable salary' includes the following:
 - (a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
 - (b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
 - (c) reportable employer superannuation contributions
3. The 'contributed superannuation' amount is the average cost to the Court for the provision of superannuation benefits to substantive senior executives in that reportable remuneration band during the reporting period.
4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
5. Bonuses paid represents average actual bonuses paid during the reporting year in that remuneration band. The bonus paid within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the Court during the financial year.

NOTE 13C: OTHER HIGHLY PAID STAFF

AVERAGE ANNUAL REPORTABLE REMUNERATION	NO OF STAFF	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$
2014					
Total remuneration (including part-time arrangements):					
\$195,000 to \$224,999	2	161,441	28,599	18,351	208,391
Total	2				
2013					
Total remuneration (including part-time arrangements):					
\$195,000 to \$224,999	2	170,934	26,167	–	197,101
Total	2				

Notes:

1. This table reports staff:
 - (a) who were employed by the Court during the reporting period;
 - (b) whose reportable remuneration was \$195,000 or more for the financial period; and
 - (c) were not required to be disclosed in Table B or director disclosures.Each row is an averaged figure based on headcount for individuals in the band.
2. 'Reportable salary' includes the following:
 - (a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
 - (b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits)
 - (c) reportable employer superannuation contributions
3. The 'contributed superannuation' amount is the average cost to the Court for the provision of superannuation benefits to other highly paid staff in that reportable remuneration band during the reporting period.
4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 14: REMUNERATION OF AUDITORS

	2014 \$'000	2013 \$'000
Financial statement audit services are provided free of charge to the Court by the Australian National Audit Office (ANAO).		
The fair value of the services provided was:	104	104

NOTE 15: FINANCIAL INSTRUMENTS

	2014 \$'000	2013 \$'000
Note 15A Categories of financial instruments		
Loans and receivables		
Loans and receivables		
Cash on hand or on deposit	576	279
Trade receivables	762	580
Carrying amount of financial assets	1,338	859
Financial Liabilities		
At amortised cost:		
Finance leases	409	812
Trade creditors	1,407	1,895
Carrying amount of financial liabilities	1,816	2,707

NOTE 15B: FAIR VALUE OF FINANCIAL INSTRUMENTS

	CARRYING AMOUNT 2014 \$'000	FAIR VALUE 2014 \$'000	CARRYING AMOUNT 2013 \$000	FAIR VALUE 2013 \$'000
FINANCIAL LIABILITIES				
Other Liabilities				
Finance leases	409	409	812	812
Total	409	409	812	812

Fair value for Finance leases which was determined for disclosure purposes was calculated based on the present value of future principal and interest cash flows, discounted at 4.31% at the reporting date. (2013: 4.31%)

NOTE 15C: NET GAINS OR LOSSES ON FINANCIAL LIABILITIES

	2014 \$'000	2013 \$'000
Loans and receivables		
Interest expense	45	72
Net losses on financial liabilities carried at amortised cost	576	279
Trade receivables	762	580
Carrying amount of financial assets	1,338	859

NOTE 15D: CREDIT RISK

The Court is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2014: \$765,000 and 2013: \$583,000). The Court has assessed the risk of default on payment and has allocated \$3,000 in 2014 (2013: \$3,000) to an impairment allowance account.

The Court manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Court has policies and procedures that are to be applied by employees who perform debt recovery duties.

The Court holds no collateral to mitigate credit risk.

Credit quality of financial instruments not past due or individually determined as impaired

	NOT PAST DUE NOR IMPAIRED 2014 \$'000	NOT PAST DUE NOR IMPAIRED 2013 \$'000	PAST DUE OR IMPAIRED 2014 \$'000	PAST DUE OR IMPAIRED 2013 \$'000
Loans and receivables				
Cash	576	279	–	–
Trade receivables	745	556	20	27
Total	1,321	835	20	27

Ageing of financial assets that are past due but not impaired for 2014

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Trade receivables	2	2	1	12	17
Total	2	2	1	12	17

All amounts assessed as impaired are aged greater than 90 days.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Ageing of financial assets that are past due but not impaired for 2013

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Trade receivables	15	8	1	–	24
Total	15	8	1	–	24

NOTE 15E: LIQUIDITY RISK

The Court's financial liabilities are payables, loans from government, finance leases and other interest bearing liabilities. The exposure to liquidity risk is based on the notion that the Court will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely as the Court is appropriated funding from the Australian Government and the Court manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Court has policies in place to ensure timely payments were made when due and has no past experience of default.

Maturities for non-derivative financial liabilities 2014

	WITHIN 1 YEAR 2014 \$'000	1 TO 5 YEARS 2014 \$'000	TOTAL 2014 \$'000
Other liabilities			
Payables – Suppliers	1,407		1,407
Finance leases	367	42	409
Total	1,774	42	1,816

Maturities for non-derivative financial liabilities 2013

	WITHIN 1 YEAR 2013 \$'000	1 TO 5 YEARS 2013 \$'000	TOTAL 2013 \$'000
Other liabilities			
Payables – Suppliers	1,895	–	1,895
Finance leases	403	409	812
Total	2,298	409	2,707

This note also applies to the Court's administered financial instruments and is therefore not reproduced at Note 21.

Interest Rate Risk

The only interest-bearing item on the statement of financial position is the 'Finance lease'. All bear interest at a fixed interest rate and will not fluctuate due to changes in the market interest rate.

NOTE 16: FINANCIAL ASSETS RECONCILIATION

	2014 \$'000	2013 \$'000
Total financial assets as per statement of financial position	46,963	47,981
Less: non-financial instrument components		
Appropriations receivable	44,714	46,224
GST receivable	911	898
Carrying amount of financial assets	45,625	47,122
Total financial assets as per financial instruments note	1,338	859

NOTE 17: ADMINISTERED – EXPENSES

	2014 \$'000	2013 \$'000
Expenses		
Fees and fines – write down	188	–
Fees and fines – provision for doubtful debts	238	(180)
Total expenses administered on behalf of government	426	(180)

NOTE 18: ADMINISTERED – INCOME

	2014 \$'000	2013 \$'000
Non-Taxation revenue		
Fees (filing and hearing fees)	18,776	16,966
Fines	696	147
Other	186	125
Total revenue administered on behalf of government	19,658	17,238

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 19: ADMINISTERED – FINANCIAL ASSETS

NOTE 19A: CASH AND CASH EQUIVALENTS

	2014 \$'000	2013 \$'000
Cash on hand or on deposit	29	40
Total cash and cash equivalents	29	40

NOTE 19B: RECEIVABLES

	2014 \$'000	2013 \$'000
Fees (filing and hearing fees)	2,190	2,983
Less: Impairment allowance account	(264)	(80)
Total receivables (net)	1,926	2,903
All receivables are expected to be recovered within 12 months.		
Receivables are aged as follows:		
Not overdue	520	1,270
Overdue by:		
– Less than 30 days	628	931
– 30 to 60 days	256	320
– 60 to 90 days	100	82
– More than 90 days	686	380
Total receivables (gross)	2,190	2,983
The total of the impairment allowance is aged over 90 days.		
Receivables are with entities external to the Australian Government. Credit terms are net 30 days (2013: 30 days).		
Reconciliation of the impairment allowance account:		
Opening balance	80	329
Increase/decrease recognised in net cost of services	238	(180)
Amounts written off	(54)	(69)
Closing balance	264	80

NOTE 20: ADMINISTERED – PAYABLES

NOTE 20A: SUPPLIERS

	2014 \$'000	2013 \$'000
Other payables	132	304
Total suppliers	132	304

NOTE 21: ADMINISTERED – CASH FLOW RECONCILIATION

	2014 \$'000	2013 \$'000
Reconciliation of cash and cash equivalents as per Administered Schedule of assets and liabilities to administered cash flow statement		
Cash and cash equivalents as per:		
Schedule of administered cash flows	29	40
Schedule of administered assets and liabilities	29	40
Difference	–	–
Reconciliation of net cost of services to net cash from operating activities:		
Net contribution by services	19,232	17,418
Changes in assets/liabilities		
(Increase)/decrease in net receivables	977	(2,364)
Increase/(decrease) in payables	(172)	304
Net cash from operating activities	20,037	15,358

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 22: ADMINISTERED FINANCIAL INSTRUMENTS

NOTE 22A: CATEGORIES OF FINANCIAL INSTRUMENTS

	2014 \$'000	2013 \$'000
Financial assets		
Loans and receivables		
Cash	29	40
Trade receivables	1,926	2,903
Carrying amount of financial assets	1,955	2,943

NOTE 22B: CREDIT RISK

The administered activities of the Court are not exposed to a high level of credit risk as the majority of financial assets are receivables. The Court has policies and procedures that guide employees who perform debt recovery functions.

The maximum exposure to credit risk is outlined in the table below.

	2014 \$'000	2013 \$'000
Financial assets		
Loans and receivables		
Receivables	2,190	2,983
Total	2,190	2,983

The Court has assessed the risk of default on payment and has allocated \$175,000 to an allowance for doubtful debts account. (2013: \$80,000)

Credit quality of financial instruments not past due or individually determined as impaired

	NOT PAST DUE NOR IMPAIRED 2014 \$'000	NOT PAST DUE NOR IMPAIRED 2013 \$'000	PAST DUE OR IMPAIRED 2014 \$000	PAST DUE OR IMPAIRED 2013 \$'000
Loans and receivables				
Cash	29	40	–	–
Trade receivables	520	1,270	1,670	1,713
Total	549	1,310	1,670	1,713

Ageing of financial assets that are past due but not impaired for 2014

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Receivables	628	256	100	422	1,406
Total	628	256	100	422	1,406

All amounts assessed as impaired are aged greater than 90 days.

Ageing of financial assets that are past due but not impaired for 2013

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Receivables	931	320	82	300	1,633
Total	931	320	82	300	1,633

NOTE 23: ADMINISTERED FINANCIAL ASSETS RECONCILIATION

	2014 \$'000	2013 \$'000
Total financial assets as per administered schedule of assets and liabilities	1,955	2,943
Less: non-financial instrument components	–	–
Carrying amount of financial assets	1,955	2,943
Total financial assets as per financial instruments note	1,955	2,943

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 24: APPROPRIATIONS

NOTE 24A: ANNUAL APPROPRIATIONS ('RECOVERABLE GST EXCLUSIVE')

Annual Appropriations for 2014

	APPROPRIATION ACT		FMA ACT		APPROPRIATION APPLIED IN 2014		VARIANCE \$'000
	ANNUAL APPROPRIATION \$'000		SECTION 30 \$'000	SECTION 31 \$'000	SECTION 32 APPROPRIATION \$'000	TOTAL \$'000	
DEPARTMENTAL							
Ordinary Annual Services	96,379		35	3,272	-	99,686	(1,318)
Other Services							
Equity							
Total departmental	96,379	-	35	3,272	-	99,686	(1,318)

Notes:

(a) Appropriations reduced under *Appropriation Act (No 1) 2013-14*: section 10. Departmental appropriations do not lapse at year end. However, the responsible minister may decide that part or all of an appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

Annual Appropriations for 2013

	APPROPRIATION ACT		FMA ACT		APPROPRIATION APPLIED IN 2013		VARIANCE \$'000
	ANNUAL APPROPRIATION \$'000		SECTION 30 \$'000	SECTION 31 \$'000	SECTION 32 APPROPRIATION \$'000	TOTAL \$'000	
DEPARTMENTAL							
Ordinary Annual Services	92,689	-	48	3,441	13,579	109,757	15,701
Other Services							
Equity							
Total departmental	92,689	-	48	3,441	13,598	109,776	15,720

Notes:

(a) Appropriations reduced under *Appropriation Act (No 1) 2012-13*: section 10. Departmental appropriations do not lapse at year end. However, the responsible minister may decide that part or all of an appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

NOTE 24B: DEPARTMENTAL CAPITAL BUDGETS ('RECOVERABLE GST EXCLUSIVE')

2014 CAPITAL BUDGET APPROPRIATIONS					CAPITAL BUDGET APPROPRIATIONS APPLIED IN 2014 (CURRENT AND PRIOR YEARS) \$'000
APPROPRIATION ACT					
ANNUAL CAPITAL BUDGET \$'000	APPROPRIATIONS REDUCED	TOTAL CAPITAL BUDGET APPROPRIATIONS \$'000	PAYMENTS FOR NON-FINANCIAL ASSETS ² \$000	VARIANCE \$'000	
DEPARTMENTAL					
Ordinary Annual Services					
Departmental Capital Budget ¹	3,166	–	3,166	(5,609)	(2,443)

Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Payments made on non-financial assets include purchase of assets, expenditure on assets which have been capitalised, and the capital repayment component of finance leases.

2013 CAPITAL BUDGET APPROPRIATIONS					CAPITAL BUDGET APPROPRIATIONS APPLIED IN 2013 (CURRENT AND PRIOR YEARS) \$'000
APPROPRIATION ACT					
ANNUAL CAPITAL BUDGET \$'000	APPROPRIATIONS REDUCED	TOTAL CAPITAL BUDGET APPROPRIATIONS \$'000	PAYMENTS FOR NON-FINANCIAL ASSETS ² \$000	VARIANCE \$'000	
DEPARTMENTAL					
Ordinary Annual Services					
Departmental Capital Budget ¹	3,669	–	3,669	(3,663)	6

Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Payments made on non-financial assets include purchase of assets, expenditure on assets which have been capitalised, and the capital repayment component of finance leases.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 24C: UNSPENT DEPARTMENTAL ANNUAL APPROPRIATIONS (‘RECOVERABLE GST EXCLUSIVE’)

	2014 \$'000	2013 \$'000
Authority		
Appropriation Act (No 1) 2010–11	–	598
Appropriation Act (No 1) 2012–13	–	43,418
Appropriation Act (No 2) 2012–13	19	19
Appropriation Act (No 3) 2012–13	–	2,468
Appropriation Act (No 1) 2013–14	44,904	–
Appropriation Act (No 3) 2013–14	367	–
Total	45,290	46,503

NOTE 25: SPECIAL ACCOUNTS AND FMA ACT SECTION 39 INVESTMENTS

NOTE 25A: SPECIAL ACCOUNTS (RECOVERABLE GST EXCLUSIVE)

	SERVICES FOR OTHER ENTITIES AND TRUST MONEYS SPECIAL ACCOUNT ¹		FEDERAL COURT OF AUSTRALIA LITIGANTS FUND ²	
	2014 \$'000	2013 \$'000	2014 \$'000	2013 \$'000
Balance brought forward from previous period	48	12	3,084	2,258
Increases:				
Other receipts	402	434	19,273	3,928
Total increases	402	434	19,273	3,928
Available for payments	450	446	22,357	6,186
Decreases:				
Special Public Money				
Payments made to others	450	398	20,054	3,102
Total special public money decreases	450	398	20,054	3,102
Total decreases	450	398	20,054	3,102
Total balance carried to the next period	–	48	2,303	3,084

1. Appropriation: *Financial Management and Accountability Act, 1997*, section 20
Establishing Instrument: FMA Determination 2012/11
Purpose: To disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth.
2. Appropriation: *Financial Management and Accountability Act, 1997*, section 20
Establishing Instrument: FMA determination 2004/07
Purpose: The purposes of the Federal Court of Australia Litigant's Fund Special Account, in relation to which amounts may be debited from the Special Account are:
 - (a) In accordance with:
 - (i) An order of the Federal Court of Australia or a Judge of that Court under rule 2.43 of the Federal Court Rules; or
 - (ii) A direction of a Registrar under that Order; and
 - (b) In any other case in accordance with the order of the Federal Court of Australia or a Judge of that Court.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 25B: INVESTMENTS MADE UNDER SECTION 39 OF THE FMA ACT (RECOVERABLE GST EXCLUSIVE)

Section 39 Investments made in 2014

	BALANCE BROUGHT FORWARD FROM PREVIOUS PERIOD \$'000	INVESTMENTS MADE \$'000	INVESTMENT INCOME \$'000	TRANSACTIONAL CHARGES \$'000	INVESTMENTS REALISED \$'000	TOTAL BALANCE CARRIED TO THE NEXT PERIOD \$'000
Federal Court of Australia Litigants Fund	34,868	18,746	188	6	33,246	20,550
Total	34,868	18,746	188	6	33,246	20,550

Moneys held in the special account are invested in interest-bearing bank accounts by order of a judge of the Federal Court of Australia.

Section 39 Investments made in 2013

	BALANCE BROUGHT FORWARD FROM PREVIOUS PERIOD \$'000	INVESTMENTS MADE \$'000	INVESTMENT INCOME \$'000	TRANSACTIONAL CHARGES \$'000	INVESTMENTS REALISED \$'000	TOTAL BALANCE CARRIED TO THE NEXT PERIOD \$'000
Federal Court of Australia Litigants Fund	6,111	40,567	393	1	12,202	34,868
Total	6,111	40,567	393	1	12,415	34,868

Moneys held in the special account are invested in interest-bearing bank accounts by order of a judge of the Federal Court of Australia.

NOTE 26: COMPENSATION AND DEBT RELIEF

	2014	2013
No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the <i>Financial Management and Accountability Act 1997</i> . (2013: nil)	–	–
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> (2013: nil)	–	–
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period (2013: nil)	–	–
No ex-gratia payments were provided for during the reporting period (2013: nil)	–	–
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the <i>Public Service Act 1999</i> (PS Act) during the reporting period (2013: nil)	–	–
ADMINISTERED	2014 \$'000	2013 \$'000
No Act of Grace expenses were incurred during the reporting period under sub-section 33(1) of the <i>Financial Management and Accountability Act 1997</i> . (2013: nil)	–	–
No payments were waived during the reporting period under subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> . (2013: nil).	–	–
1,199 exemptions and waivers of amounts owing to the Commonwealth were made pursuant to sub-regulations 2(4)(a-c), 2A(2)(e-g), 2AA(2)(f-h) of the <i>Federal Court and Federal Circuit Court Regulation 2012</i> . (2013: 976)	2,225	1,579

NOTE 27: REPORTING OF OUTCOMES

NOTE 27A: NET COST OF OUTCOME DELIVERY

The Court has one Output and Outcome:

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.

	OUTCOME 1	
	2014 \$'000	2013 \$'000
OUTCOME 1		
Departmental		
Expenses	132,727	125,409
Own-source Income	36,385	34,242
Administered		
Expenses	426	(180)
Income	19,658	17,418
Net cost/(contribution) of outcome delivery	77,110	73,569

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

NOTE 27B: MAJOR CLASSES OF DEPARTMENTAL EXPENSES, INCOME, ASSETS AND LIABILITIES BY OUTCOME

OUTCOME 1	OUTCOME 1	
	2014 \$'000	2013 \$'000
Departmental expenses		
Judges and Employees	80,128	73,798
Suppliers	47,730	46,714
Depreciation and Amortisation	4,691	4,265
Finance costs	45	72
Other Expenses	133	560
Total	132,727	125,409
Departmental income		
Income from government	125,925	119,921
Sale of goods and services	3,673	3,341
Total	129,598	123,262
Departmental assets		
Cash and cash equivalents	576	279
Trade and other receivables	46,387	47,702
Property, plant and equipment	23,809	19,965
Intangibles	4,883	2,851
Other non-financial assets	956	522
Total	76,611	71,319
Departmental liabilities		
Suppliers	1,407	1,895
Leases	409	812
Judge and employee provisions	20,061	19,910
Other payables and provisions	3,026	2,521
Total	24,903	25,138

NOTE 27C: MAJOR CLASSES OF ADMINISTERED EXPENSES, INCOME, ASSETS AND LIABILITIES BY OUTCOME

OUTCOME 1	OUTCOME 1	
	2014 \$'000	2013 \$'000
Administered expenses		
Write off expense	188	–
Doubtful debts expense	238	(180)
Total	426	(180)
Administered income		
Non-taxation revenue	19,658	17,238
Total	19,658	17,238
Administered assets		
Cash and cash equivalents	29	40
Trade and other receivables	1,926	2,903
Total	1,955	2,943
Administered liabilities		
Other payables	132	304
Total	132	304

NOTE 28: NET CASH APPROPRIATION ARRANGEMENTS

	2014 \$'000	2013 \$'000
Total comprehensive income (loss) less depreciation/amortisation expenses previously funded through revenue appropriations¹	7,052	2,118
Plus: depreciation/ amortisation expenses previously funded through revenue appropriation	(4,691)	(4,265)
Total comprehensive income (loss) as per the Statement of Comprehensive Income	2,361	(2,147)

1. From 2010–11, the Government introduced net cash appropriation arrangements, where revenue appropriations for depreciation/amortisation expenses ceased. Entities now receive a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

APPENDIX 2

AGENCY RESOURCE STATEMENT

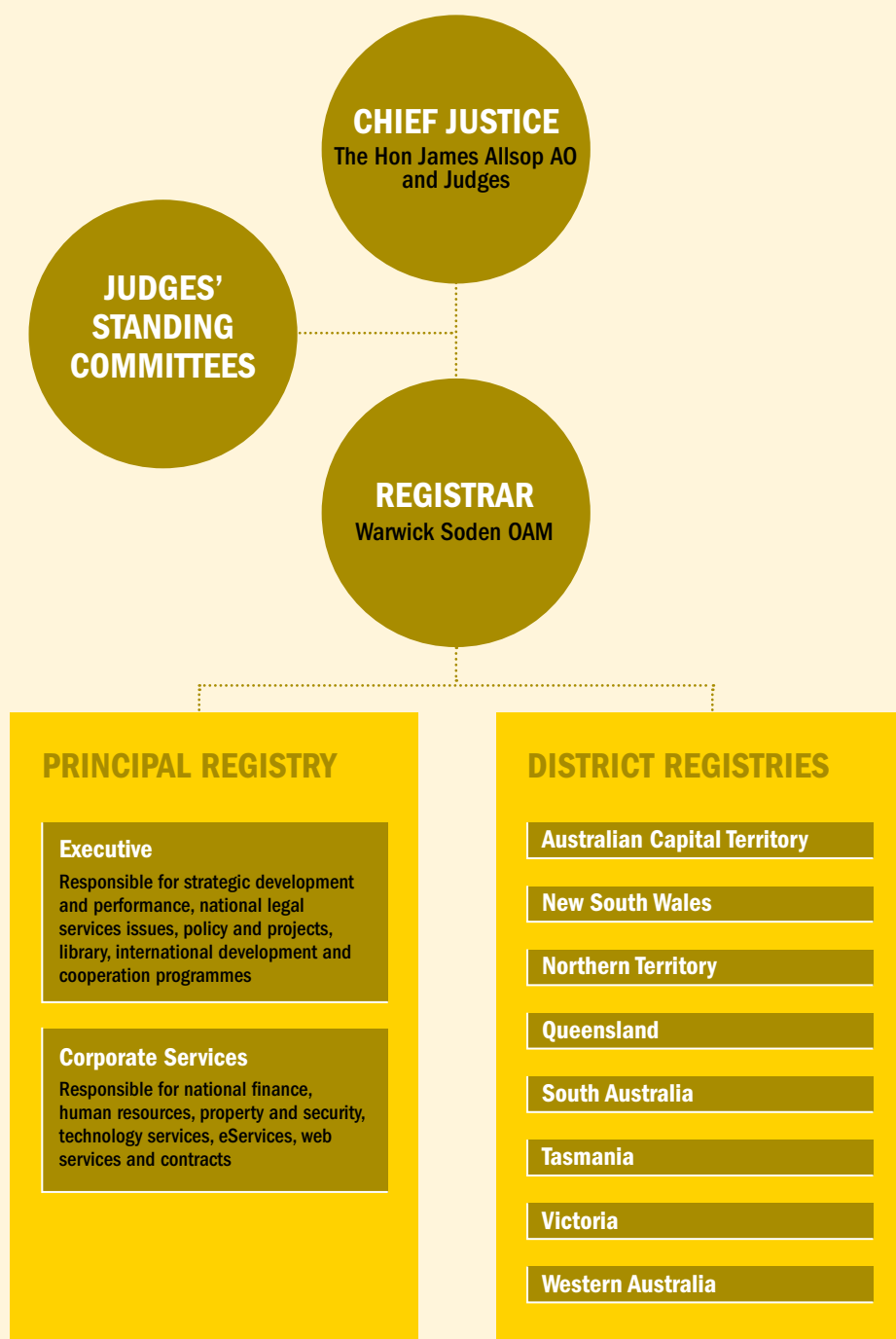
	ACTUAL AVAILABLE APPROPRIATIONS FOR 2013-14 \$'000	PAYMENTS MADE 2013-14 \$'000	BALANCE REMAINING \$'000
ORDINARY ANNUAL SERVICES¹			
Departmental appropriation			
Prior year departmental appropriation	46 225	46 225	–
Departmental appropriation ²	96 379	51 665	44 714
s 31 relevant agency receipts	3 673	3 673	–
Total	146 277	101 563	44 714
Total ordinary annual services	146 277	101 563	44 714
OTHER SERVICES			
Departmental non-operating			
Previous year's outputs			–
Total			–
Total other services			–
Total available annual appropriations	146 277	101 563	44 714
Total appropriations excluding special accounts	146 277	101 563	44 714
Total resourcing	146 277	101 563	44 714
Total net resourcing for Court	146 277	101 563	44 714

¹ Appropriation Bill (No.1) 2013–14 and Appropriation Bill (No. 2) 2013–14.

² Includes a Departmental Capital Budget of \$3.166m.

APPENDIX 3

FEDERAL COURT MANAGEMENT STRUCTURE



APPENDIX 4

REGISTRARS OF THE COURT

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
PRINCIPAL REGISTRY		
Registrar	Warwick Soden OAM	
Deputy Registrars	John Mathieson	Sheriff A Registrar, Federal Circuit Court A Deputy Sheriff, Federal Circuit Court
	Angela Josan (based in Melbourne)	
	Ian Irving (based in Sydney)	A Registrar, Federal Circuit Court
	June Eaton (based in Perth)	A Registrar, Federal Circuit Court
	Russell Trott (based in Perth)	A Registrar, Federal Circuit Court
	Ann Daniel (based in Perth)	A Registrar, Federal Circuit Court
	Christine Fewings (based in Brisbane)	
	Nicola Colbran (based in Brisbane)	A Registrar, Federal Circuit Court
NEW SOUTH WALES		
District Registrar	Michael Wall	Registrar, Copyright Tribunal A Registrar, Federal Circuit Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
Deputy District Registrars	Geoffrey Segal	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero	A Registrar, Federal Circuit Court
	Kim Lackenby (based in Canberra)	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Paddy Hannigan	A Registrar, Federal Circuit Court
	Chuan Ng	A Registrar, Federal Circuit Court Deputy Registrar, Supreme Court of Norfolk Island
	Thomas Morgan	A Registrar, Federal Circuit Court

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
VICTORIA		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrars	Daniel Caporale	A Registrar, Federal Circuit Court Deputy Registrar, Supreme Court of Norfolk Island
	Timothy Luxton	A Registrar, Federal Circuit Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Julian Heteyey	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Rupert Burns	A Registrar, Federal Circuit Court
	Phillip Allaway	A Registrar, Federal Circuit Court
	David Pringle	A Registrar, Federal Circuit Court
	David Priddle	A Registrar, Federal Circuit Court
QUEENSLAND		
District Registrar	Heather Baldwin	Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrars	Murray Belcher	A Registrar, Federal Circuit Court
	Katie Lynch	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
WESTERN AUSTRALIA		
District Registrar	Martin Jan PSM	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrars	Elizabeth Stanley	A Registrar, Federal Circuit Court
	Rainer Gilich	A Registrar, Federal Circuit Court

APPENDIX 4

REGISTRARS OF THE COURT

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
SOUTH AUSTRALIA		
District Registrar	Katrina Bochner	Registrar, Australian Competition Tribunal A Registrar, Federal Circuit Court
Deputy District Registrar	Belinda Grant	A Registrar, Federal Circuit Court
TASMANIA		
District Registrar	Catherine Scott	District Registrar, Administrative Appeals Tribunal A Registrar, Federal Circuit Court
AUSTRALIAN CAPITAL TERRITORY		
District Registrar	Michael Wall (based in Sydney)	Registrar, Copyright Tribunal A Registrar, Federal Circuit Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
Deputy District Registrars	Geoffrey Segal (based in Sydney)	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero (based in Sydney)	A Registrar, Federal Circuit Court
	Kim Lackenby	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Paddy Hannigan (based in Sydney)	A Registrar, Federal Circuit Court
	Chuan Ng (based in Sydney)	A Registrar, Federal Circuit Court Deputy Registrar, Supreme Court of Norfolk Island
	Thomas Morgan (based in Sydney)	A Registrar, Federal Circuit Court
NORTHERN TERRITORY		
District Registrar	Katrina Bochner (based in Adelaide)	Registrar, Australian Competition Tribunal A Registrar, Federal Circuit Court

APPENDIX 5

WORKLOAD STATISTICS

The statistics in this appendix provide comparative historical information on the work of the Court, including in certain areas of the Court's jurisdiction.

When considering the statistics it is important to note that matters vary according to the nature and complexity of the issues in dispute.

It should also be noted that the figures reported in this report may differ from figures reported in previous years. The variations have occurred through refinements or enhancements to the Casetrack database which necessitated the checking or verification and possible variation of data previously entered.

Casetrack records matters in the Court classified according to sixteen main categories, described as 'causes of action' (CoA). The Court presently reports on filings by major CoA. This is an under representation of the workload as it does not include filings of supplementary CoAs (cross appeals and cross claims), interlocutory applications or Native Title joinder of party applications. In 2007–08 the Court started to count and report on interlocutory applications (including interim applications and notices of motion) in appellate proceedings in order to provide the most accurate possible picture of the Court's appellate workload. From 2008–09 the Court has counted all forms of this additional workload in both its original and appellate jurisdictions.

Table A5.4 on page 141 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of interlocutory applications (because they are recorded in the Court's case management system as a document filed rather than a specific CoA). Because of this, detailed reporting of these matters has been restricted to the information about appeals in Part 3 and Table A5.4. All other tables and figures in this Appendix and through the report are based on major CoA.

APPENDIX 5

WORKLOAD STATISTICS

Table A5.1 – Summary of Workload Statistics – Original and Appellate Jurisdictions
Filings of Major CoAs (including Appellate and Related Actions)

CAUSE OF ACTION	2009-10	2010-11	2011-12	2012-13	2013-14
Total CoAs (incl. Appeals & Related Actions)					
Filed	3646	4942	5280	5803	5009
Finalised	3517	4596	5774	5537	5611
Current	2845	3191	2697	2963	2361
Corporations (incl. Appeals & Related Actions)					
Filed	1678	2839	3327	3897	2903
Finalised	1400	2530	3762	3511	3405
Current	755	1064	629	1015	513
Bankruptcy (incl. Appeals & Related Actions)					
Filed	188	217	185	216	281
Finalised	169	206	192	214	258
Current	99	110	103	105	128
Native Title (incl. Appeals & Related Actions)					
Filed	36	83	98	61	58
Finalised	67	77	107	82	121
Current	474	480	471	450	387
Total CoAs (incl. Appeals & Related Actions and excl. Corporations, Bankruptcy & Native Title)					
Filed	1744	1803	1670	1629	1767
Finalised	1881	1783	1713	1730	1827
Current	1517	1537	1494	1393	1333

Table A5.2 – Summary of Workload Statistics – Excluding Appeals and Related Actions
Filings of Major CoAs

CAUSE OF ACTION	2009-10	2010-11	2011-12	2012-13	2013-14
Total CoAs (excl. Appeals & Related Actions)					
Filed	2951	4304	4664	5169	4281
Finalised	2769	3992	5102	4905	4912
Current	2537	2849	2411	2675	2044
Corporations (excl. Appeals & Related Actions)					
Filed	1642	2798	3284	3849	2875
Finalised	1371	2489	3710	3471	3363
Current	729	1038	612	990	502
Bankruptcy (excl. Appeals & Related Actions)					
Filed	127	144	131	174	219
Finalised	128	133	131	165	198
Current	60	71	71	80	101
Native Title (excl. Appeals & Related Actions)					
Filed	33	73	87	50	44
Finalised	62	68	93	75	109
Current	469	474	468	443	378
Total CoAs (excl. Appeals & Related Actions & excl. Corporations, Bankruptcy & Native Title)					
Filed	1149	1289	1162	1096	1143
Finalised	1208	1302	1168	1194	1242
Current	1279	1266	1260	1162	1063

APPENDIX 5

WORKLOAD STATISTICS

Table A5.3 – Summary of Workload Statistics – Appeals and Related Actions only
Filings of Appeals and Related Actions

CAUSE OF ACTION	2009-10	2010-11	2011-12	2012-13	2013-14
Total Appeals & Related Actions					
Filed	695	638	616	634	728
Finalised	748	604	672	632	699
Current	308	342	286	288	317
Corporations Appeals & Related Actions					
Filed	36	41	43	48	28
Finalised	29	41	52	40	42
Current	26	26	17	25	11
Migration Appeals & Related Actions					
Filed	376	253	243	278	367
Finalised	420	266	240	255	354
Current	96	83	86	109	122
Native Title Appeals & Related Actions					
Filed	3	10	11	11	14
Finalised	5	9	14	7	12
Current	5	6	3	7	9
Total Appeals & Related Actions (excl. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	280	334	319	297	319
Finalised	294	288	366	330	291
Current	181	227	180	147	175

Table A5.4 – Summary of supplementary workload statistics

FILINGS OF SUPPLEMENTARY CAUSES OF ACTION	2009-10	2010-11	2011-12	2012-13	2013-14
Total CoAs (excl. Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	6	3	0	0	0
Cross Claims	205	242	186	165	177
Interlocutory Applications	1608	1892	1693	1674	1535
Native Title (NT)					
Joinder of party applications	364	628	405	982	781
Appeals & Related Actions					
Cross Appeals	15	38	11	15	25
Interlocutory Applications	220	247	179	138	137
Total Actions (incl. Appeals & Related Actions)					
Cross Appeals	21	41	11	15	25
Cross Claims	205	242	186	165	177
Interlocutory Applications	1828	2139	1872	1812	1672
NT Joinder of party applications	364	628	405	982	781
Totals	2418	3050	2474	2974	2655

FILINGS OF SUPPLEMENTARY CAUSES OF ACTION	2009-10	2010-11	2011-12	2012-13	2013-14
Total Actions (excl. Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	5	7	1	2	0
Cross Claims	173	169	165	212	130
NT Joinder of party applications	364	628	405	982	781
Appeals & Related Actions					
Cross Appeals	9	26	35	5	24
Total Actions (incl. Appeals & Related Actions)					
Cross Appeals	14	33	36	7	24
Cross Claims	173	169	165	212	130
NT Joinder of party applications	364	628	405	982	781
Totals	551	830	606	1201	935

CURRENT CROSS APPEALS & CROSS CLAIMS AS AT 30 JUNE 2014

Appeals & Related Actions					
Cross Appeals					20
Total Supplementary CoAs (excl. Appeals & Related Actions)					
Cross Appeals (original jurisdiction)					0
Cross Claims					351
Total Supplementary CoAs (incl. Appeals & Related Actions)					
Cross Appeals					20
Cross Claims					351
Totals					371

APPENDIX 5

WORKLOAD STATISTICS

Figure A5.1 – Matters filed over the last five years

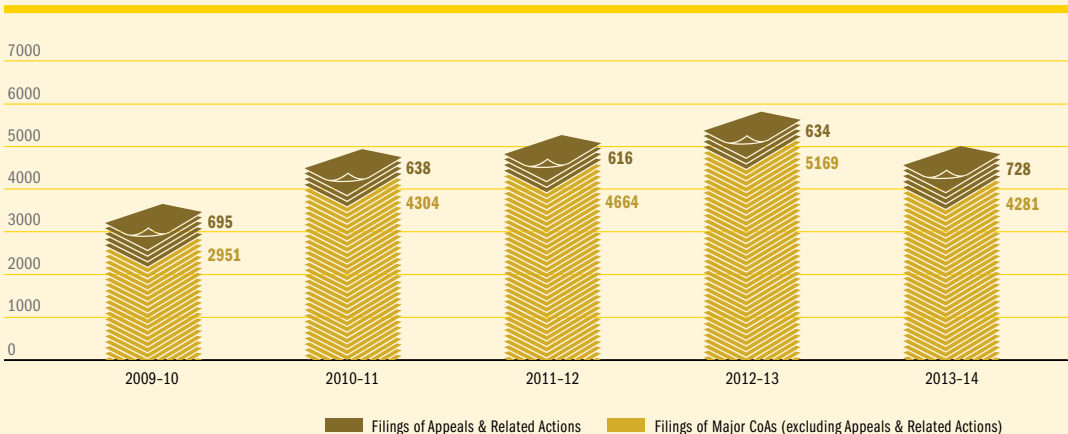
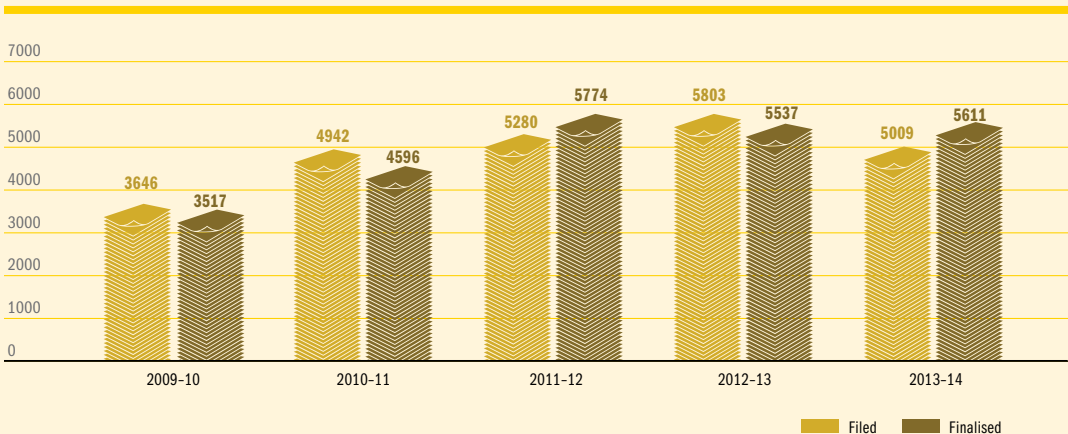
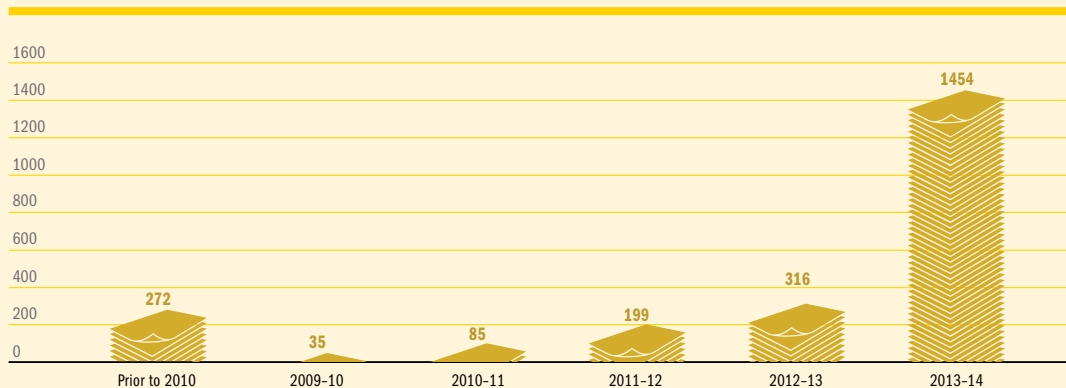


Figure A5.2 – Matters filed and finalised over the last five years



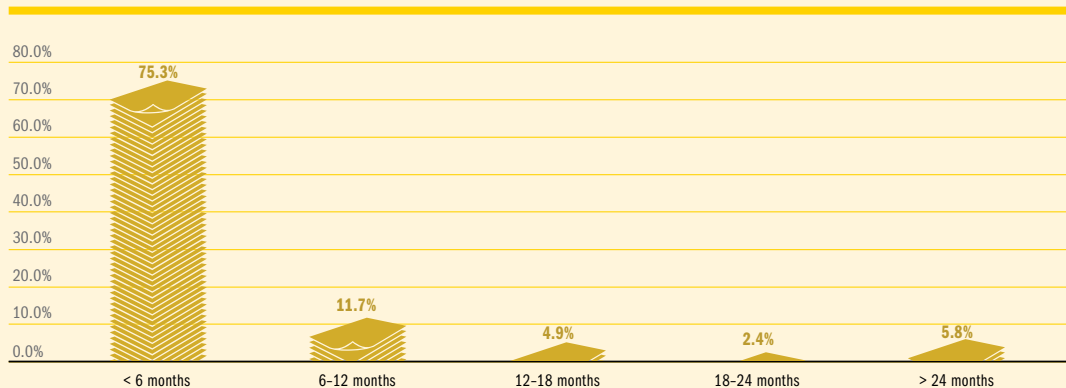
The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

Figure A5.3 – Age and number of current matters at 30 June 2014



A total of 2361 matters remain current at 30 June 2014. There were 272 applications still current relating to periods before those shown in Figure A5.3. Eighty-six per cent of cases prior to 2010 are native title matters.

Figure A5.4 – Time span to complete – Matters completed (excl. native title) over the last five years

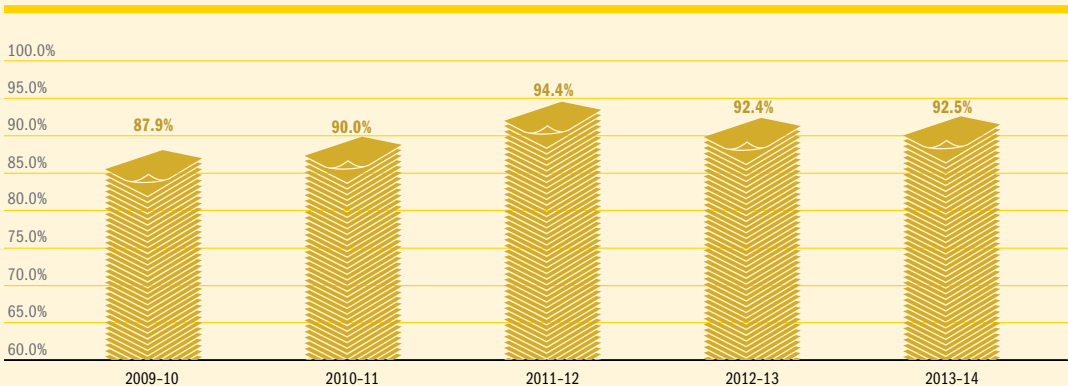


A total of 24 628 matters were completed during the five-year period ending 30 June 2014, excluding native title matters. The time span, from filing to disposition of these matters, is shown in Figure A5.4 above.

APPENDIX 5

WORKLOAD STATISTICS

Figure A5.5 – Time span to complete against the benchmark (excl. native title) over the last five years



The Court has a benchmark of eighty-five per cent of cases (excluding native title) being completed within eighteen months of commencement. Figure A5.5 sets out the Court's performance against this time goal over the last five years. The total number of matters (including appeals but excluding native title) completed for each of the last five years and the time span for completion are shown below in Table A5.5.

Table A5.5 – Finalisation of major CoAs in accordance with 85% benchmark (incl. appeals and related actions and excluding native title matters)

PERCENTAGE COMPLETED	2009-10	2010-11	2011-12	2012-13	2013-14
Under 18 months	3038	4077	5365	5049	5087
% of Total	87.9%	90.0%	94.4%	92.4%	92.5%
Over 18 months	417	451	316	413	415
% of Total	12.1%	10.0%	5.6%	7.6%	7.5%
Total CoAs	3455	4528	5681	5462	5502

Figure A5.6 – Bankruptcy Act matters (excl. appeals) filed over the last five years

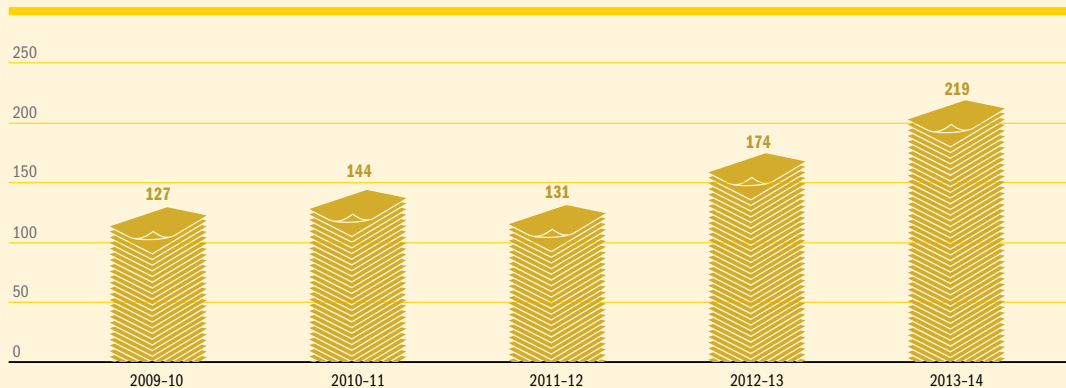
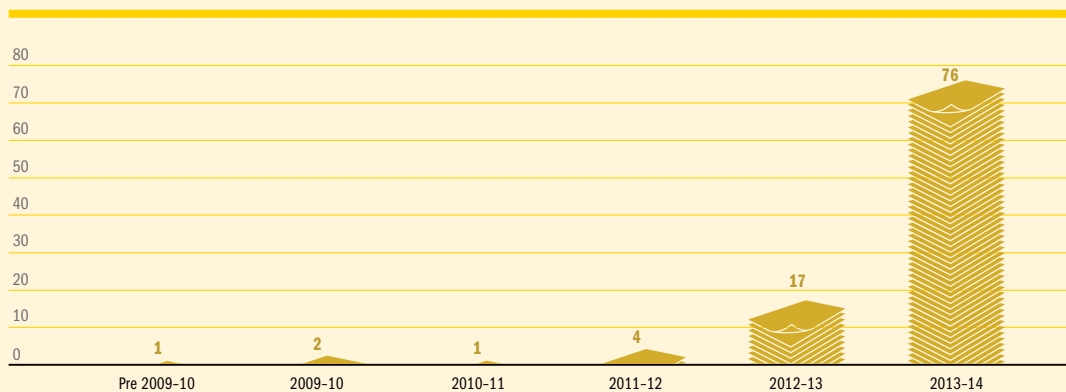


Figure A5.6.1 – Current Bankruptcy Act matters (excl. appeals) by year of filing



A total of 101 Bankruptcy Act matters remain current as at 30 June 2014.

APPENDIX 5

WORKLOAD STATISTICS

Figure A5.7 – Corporations Act matters (excl. appeals) filed over the last five years

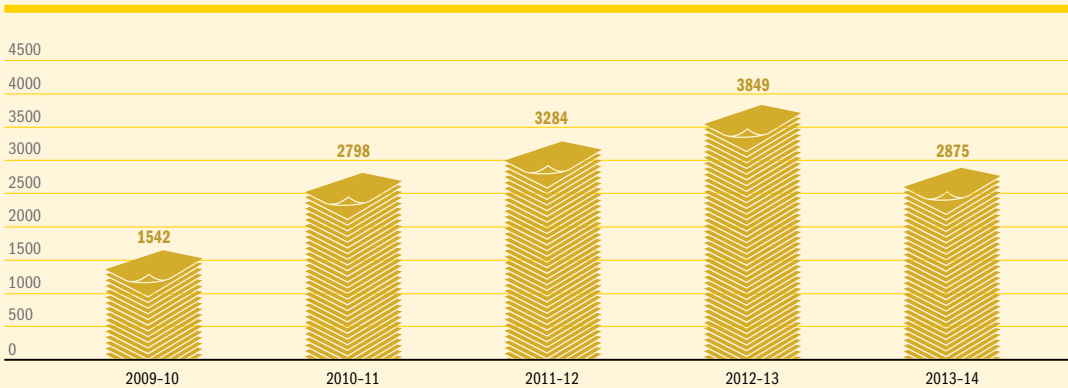
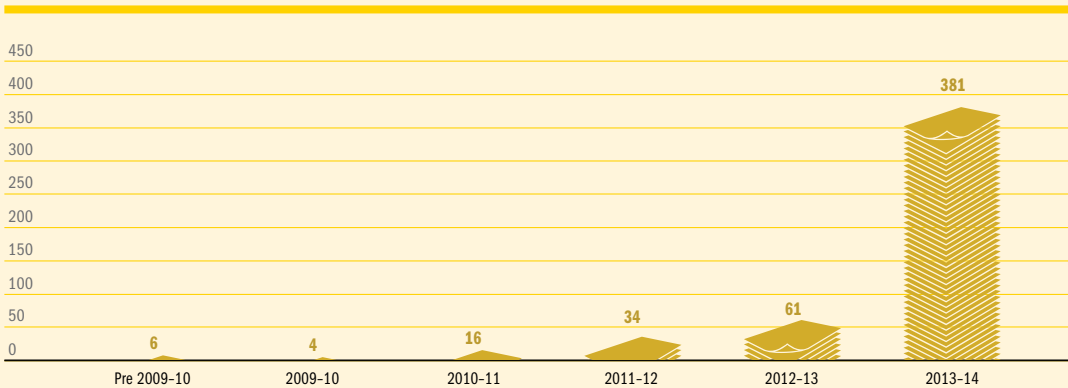


Figure A5.7.1 – Current Corporations Act matters (excl. appeals) by year of filing



A total of 502 Corporations Act matters remain current as at 30 June 2014.

Figure A5.8 – Consumer Law matters (excl. Competition Law and appeals) filed over the last five years

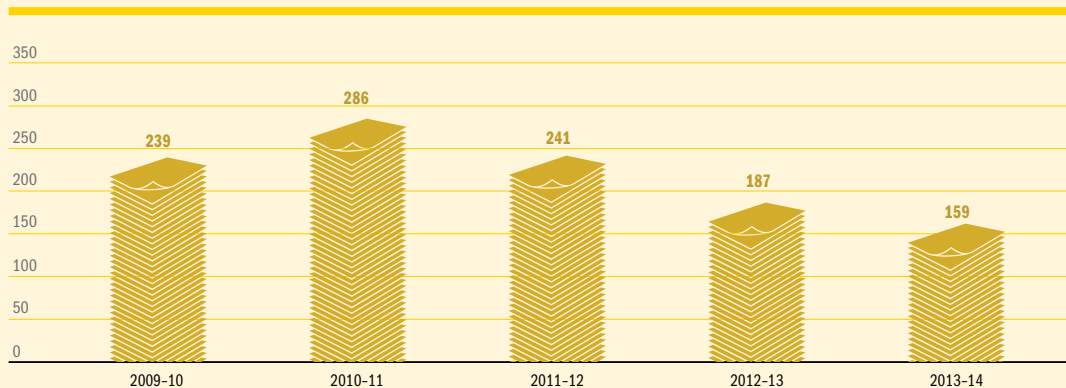
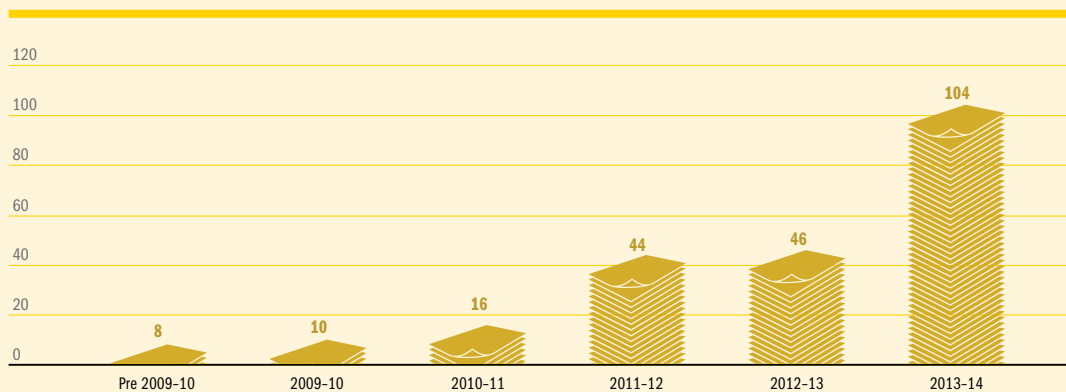


Figure A5.8.1 – Current Consumer Law matters (excl. Competition Law and appeals) by year of filing

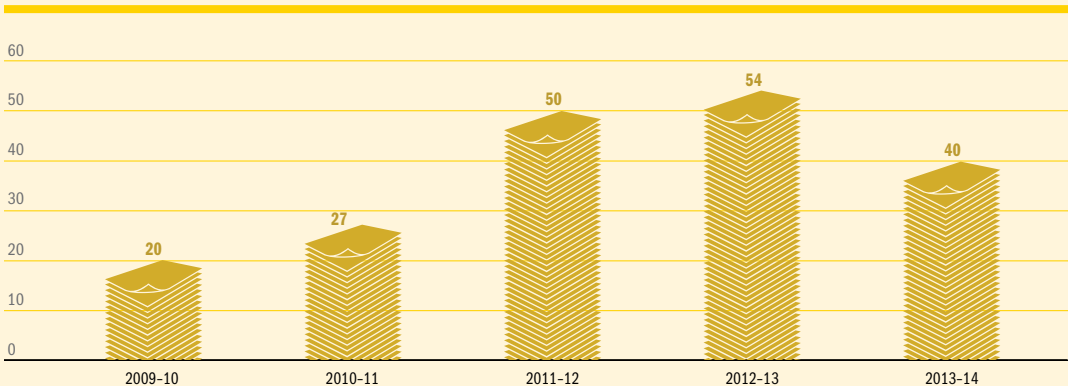


A total of 228 Consumer Law matters remain current as at 30 June 2014.

APPENDIX 5

WORKLOAD STATISTICS

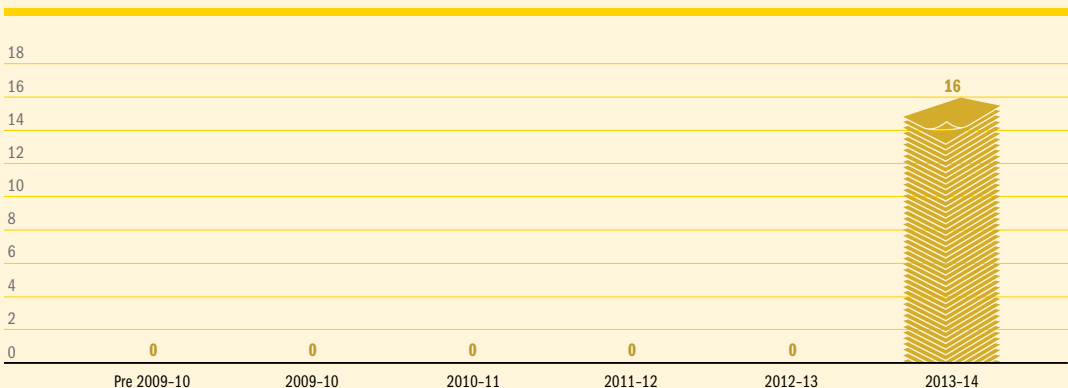
Figure A5.9 – Migration Act matters (excl. appeals) filed over the last five years



These figures include migration applications filed under the Judiciary Act, Administrative Decisions (Judicial Review) Act and Migration Act.

Since 1 December 2005, when the Migration Litigation Reform Act commenced, almost all first instance migration cases have been filed in the Federal Circuit Court.

Figure A5.9.1 – Current Migration Act matters (excl. appeals) by year of filing



A total of 16 Migration Act matters remain current as at 30 June 2014.

Figure A5.10 – Admiralty Act matters (excl. appeals) filed over the last five years

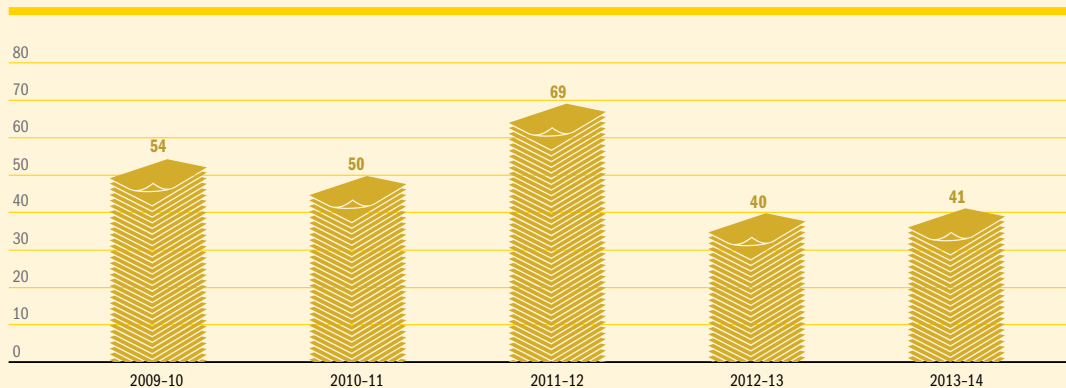
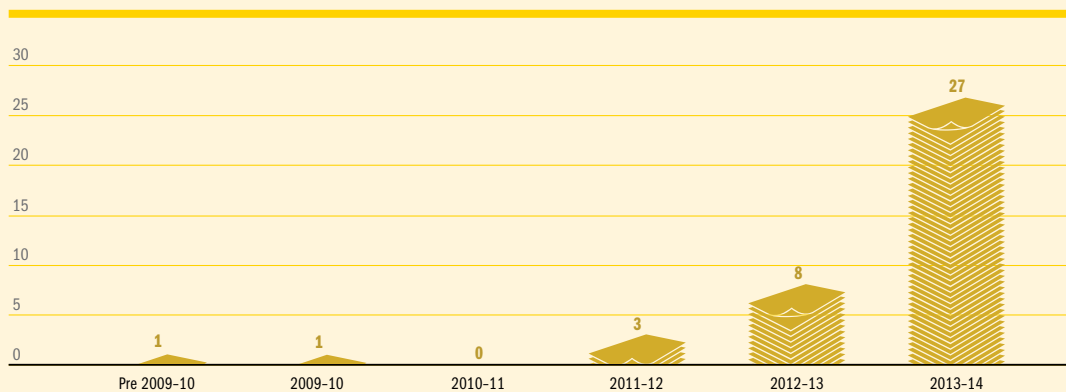


Figure A5.10.1 – Current Admiralty Act matters (excl. appeals) by year of filing



A total of 40 Admiralty Act matters remain current as at 30 June 2014.

APPENDIX 5

WORKLOAD STATISTICS

Figure A5.11 – Native Title Act matters (excl. appeals) filed over the last five years

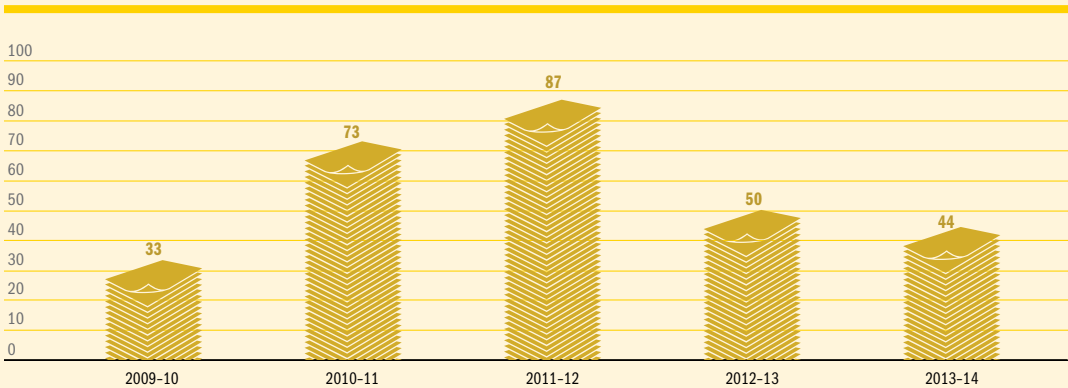
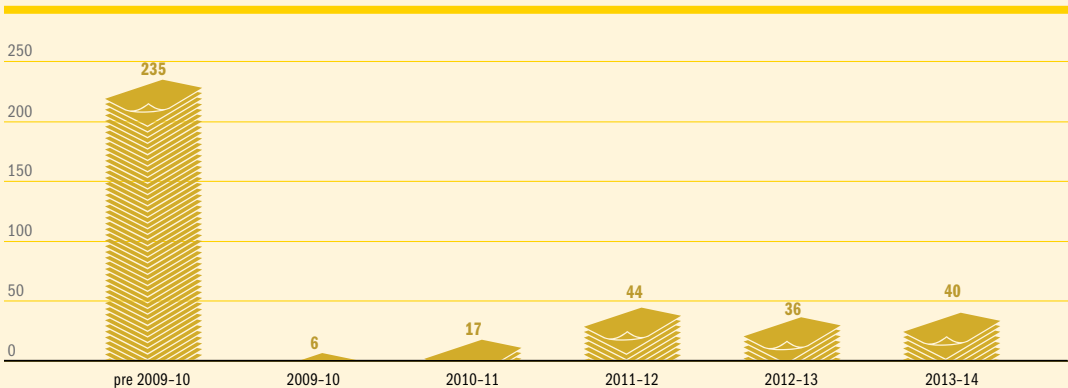


Figure A5.11.1 – Current Native Title Act matters (excl.appeals) by year of filing



A total of 378 Native Title matters remain current as at 30 June 2014.

Figure A5.12 – Workplace Relations/Fair Work matters (excl. appeals) filed over the last five years

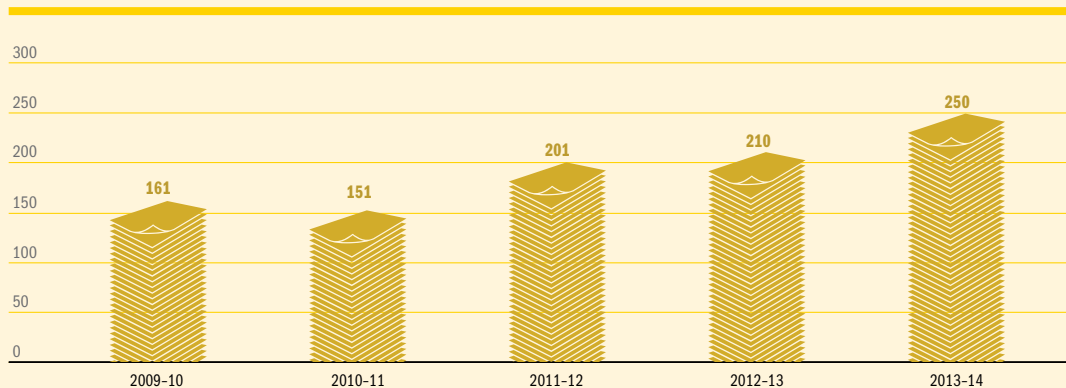
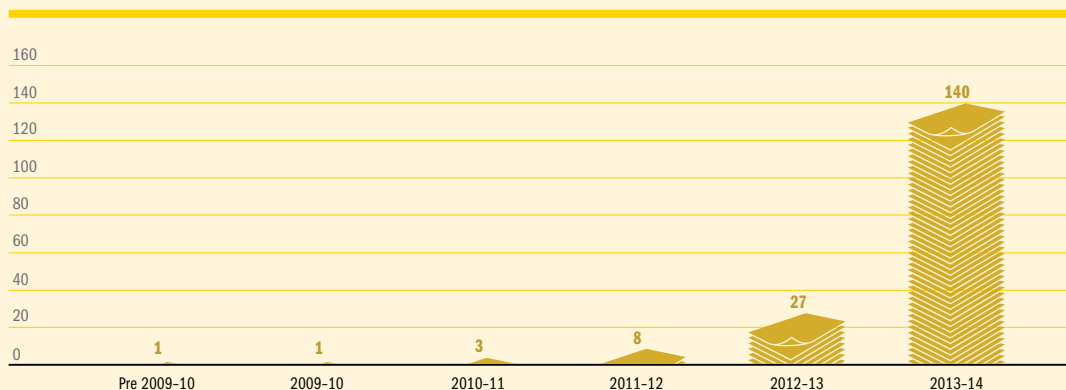


Figure A5.12.1 – Current Workplace Relations/Fair Work matters (excl. appeals) by year of filing



A total of 180 Workplace Relations/Fair Work cases remain current as at 30 June 2014.

APPENDIX 5

WORKLOAD STATISTICS

Figure A5.13 – Taxation matters (excl. appeals) filed over the last five years

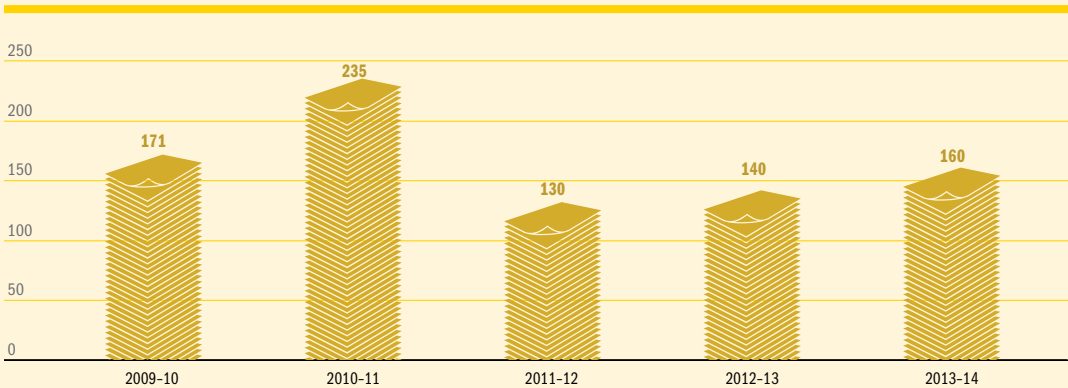
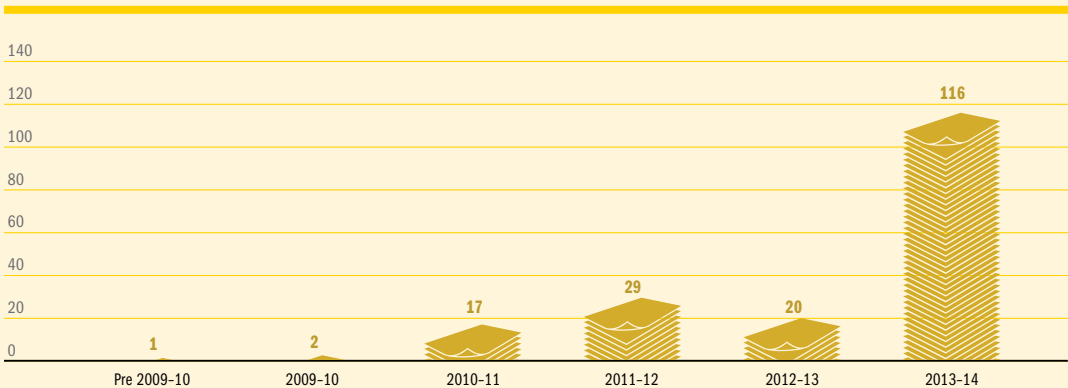


Figure A5.13.1 – Current Taxation matters (excl. appeals) by year of filing



A total of 185 Taxation cases remain current as at 30 June 2014.

Figure A5.14 – Intellectual Property Matters (excl. appeals) filed over the last five years

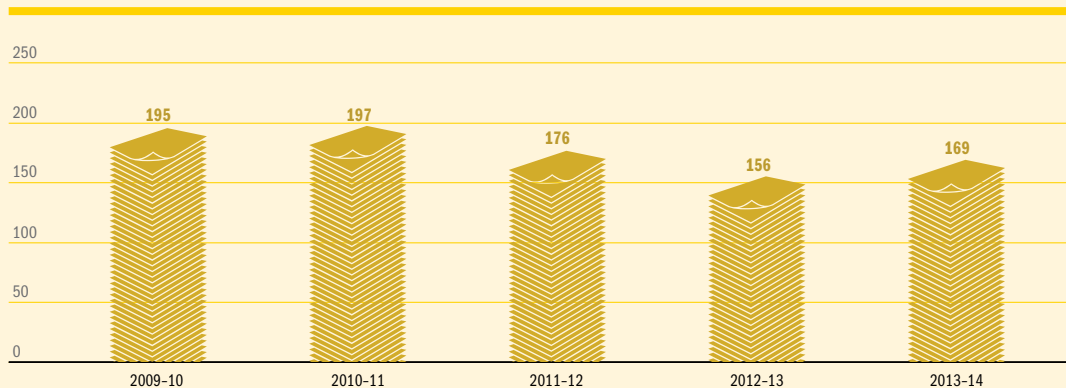
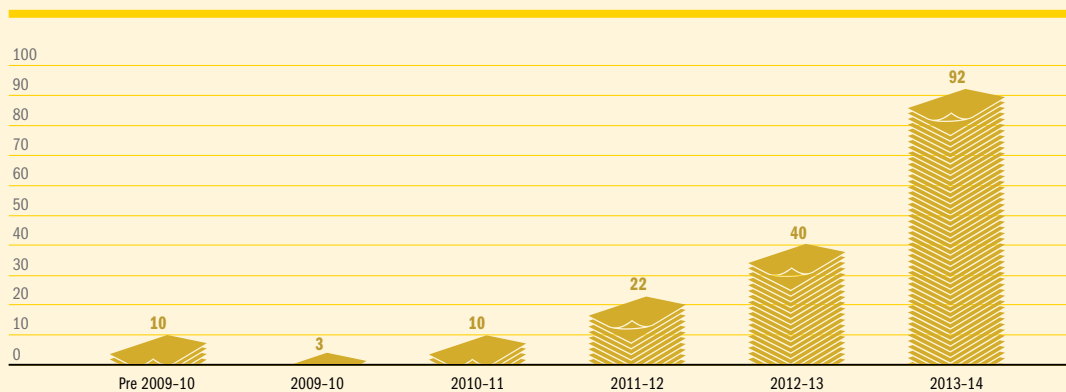


Figure A5.14.1 – Current Intellectual Property matters (excl. appeals) by year of filing



A total of 177 Intellectual Property cases remain current as at 30 June 2014.

APPENDIX 5

WORKLOAD STATISTICS

Figure A5.15 – Appeals and Related Actions filed over the last five years

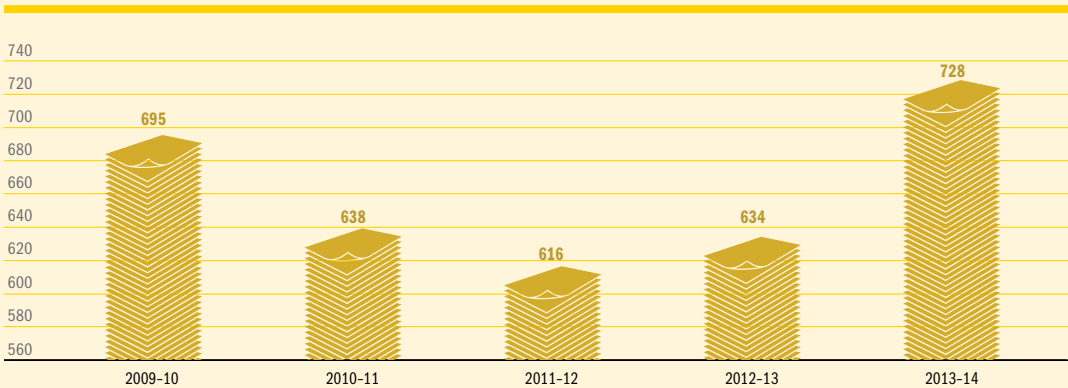
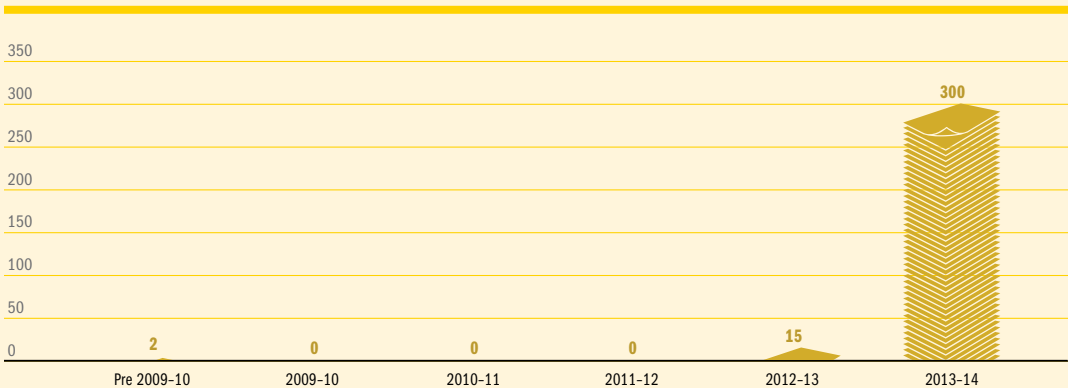


Figure A5.15.1 – Current Appeals and Related Actions by date filed



A total of 317 Appeals and Related Actions remain current as at 30 June 2014.

Figure A5.16 – Source of Appeals and Related Actions over the last five years

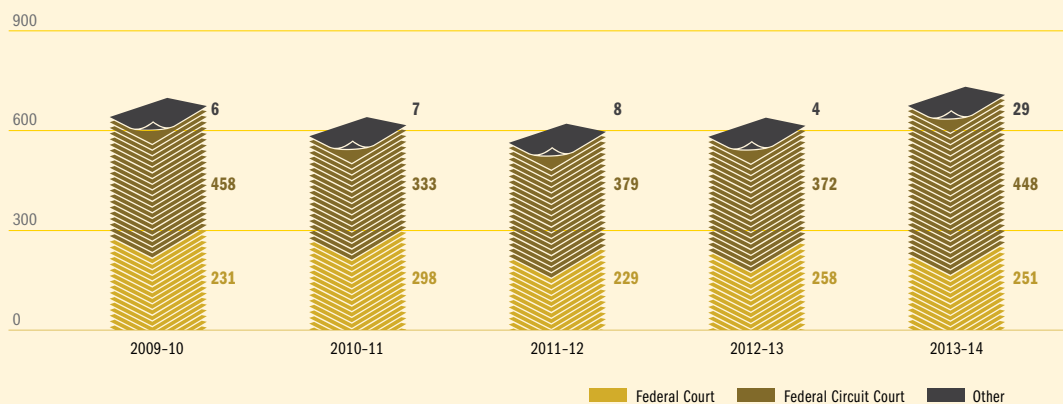


Table A5.6 – Appeals and Related Actions (excl. interlocutory applications)

SOURCE	2009-10		2010-11		2011-12		2012-13		2013-14	
Federal Court	231	33.2%	298	46.7%	229	37.2%	258	40.7%	251	34.5%
Federal Circuit Court	458	65.9%	333	52.2%	379	61.5%	372	58.7%	448	61.5%
Other	6	0.9%	7	1.1%	8	1.3%	4	0.6%	29	4.0%
Total by Period	695		638		616		634		728	

APPENDIX 6

WORK OF TRIBUNALS

The following summarises the work of the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal during the reporting year.

AUSTRALIAN COMPETITION TRIBUNAL

FUNCTIONS AND POWERS

The Australian Competition Tribunal was established under the *Trade Practices Act 1965* and continues under the *Competition and Consumer Act 2010* (the 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 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.
- Determinations by the ACCC in relation to notices issued under s 93 of the Act in relation to exclusive dealing.
- Determinations by the ACCC granting or refusing clearances for company mergers and acquisitions.

The Tribunal also hears applications for authorisation of company mergers and acquisitions which would otherwise be prohibited under the Act.

The Tribunal hears reviews of 'reviewable regulatory decisions' of the Australian Energy Regulator (AER): National Electricity Law, s 71B(1) and National Gas Law, s 245 and certain other parallel State legislation.

These reviewable regulatory decisions include:

- a network revenue or pricing determination covering a regulatory period, or
- any other determination (including a distribution determination or transmission determination) or decision of the AER under the National Electricity Law or National Gas Law.

A review by the Tribunal is in some instances a review on the papers, with some qualifications, and in some instances it is a full merits review, with additional investigative powers. It can affirm, set aside or vary the decision under review. The Tribunal also has power to inquire into, and report to the Minister on, whether a non-conference ocean carrier has a substantial degree of market power on a trade route.

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 Act and regulations within the discretion of the Tribunal. The Competition and Consumer Regulations 2010 set out some procedural requirements in relation to the making and hearing of review applications.

Proceedings are 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 2013–14 there were no changes to the membership of the Tribunal.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 4 on page 134.

ACTIVITIES

Three matters were current at the start of the reporting year. During the year, two matters were commenced and all were finalised. In one of those five matters, the application by Murray Goulburn Co-operative Co Limited for authorisation of its proposed acquisition of Warnambool Cheese and Butter Factory Company Holdings Limited was discontinued before the hearing. That application and a further application by AGL Energy Limited for authorisation of its proposed acquisition of the assets of Macquarie Generation in New South Wales were the first applications to the Tribunal under s 95AT of the Act.

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

DECISIONS OF INTEREST

Application by Multinet Gas (DB No 1) Pty Ltd and Multinet Gas (DB No 2) Pty Ltd, trading as Multinet Gas Distribution Partnership (No 2) [2013] ACompT 6 (31 July 2013)

Application by SPI Electricity Pty Limited (Trading as SP AUSNet) [2013] ACompT 7 (1 August 2013)

Application by APA GasNet Australia (Operations) Pty Limited (No 2) [2013] ACompT 8 (18 September 2013)

Application by APA GasNet Australia (Operations) Pty Limited (No 3) [2013] ACompT 9 (3 October 2013)

Application by Murray Goulburn Co-operative Co Limited (withdrawn 29 November 2013)

Application for Authorisation Acquisition of Macquarie Generation by AGL Energy Limited [2014] ACompT 1 (25 June 2014)

COPYRIGHT TRIBUNAL

FUNCTIONS AND POWERS

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

- To determine the amounts of equitable remuneration payable under statutory licensing schemes.
- To determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems.
- To declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a State.
- To determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

The *Copyright Amendment Act 2006*, assented to on 11 December 2006, has given the Tribunal more jurisdiction, including to hear disputes between collecting societies and their members.

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 and is also 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 conducted with as little formality and technicality and as quickly 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.

APPENDIX 6

WORK OF TRIBUNALS

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 Justice Annabelle Bennett was appointed President of the Tribunal for a period of three years with effect from 25 July 2013.

The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 134.

ACTIVITIES

Three matters were current at the start of the reporting year. During the year three new matters were filed and one matter finalised; there are five matters 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 1955* (Cth) (the Act). Pursuant to s 20 of the Act, a convicted person may bring an appeal to the Tribunal against his or her conviction and/or against a punishment or court order made in respect of that conviction.

Following the decision of the High Court of Australia in *Lane v Morrison* (2009) 239 CLR 230, the Defence Force Discipline Appeals Act was amended by operation of the *Military Justice (Interim Measures) Act (No 1) 2009* (Cth). In the main, references in the Act to the Australian Military Court were replaced with references to courts martial and Defence Force magistrates. Accordingly, appeals to the Tribunal now lie from decisions of

courts martial and Defence Force magistrates, rather than from the Australian Military Court.

The Tribunal has the power to hear and determine appeals and questions of law.

PRACTICE AND PROCEDURE

Formal determination of sitting dates has been introduced. Under s 141(1) of the Act, the sittings of the Tribunal were held on the following dates: 26–27 September 2013, 24–25 October 2013, 13–14 December 2013 and 26–27 March 2014.

Otherwise, 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. In August 2013 Justice Paul Brereton of the NSW Supreme Court was appointed as a member of the Tribunal. On 15 March 2014 Justice Dennis Cowdroy retired from the Tribunal.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 134.

ACTIVITIES

There were two matters before the Tribunal during the reporting year.

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

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

ADMINISTRATIVE LAW – jurisdictional error – challenge to the first respondent Minister's decision to approve proposed action by the second respondent to develop and operate a mine in north-west Tasmania – whether Minister failed to 'have regard to' the 'Approved Conservation Advice for the Tasmanian Devil' – text, structure and purpose of the EPBC Act considered – mandatory consideration – whether the Minister's decision would have been materially affected by failure to have regard to the document itself – whether the Minister was entitled to attach certain conditions to the approval – whether decision irrational or unreasonable – whether relief should be refused on discretionary grounds.

Tarkine National Coalition Incorporated v Minister for Sustainability, Environment, Water, Population and Communities [2013] FCA 694 (17 July 2013, Justice Marshall)

The Federal Court of Australia declared the decision of the respondent Minister to approve the development and operation of an iron ore mine in north-west Tasmania invalid on the ground that the Minister failed to consider the text of the Approved Conservation Advice for the Tasmanian Devil (the ACA) as required by the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the EPBC Act).

In December 2012, the Minister approved the taking of a proposed action by Shree Minerals (Shree) to develop and operate the mine subject to several conditions, including the condition that Shree donate money to the Save the Tasmanian Devil Programme Appeal (the programme).

Prior to the Minister's decision, an Environmental Impact Statement (EIS) was prepared to assess the impacts of the proposed action. The EIS was provided to the Minister for consideration.

The Tarkine National Coalition applied for review of the Minister's decision. The critical issues for determination were:

- whether the Minister had regard to the ACA when making his decision
- whether the Minister was entitled to attach conditions to the approval.

Having regard to the objects of the EPBC Act, the Court found that the ACA was an important document which was intended to inform the Minister's decision-making.

The Court also observed the mandatory language of s 139(2) of the EPBC Act requires that 'the Minister *must* have regard to any approved conservation advice for species' [emphasis in original].

When considering whether the Minister 'had regard to' the ACA, the Court noted that in his statement of reasons, the Minister stated that he took into account 'any relevant conservation advice' in making his decision [emphasis added]. The Court concluded that the Minister's failure to have regard to the document for the purpose of making his decision was 'fatal to its validity'.

Applying the decision in *Lansen v Minister for Environment and Heritage* (2008) 174 FCR 14, the Court concluded that the plain words of the provision and purpose and objects of the EPBC Act revealed a legislative intention that any decision made without proper regard to the ACA would be invalid.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

CONSUMER LAW – unconscionability – entry into consumers’ homes by ruse – sale of vacuum cleaners – breaches of State and Commonwealth consumer protection legislation – whether unconscionable.

Australian Competition and Consumer Commission v Lux Distributors Pty Ltd [2013] FCAFC 90 (15 August 2013, Chief Justice Allsop and Justices Jacobson and Gordon)

In this matter, the Australian Competition and Consumer Commission sought relief against Lux Distributors in respect of the sale of vacuum cleaners by its door-to-door salesmen to three elderly women in their homes. The Commission claimed that the salesmen’s conduct had been unconscionable. The Full Court agreed. It reversed the decision of the trial judge, making declarations of unconscionable conduct under s 51AB of the *Trade Practices Act 1974* (Cth) and s 21 of the *Australian Consumer Law*, and otherwise remitting the matter.

Lux’s method was to call potential purchasers and make an appointment for what purported to be a free ‘maintenance check’ on their existing vacuum cleaner. The Court found that this was a deceptive ruse designed ultimately to lead to a vacuum cleaner sale. The three elderly women here agreed to an appointment. The salesmen attended their homes and carried out cursory checks on their existing vacuum cleaners. These appeared to demonstrate the need to purchase a new machine. After lengthy stays by the salesmen, each woman agreed to purchase a new Lux cleaner.

In two cases, in breach of Commonwealth and State consumer protection legislation, the salesman in question failed to inform the woman of the real purpose of the visit or of her rights. In one instance, the salesman overstayed the State statutory time limit beyond which written consent from the house occupant was required but never received. In another, the salesman accepted a cheque in breach of State law.

The Court observed that State and Commonwealth legislative requirements applicable to door-to-door selling, which had been infringed, were designed to redress the power imbalance and consumer vulnerability inherent in that mode of salesmanship. According to the Court, the values, norms and community expectations underpinning the determination whether conduct is unconscionable is informed by such statutory provisions.

In this light and in all the circumstances, the relevant conduct was unconscionable. The Court emphasised the deceptive means by which access to the ladies’ homes was gained, the resulting power imbalance, and the salesmen’s contraventions of consumer protection obligations.

TAXATION – *Taxation Administration Act 1953* (Cth) – Div 290 – civil penalty regime – whether entity is a promoter of tax exploitation scheme – whether entity has implemented a scheme otherwise than in accordance with its product ruling – time limits on commencement of actions in respect of an entity’s involvement in a tax exploitation scheme.

STATUTORY INTERPRETATION – meaning of ‘scheme benefit’ – whether there is requirement of alternative postulate – meaning of ‘markets the scheme or otherwise encourages the growth of the scheme or interest in it’ – meaning of consideration received ‘in respect of’ marketing or encouragement.

Commissioner of Taxation v Ludekens
[2013] FCAFC 100
(29 August 2013, Chief Justice Allsop
and Justices Gilmour and Gordon)

The Commissioner sought imposition of penalties on the respondents under tax exploitation scheme provisions of s 290-50 of Sch 1 of the *Taxation Administration Act 1953* (Cth). On appeal, the question was whether the respondents had engaged in conduct that resulted in either:

- (a) promotion of a tax exploitation scheme (s 290-50(1)), or
- (b) implementation of a scheme, promoted on the basis of its conformity with a product ruling, in a manner different from that described in the ruling (s 290-50(2)).

The Court concluded that the respondents had done the former but not the latter.

The respondents formulated a plan involving acquisition of woodlots in a Gunns managed investment scheme. Woodlot investors incurred fees that a product ruling by the Commissioner held to be tax-deductible. Debts incurred through woodlot acquisition would be paid with profits obtained from a trading business into which would be invested commissions from Gunns and GST refunds from the woodlot acquisitions, along with funds from on-selling the woodlots to secondary investors. Profits from the trading business were otherwise to be retained. Secondary investors would seek tax deductions and refunds in respect of their woodlot acquisitions, promising to pay the refunds to the respondents.

As to whether this was a tax exploitation scheme, the Commissioner submitted that it was reasonable to conclude that an entity had the purpose of having a tax-related liability that was, or could reasonably be expected to be, less than it would be apart from the scheme. The Court agreed: the Commissioner was not required to plead or prove what the tax-related liability of the relevant entity would have been without the scheme.

Further, obtaining the GST and other tax refunds was the respondents’ dominant purpose, despite the ulterior aim of profiting from the trading business.

The respondents had engaged in promotion: they marketed and encouraged growth of the scheme by procuring third parties’ involvement in it. They received consideration via Gunns commissions and GST refunds.

However, the respondents did not breach s 290-50(2): the Commissioner’s product ruling related to the Gunns scheme, not the respondents’ secondary investment scheme.

An application to the High Court for special leave to appeal was refused on 11 April 2014.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

COMPETITION LAW – whether a corporation in entering into a contract for the acquisition of flyash from a power station in South-East Queensland contravened s 46 of the *Trade Practices Act 1974* (Cth) – consideration of the features and sources of the corporation's contended market power – whether uncertainty in the renewal of the corporation's principal contract, due to public sector tendering processes, had the effect of extinguishing any substantial degree of market power enjoyed by the company prior to the commencement of the tender process – whether in entering into the contract the corporation took advantage of any subsisting market power or whether its conduct was referable to legitimate business reasons – consideration of the notion of legitimate business reasons – whether the contended conduct was conduct a corporation in a workably competitive market could have engaged in – consideration of the purposes actuating the conduct of particular individuals – consideration of the relevant markets – consideration of the boundaries of the upstream and downstream markets – consideration of the scope and field of rivalry – whether the performance of a contractual obligation involved taking advantage of market power – consideration of the features of taking advantage of market power.

Australian Competition and Consumer Commission v Cement Australia Pty Ltd [2013] FCA 909 (10 September 2013, Justice Greenwood)

The claims and principles in these lengthy and complex proceedings, put simply and using abbreviated terms, can be reduced to the following:

CLAIM 1

On 30 September 2002 Pozzolan Enterprises (PE), after a tender process, entered into a six-year contract to acquire flyash from Millmerran Power Station. Flyash is ash liberated from the mineral matter in coal during combustion at a power station. It is carried in exhaust gases

called flue gases from the combustion chamber, collected, sometimes classified, and used as a partial substitute for cement in making concrete. Cement producers seek it out. Two markets were found to exist. First, a south-east Queensland (SEQ) 'unprocessed' flyash market (an 'upstream market') and, second, a SEQ 'fine grade' flyash market for use as a partial substitute for cement (a 'downstream market'). PE was found to enjoy a substantial degree of market power in both markets leading up to entry into the Millmerran contract.

PE's source of market power was its longstanding control of all flyash sources in SEQ and, in particular, its contractual control of flyash from SEQ's primary source of proximate flyash from the Tarong Power Station. That contract with PE was also subject to tender and was ultimately won by PE on 26 February 2003. PE contended, supported by expert evidence from Professor Hay, that uncertainty surrounding the renewal of the Tarong rights meant PE had no market power at 30 September 2002. The Court found otherwise holding that the relationship between uncertainty in the Tarong rights and market power was not a question of kind but of degree, on the facts. The Commission contended that, in contravention of s 46 of the *Trade Practices Act 1974* (Cth), PE 'took advantage' of its market power for a prescribed purpose of, put simply, foreclosing new entrant competition by entering into the Millmerran contract.

The Court found that entry was not a use of market power but rather something that any corporation in a workably competitive market could have done to risk manage a loss of the Tarong tender resulting in a loss of Tarong flyash to PE.

CLAIM 2

On 28 and 30 July 2004, the Millmerran contract was affirmed by PE and amended by PE and Millmerran. By then, PE had won the Tarong contract. The Commission contended that Cement Australia by causing PE to go on with the contract rather than bring it to an end as it could have done, took advantage of its market power to foreclose new entrant competition in each market by denying third party access to Millmerran flyash under the amended arrangements. The Court found no taking advantage of market power, on the facts, but rather an election by PE, supported by Millmerran, to further evaluate the compromised quality of the ash as a product, during the extended period and terms of the contract.

CLAIM 3

On 18 March 2005, PE elected to deploy capital at Millmerran to construct processing facilities. The Commission contended that since PE did not need Millmerran flyash and no demand for it had been identified, PE's election to deploy the capital under the contract and make the investment was the expression of taking advantage of market power to foreclose third party access to Millmerran flyash. The Court found no taking advantage of market power but rather an election to perform and discharge contractual 'obligations' cast upon PE that could not properly be unilaterally repudiated by it.

CLAIM 4

Identified provisions of the Millmerran contract were said by the Commission to have been included for a purpose of substantially lessening competition and the provisions were said to have the effect and likely effect of doing so: s 45(2)(a) (ii). Other entities in the Cement Australia group (including PE) were said to have given effect to the provisions: s 45(2)(b)(ii). Some entities were said to be knowingly concerned in the contraventions. The Court so found in respect of PE and some other entities. However, the effect and likely effect of the provisions was exhausted due to the compromised quality of the flyash, by 31 December 2003.

CLAIM 5

Identified provisions of the Tarong contract were said to have been included for a purpose of substantially lessening competition and those provisions were said to have the effect and likely effect of doing so. Other entities in the Cement Australia group (including PE) were said to have given effect to the provisions. Some entities were said to be knowingly concerned in the contraventions. The Court so found in respect of PE and some other entities.

CLAIM 6

This claim was concerned with whether individuals were knowingly concerned in the contraventions on the part of entities within the Cement Australia group. The Court so found in relation to one individual.

PRINCIPLES

The judgment considers all of these matters within a complex factual matrix. The judgment discusses the principles governing each of the integers of s 46 and the assessment of the expert evidence concerning market power factors (Pts 28, 29, 30, 31 and 41 of the judgment). It considers the integers of s 45 on purpose, effects, likely effects and the tests for determining 'inclusion' of provisions in a contract for the purposes of s 45 (Pts 42, 43, 44, 45, 46 and 47). It considers the circumstances when *Jones v Dunkel* (1959) 101 CLR 298 inferences might be drawn from the failure of a party to call evidence from particular persons.

A penalty hearing on the s 45 contraventions is set down for hearing for December 2014.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

ADMINISTRATIVE LAW – delegated legislation – legislative instrument – *Guide to the Assessment of the Degree of Permanent Impairment* – whether prescribed criteria of impairment fix objective standards that can be applied with certainty – whether prescribed criteria of impairment invalid – whether medical evidence not based on clinical testing relevant to assessment.

STATUTORY INTERPRETATION – ‘unable’ – whether ‘unable’ should be construed as requiring an activity to be impossible for a person to complete or perform – *Leeder v Mayor of Ballarat East* [1908] VLR 214.

PRACTICE AND PROCEDURE – application to amend Notice of Contention made without notice at hearing of appeal – interests of the administration of justice – leave to amend refused on most grounds – costs of appeal apportioned

Comcare v Lilley [2013] FCAFC 121
(1 November 2013, Justices Kerr, Farrell and Mortimer)

Mr Lilley was a firefighter who developed pain in his legs after performing strenuous exercise. His general practitioner diagnosed him as suffering from bilateral compartment syndrome, probably caused by his work in the fire brigade. Mr Lilley made a claim for compensation under the *Safety, Rehabilitation and Compensation Act 1988* (Cth).

The amount of compensation payable for permanent impairment is calculated by reference to a percentage expressing the employee’s degree of impairment. This percentage is determined under the provisions of the *Guide to the Assessment of the Degree of Permanent Impairment*. Criteria in Table 9.7 of the Guide indicating a 5% or 10% impairment include whether an employee can negotiate three or more stairs or a ramp without assistance, and how easily an employee can negotiate uneven ground.

The Administrative Appeals Tribunal found that clinical testing is required for a valid assessment, and that Mr Lilley’s compartment syndrome injury did not meet the 10% minimum threshold for compensation. On appeal to the Federal Court, the primary judge found that clinical testing was not required for a valid assessment (other than in respect of determining ‘manifest’ difficulty), and that the criteria for 5% and 10% impairment in Table 9.7 were invalid as they failed to fix an objective standard and left an unfettered power to the decision-maker.

On appeal, the Full Court held that the criteria in Table 9.7 were not invalid. Uncertainty will only invalidate if one can derive from the statute an intention by Parliament that the power be confined in a way which requires a high level of certainty or precision. Viewed as a whole and in context, the Guide was directed to medical assessments and practical activities not necessarily susceptible to high levels of precision. The focus of the Guide is on what a person can and cannot do in going about the activities of daily living. A person is ‘unable’ to perform an activity where the level of pain experienced by a person or the level of effort required to do so is such that the person cannot be reasonably expected to perform the activity. Read in context, a ‘stair’ or ‘ramp’ in the Guide is of the kind found in daily life.

The Full Court agreed with the primary judge that clinical testing was not required to satisfy the criteria in Table 9.7.

CONSTITUTIONAL LAW – powers of the Commonwealth Parliament – taxation – Superannuation contributions surcharge – State parliamentary pensions – implied limitations on Commonwealth legislative power – discrimination against the States – laws imposing taxation – whether law discriminates against State of Victoria – whether tax significantly impairs State’s capacity to exercise its powers to remunerate its parliamentarians

Parliamentary Trustee of the Parliamentary Contribution Superannuation Fund v Commissioner of Taxation [2013] FCAFC 127
(14 November 2013, Justices Kenny, Perram and Robertson)

The trustee of the Parliamentary Contributory Superannuation Fund (the appellant), challenged the validity of two Acts which together required it to pay the Commonwealth a surcharge on superannuation contributions made to the defined benefits superannuation scheme that it provided to members of the Victorian Parliament. Between 1999 and 2009 the Commissioner of Taxation had issued assessments to the appellant for a superannuation contributions surcharge in respect of the parliamentarians who were members of the Fund. The effect of the surcharge was to require increased payments from the Victorian Consolidated Fund to cover the surcharge liability. To counteract this, the Victorian Parliament had enacted legislation that made individual parliamentarians liable for their portion of the superannuation surcharge.

The appellant lodged a notice of objection to the assessments on the basis that the Acts that imposed the surcharge, the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* (Cth) and the *Superannuation Contributions Tax Imposition Act 1997* (Cth) (the Surcharge Acts), were invalid. Before the Commissioner, the primary judge and the Full Court, the appellant submitted that the Surcharge Acts were invalid because they impaired the capacity of the State of Victoria to exercise its powers with respect to the remuneration of the members of its Parliament, contrary to the Melbourne Corporation doctrine and the requirements articulated by the High Court in *Clarke v Federal Commissioner of Taxation* (2009) 240 CLR 272 and *Austin v The Commonwealth* (2003) 215 CLR 185.

The primary judge found that the Surcharge Acts were valid and dismissed the application. On appeal, the Full Court distinguished the legislation under consideration from that in *Clarke* and *Austin*, where legislation had imposed a taxation surcharge on individual State officials as opposed to the entity operating the superannuation fund. The Court found that the Victorian Parliament had passed on liability for the surcharge to individual members in order to relieve pressure on the Consolidated Fund and not in order to relieve State officials from a taxation burden that encouraged them to retire early and interfered with the terms of their remuneration, as was the case in *Austin*. The Court found that there was nothing discriminatory in the Surcharge Acts and nothing that restricted or burdened the States in the exercise of their constitutional powers. Accordingly the Full Court found the legislation to be valid and dismissed the appeal.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

TRADE PRACTICES – anti-competitive arrangements – whether the respondent travel agent attempted to induce specified airlines to make collusive arrangements lessening or likely to lessen competition in the market – application of s 45 and s 45A of the Trade Practices Act 1974 (Cth), now the Competition and Consumer Act 2010 (Cth) – six alleged contraventions – consideration of the relevant ‘market’ in intermediary services provided by travel agents – whether respondent and airlines truly in competition – consideration of the relevant service being supplied – *Castlemaine Tooheys Ltd v Williams and Hodgson Transport Pty Ltd* (1986) 162 CLR 395 distinguished

Australian Competition and Consumer Commission v Flight Centre Limited (No 2) [2013] FCA 1313 (6 December 2013, Justice Logan)

The Australian Competition and Consumer Commission alleged that, on six occasions between August 2005 and March 2009, contrary to s 76 of the *Trade Practices Act 1974* (Cth), Flight Centre Limited attempted to induce specified international airlines to make collusive arrangements with it in relation to retail air fares for international air travel. The Commission alleged that the arrangements would have lessened or were likely to have lessened competition in the market for the distribution and booking and retail sale of international air travel from Australia (or a market having at least one of these features), thereby contravening s 45 of that Act, as construed and applied in light of s 45A.

Flight Centre’s travel agency business included acting as agent for each of the airlines under annual ‘preferred airline agreements’. Under these it had an entitlement to receive an additional commission payment if nominated air travel sales targets were achieved. Central to Flight Centre’s business model was a ‘Price Beat Guarantee’ policy by which it undertook to better the price of any other airfare in the market shown to it by a customer. Each of the airlines commenced offering airfares directly to the public at fares that were lower than those made available, via an existing global distribution system, to Flight Centre for it to offer to retail customers. Internally, Flight Centre identified a threat of what it termed ‘disintermediation’ (cutting out the middle man).

The Court concluded that Flight Centre did not compete with the airlines in the provision of international air travel but that it did in relation to the booking and distribution of such travel, because the direct retail air fare sales by the airlines were a substitute for the service offered by Flight Centre. It also concluded that it had attempted to induce the airlines to enter into arrangements by which lower air fares would no longer be offered directly by them. Penalties totalling \$11 million were imposed. The Commission’s claim for higher penalties was rejected on the basis that it had not pleaded the aggravating circumstance of derivation of a benefit from the alleged conduct.

An appeal and a cross appeal to the Full Court were filed in April 2014.

INTELLECTUAL PROPERTY – trade marks – whether infringement – whether trade mark deceptively similar – relevance of context – surrounding circumstances – whether use of name ‘in good faith’ – survey and expert evidence

Australian Postal Corporation v Digital Post Australia [2013] FCAFC 153
(6 December 2013, Justices North, Middleton and Barker)

This case was an appeal from the decision of the primary judge in *Australian Postal Corporation v Digital Post Australia Pty Ltd (No 2)* [2012] FCA 862.

The primary judge decided that ‘DIGITAL POST AUSTRALIA’ was not deceptively similar to ‘AUSTRALIA POST’ within the meaning of s 120(1) of the *Trade Marks Act 1995* (Cth) (the TM Act), the domain names adopted by Digital Post Australia Pty Ltd (DPA) did not infringe the ‘AUSTRALIA POST’ trademarks, and the adoption of the name ‘DIGITAL POST AUSTRALIA’ did not constitute misleading or deceptive conduct pursuant to the Australian Consumer Law. Furthermore, the primary judge held that DPA used its name in good faith, and as such, in the event that he had found ‘DIGITAL POST AUSTRALIA’ and ‘AUSTRALIA POST’ to be deceptively similar, DPA would have had a defence to the infringement claim under s 122(1) of the TM Act.

Australia Post only challenged the primary judge’s findings in respect of the TM Act.

On the appeal, Australia Post relied on a marketing expert’s opinion that a significant proportion of consumers would associate the services offered by DPA with Australia Post. The Court did not find the report persuasive because the main focus of the expert’s evidence was irrelevant with respect to trademarks infringement. The law requires that the marks be compared. Australia Post’s relevant marks were ‘AUSTRALIA POST’ for the services so registered. However, the expert considered ‘POST’, Australia Post’s ‘master brand’ logo, and the colour red and the colour scheme or combination of red and white, which are either constituent elements of the marks, or marks not

the subject of the claim. Furthermore, Australia Post relied on two consumer surveys which the Court held were unreliable on the basis of concerns with the recruitment of participants.

The Court then considered the primary judge’s analysis of the purported infringement and the good faith defence, and upheld his findings. The Court held that ‘DIGITAL POST AUSTRALIA’ did not infringe Australia Post’s marks. Strictly, this meant that the Court did not need to decide if the good faith defence was made out. However, for the sake of completeness it looked at the evidence surrounding the launch of ‘DIGITAL POST AUSTRALIA’, and decided that the defence would have been made out in any event.

Consequently, the appeal was dismissed.

INDUSTRIAL LAW – union alleged to have engaged in industrial action at construction site – application under s 418 of the *Fair Work Act 2009* (Cth) for an order that industrial action stop or not be organised – whether union denied procedural fairness at first instance hearing before Fair Work Commission – whether failure of Fair Work Commission to grant adjournment constituted a denial of procedural fairness – whether any jurisdictional error addressed or cured by appeal – whether jurisdictional error by Full Bench on appeal

ADMINISTRATIVE LAW – application for constitutional writs – whether denial of request for an adjournment amounted to a denial of procedural fairness – whether denial of procedural fairness at first instance hearing cured by appeal – character of appeal – whether jurisdictional error committed by Full Bench of Commission on appeal – orders whether certiorari should be granted

Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions v Abigroup Contractors Pty Ltd [2013] FCAFC 148
(6 December 2013, Justices Buchanan, Katzmann and Rangiah)

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

This was an application for judicial review of a decision of the Fair Work Commission (FWC) heard by a Full Court in the original jurisdiction of the Court. The applicant (the CEPU) sought to impugn the decision on the basis that it had been denied procedural fairness during a hearing of an application by the first respondent (Abigroup) under s 418 of the *Fair Work Act 2009* (Cth). Abigroup made the application on 3 September 2012, seeking to restrain the CEPU and another union (the CFMEU) from taking industrial action at a construction site in Brisbane. The application was served on the CEPU that day, with supporting statutory declarations. The application was also heard that day. At the beginning of the hearing, the CEPU and the CFMEU sought an adjournment for two days, but their application was refused. The unions appealed to the Full Bench of the FWC (Full Bench), but their appeal was dismissed.

Justice Buchanan was prepared to accept that the refusal of an adjournment until at least the following day *prima facie* represented a denial of procedural fairness. But his Honour declined to grant relief on the ground that any procedural unfairness was cured by the appeal to the Full Bench.

The majority (Justices Katzmann and Rangiah) found that the CEPU had been denied procedural fairness, but considered that this had not been cured by the appeal because the Full Bench's decision was affected by jurisdictional error. Their Honours found that the Full Bench had held that there was no denial of procedural fairness because an adjournment would not have made a difference to the outcome. Their Honours held that the Full Bench had applied the wrong test (by asking whether the evidence would, rather than could, have made a difference to the outcome). They also held that whether there could have been a difference to the outcome was only relevant to the discretion to grant relief, not to the question of whether the CEPU had had a reasonable opportunity to present its case. On this basis, their Honours allowed the appeal.

NATIVE TITLE – where perpetual leases under *Crown Lands Act 1929* (SA) were transferred to Indigenous Land Corporation and then to an Aboriginal corporation – where perpetual leases held by an Aboriginal corporation were surrendered and freehold titles issued to that Aboriginal corporation – whether perpetual leasehold and freehold land were areas to which s 47A of the *Native Title Act 1993* (Cth) apply – consideration of meaning of ‘grant’ and ‘vested’ in s 47A(1)(b)(i) – consideration of circumstances in which an Aboriginal corporation expressly holds land on trust etc within meaning of s 47A(1)(b)(ii)

Adnyamathanha People No 3 Native Title Claim v State of South Australia [2014] FCA 101 (19 February 2014, Justice Mansfield)

This native title matter involved parcels of land subjected to freehold and leasehold interests within the claim area. The historic grant of perpetual leases over those parcels of land under the *Crown Lands Act 1929* (SA) being transferred from the Indigenous Land Corporation to an Aboriginal corporation extinguished native title over the claim area.

The Court considered whether s 47A of the *Native Title Act 1993* (Cth) (the NT Act) nevertheless applies so that all freehold, leasehold estates and any other interests created prior to the native title application are to be disregarded for all purposes under the NT Act in relation to the applicant. The evident purpose of s 47A is to create a statutory exception to provisions which preclude native title being claimed over land which had been the subject of past extinguishment.

Section 47A(1)(b)(i) and (ii) identifies two broad categories of land grant capable of enlivening the statutory exception. The Court considered the legislative context and a textual analysis of s 47A(1)(b)(i), particularly on the words ‘grant’ and ‘vested’. It was decided that the specific technical conveyancing meaning applied to ‘grant’. Further, a strict interpretation of ‘grant’ complements the term ‘vested’ or ‘vesting’, as a state of affairs additional to freehold and leases as provided for in s 47A(1)(b)(i). Ultimately, it was found that the

freehold estate did not fall under the exception under s 47A(1)(b)(i) because those proprietary interests were not granted by or took place under the relevant legislation. However, the exception captured the leasehold interest which did take place under the relevant legislation.

The Court considered that both leasehold and freehold estates fell within the second statutory exception provided for in s 47A(1)(b)(ii), in circumstances where the area was held on trust for the benefit of Aboriginal people. The Court accorded weight to obligations imposed to the Aboriginal corporation when the proprietary interests were transferred. Such obligations preclude it from changing its status and oblige it to hold and use land only for particular purposes consistent with those terms.

INDUSTRIAL LAW – Fair Work Act 2009 (Cth) (FW Act) – authorisation of protected industrial action by protected action ballot – meaning of the words ‘extended’ and ‘extend’ in s 459 of the FW Act – whether the Fair Work Commission has the power under s 459(3) of the FW Act to extend the 30-day period for the commencement of protected action authorised by a ballot, after that period has expired

COURTS AND TRIBUNALS – jurisdiction – whether grant of jurisdiction in FW Act limits power of the Federal Court to grant certiorari

Energy Australia Yallourn Pty Ltd v Construction, Forestry, Mining and Energy Union [2014] FCAFC 8 (19 February 2014, Justices North, Dowsett and Bromberg)

This case was a review of a decision of the Full Bench of the Fair Work Commission (the Commission).

Under provisions of the *Fair Work Act 2009* (Cth), industrial action taken by employees in relation to enterprise bargaining will be ‘protected’ where such action is authorised by a secret ballot. ‘Protection’ in this context is a qualified immunity from civil liability. Section 459(1)(d) of the Act provides that an action will be authorised where the action commences 30 days from the date the

results of the ballot are declared, or during such other period as extended by the Commission. Section 459(3) provides that the Commission may extend the 30-day period by up to 30 days.

The Commission found that it was empowered to extend the 30-day period for an action to commence, at a time after that 30-day period had expired. The case turned on the construction of the word ‘extend’ in this context. The applicant also contended that the Court did not have jurisdiction to grant the relief sought by the respondent.

Justices North and Bromberg held that the word ‘extend’ can have different meanings. Where there are different meanings available, the purpose and policy of the provision becomes important. Their Honours held that the purpose of the 30-day limitation period is to ensure that the authorisation via ballot is current. Where employee support plainly continues beyond the 30 days, the Commission has discretion to extend the period to avoid additional costs in going through the ballot process again. Their Honours said it was unlikely that the power to extend would be limited to exercise during the 30-day period, and that there was little policy reason for such an interpretation. However, their Honours held that that construction would only permit extension in accordance with the temporal limit in the provision; the 30-day extension is to be calculated from the declaration of the results of the ballot and not from the date of any extension. Further, the provision would not operate retrospectively to authorise action taken prior to the extension order. Their Honours held that the challenge to jurisdiction should be rejected.

Justice Dowsett held in dissent that the Full Bench erred in its decision. His Honour found that the policy behind the provision was to strike a balance between advantages of taking industrial action, and the notice and certainty, to employers, of the action. His Honour took the view that the power to extend the 30-day period could only be exercised during that period. His Honour held that the Court had power to issue a writ of certiorari and of mandamus in the case, and that they should be granted.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

NATIVE TITLE – statutory interpretation – defence and war – special case stated – extinguishment of native title – legislative intention – inconsistency test – construction of *National Security Act 1939* (Cth) s 51(1) and *National Security (General) Regulations* regs 54 – whether military orders made under the *National Security Regulations* purported to effect an acquisition of property otherwise than on just terms contrary to s 51(xxi) of the Constitution – acquisition of property and requirement of physical occupation – whether *National Security Regulations* ‘past acts’ under *Native Title Act 1993* (Cth) – whether in making the military orders all native title rights wholly extinguished

Congoo on behalf of the Bar-Barrum People #4 v State of Queensland [2014] FCAFC 9 (21 February 2014, Justices North, Logan and Jagot)

This matter was referred to a Full Court in the form of a special case pursuant to r 38.01 of the Federal Court Rules 2011.

War-time military orders (the orders) were made between 1943 and 1945, pursuant to the *National Security Act 1939* (Cth) and regulations, in relation to land over which the Bar-Barrum People claimed native title interests (the land). The legislative scheme gave extensive powers to the Executive. It empowered the Commonwealth to take possession of any land if necessary or expedient in the interests of public safety, the defence of the Commonwealth, or the efficient prosecution of the war. The Commonwealth, by the orders, took possession of the land and was entitled to do anything in relation to the land as if it were the owner in fee-simple. The Commonwealth physically occupied only some of the land and ceased that occupation in August 1945.

The primary issues were:

- whether the orders or occupation of the land extinguished the native title rights and interests of the Bar-Barrum People
- whether the orders effected an acquisition of property otherwise than on just terms
- whether the orders, regulations or occupation of the land were past acts validated under the *Native Title Act 1993* (Cth).

Justices North and Jagot held that the objective intention of the legislation was to prevent the exercise of, but to not otherwise affect, the native title rights for the duration of the orders. Inconsistency of rights is a tool enabling legislative intent to be ascertained. There was no inconsistency of rights and the native title rights were not extinguished, but simply could not be exercised during the period that the Commonwealth held a right of temporary possession over the land. Further, their Honours held that only the land which was physically occupied by the Commonwealth was ‘possessed’ by it. Then, their Honours held that the Commonwealth did acquire the land, but that such acquisition was on just terms. It was not necessary to decide the third issue.

Justice Logan in dissent held first, that physical occupation of the land was not required for possession to have been taken by the Commonwealth, and that the orders alone effected possession. Second, his Honour found that the orders extinguished native title, as the rights of the Commonwealth were inconsistent with the native title rights claimed. Finally, Justice Logan found that as the native title rights were extinguished, there was no acquisition of property.

An application to the High Court for special leave to appeal was filed in March 2014.

ADMIRALTY – ARREST – arrest of a surrogate vessel – interlocutory application for release of vessel – meaning of the expression ‘the owner’ in s 19(b) of the Admiralty Act 1988 (Cth) – quality and significance of evidence required to demonstrate ownership of surrogate vessel under s 19(b) of the Admiralty Act 1988 (Cth) where respective owners of vessels are related entities

Shagang Shipping Co Ltd v Ship ‘BULK PEACE’ as surrogate for the Ship ‘DONG-A ASTREA’
[2014] FCAFC 48
(22 March 2014, Chief Justice Allsop and Justices Rares and McKerracher)

This case concerned the correct application of *Admiralty Act 1988* (Cth) provisions dealing with the arrest of surrogate ships. Clarity and certainty for in rem arrest powers is extremely important, as they significantly impact the substantial commercial and trading interests that dominate contemporary seafaring.

Briefly, the facts of this case are as follows: the ship *Dong-A Astrea* was chartered under a charterparty between owner Shagang Shipping Co Ltd (Shagang) and charterer Grand China Shipping Co Limited (GCS) with HNA Group Co Limited (HNA) as guarantor. When GCS failed to make required payments and HNA failed to perform those obligations, Shagang commenced proceedings in various jurisdictions, and an arbitral award was calculated. After application by Shagang, a Marshal of the Federal Court of Australia arrested *Bulk Peace* as a surrogate for *Dong-A Astrea* pursuant to s 19 of the *Admiralty Act*, which provides powers to arrest a surrogate ship in circumstances where the first ship was owned, chartered, possessed or controlled by a person who also owned the surrogate ship at the time the cause of action arose. The alleged owner in this case was HNA.

Bulk Peace applied for release on the basis that it is not a surrogate ship under s 19 because its owners did not own, charter, possess or control *Dong-A Astrea*. The Court first considered whether HNA ‘controlled’ *Dong-A Astrea*. Under the charter, HNA could control the commercial disposition of *Dong-A Astrea* from the date of default. Although it did not in fact do so, this power indicated that HNA nevertheless controlled her in the relevant legal sense. In assessing whether HNA owned *Bulk Peace*, the Court considered whether HNA had ultimate title and exercised rights of dominion (including control of use, proceeds and sale) over her. Affidavit evidence suggested that HNA exercised significant influence over companies within its group, including the owners of *Bulk Peace*. This evidence established HNA’s substantial control over *Bulk Peace*, but was insufficient to satisfy the explicit ownership-based requirement of s 19(b). Consequently, *Bulk Peace* could not be considered a surrogate for *Dong-A Astrea* and orders were made for her release.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

DOUBLE TAXATION TREATIES – United States Double Taxation Convention – taxation of gains derived from disposition of shares in a company owning real property (mining tenements) situated in Australia by a limited partnership formed outside both Australia and the United States but comprised of limited partners being predominantly United States residents – whether gain derived by limited partnership or limited partners for the purpose of the Convention

INCOME TAX – Div 855 of Pt 4-5 of *Income Tax Assessment Act 1997* (Cth) – whether capital gains derived by a foreign resident to be disregarded – whether ‘principal asset test’ in s 855-30 passed – consideration of what is to be valued and compared as the criterion for passing the test

Commissioner of Taxation v Resource Capital Fund III LP [2014] FCAFC 37
(3 April 2014, Justices Middleton, Robertson and Davies)

The issue in this appeal was whether the primary judge was correct to find the respondent (RCF), a non-resident limited partnership, not taxable on the capital gain that it made on the sale of shares that it held in an Australian mining company, St Barbara Mines Ltd (SBM). The primary judge held that RCF was not taxable on the gain because:

- the provisions of the *Income Tax Assessment Act 1997* (Cth) (the 1997 Act) which imposed the liability for the tax on the gain on RCF as the relevant taxable entity were inconsistent with the provisions of the Double Tax Agreement between Australia and the United States (the DTA) which treated the gain not as derived by RCF but as derived by the partners of RCF, and that the assessment of RCF was therefore precluded by s 4(2) of the *International Tax Agreements Act 1953* (Cth) (the Agreements Act) (the first issue)

- (if it were necessary to decide) RCF's membership interest in SBM did not pass the ‘principal interest test’ in s 855-30 of the 1997 Act because the market values of SBM's non ‘taxable Australian real property’ (TARP) assets exceeded the market values of SBM's TARP assets, and therefore the shares were not ‘taxable Australian property’ (the second issue).

The Full Court disagreed with both the conclusions of the primary judge. The Full Court held that the correct analysis on the first issue was that the inconsistency resides in the difference between Australia and the United States (US) in the tax treatment of partnerships, not in the terms of the DTA. Whereas Australia recognises certain limited partnerships as taxable entities, the US treats partnerships as transparent entities and taxes the partners so that the application of the DTA by the Source State (Australia) is different from the application of the DTA by the Residence State (the US). Therefore, the Full Court disagreed that s 4(2) of the Agreements Act precluded Australia from taxing RCF on the gain.

The Full Court went on to observe that RCF was an independent taxable entity in Australia and liable to tax on Australian sourced income and the DTA did not gainsay RCF's liability to tax. There was no inconsistency between the DTA and the provisions of the *Income Tax Assessment Act 1936* or the 1997 Act with respect to the taxation of the gain in the hands of RCF. The inconsistency was between US tax law and Australian tax law with respect to the tax treatment of RCF. The inconsistency related to the imposition of the liability for the tax on the gain, with the consequence that the provisions of the DTA applied differently between Australia as the source country and the US as the place of residence of many of RCF's partners.

Whilst US tax law treated RCF as a transparent entity for tax purposes and taxed the partners of RCF on their individual shares of RCF's income, under Australian tax law RCF was not transparent for tax purposes but was a separate taxable entity taxed as a company and, in Australia, the gain was taxable in RCF's hands. Though US law attributed to the partners the liability for any tax payable on the gain made by RCF, Australia attributed the liability for any tax payable to RCF.

As to the second issue, the Full Court disagreed with the primary judge's construction of s 855-30 of the 1997 Act and consequently with the valuation hypothesis adopted by the primary judge in determining the market values of SBM's assets.

The question raised was whether the market value of each asset was to be determined under s 855-30(2) as if each asset was the only asset offered for sale or on the basis of an assumed simultaneous sale of SBM's assets to the same hypothetical purchaser.

In light of the statutory context and purpose, the Full Court decided that it was implicit that to determine where the underlying value resides in SBM's bundle of assets, the market values of the individual assets making up that bundle are to be ascertained as if they were offered for sale as a bundle, not as if they were offered for sale on a stand-alone basis.

It followed that the assets should be valued on the basis of an assumed simultaneous sale of SBM's assets to the same hypothetical purchaser, not as stand-alone separate sales.

An application to the High Court for special leave to appeal was filed in May 2014.

INCOME TAX – whether outgoings deductible under general provisions of s 8-1 of the *Income Tax Assessment Act 1997* (Cth) – outgoings in the form of imposts imposed under s 163AA of the *Electricity Industry Act 1993* (Vic) over three years – appellant agreed to pay the imposts on purchase of transmission licence – whether outgoings to be characterised as part of cost of acquiring assets and therefore on capital account or as a working expense on revenue account

SPI PowerNet Pty Ltd v Commissioner of Taxation [2014] FCAFC 36
(7 April 2014, Justice Edmonds, McKerracher and Davies)

The appellant in this case sought to deduct imposts it agreed to pay to the State of Victoria pursuant to the *Electricity Industry Act 1993* (Vic) upon its acquisition of electricity transmission licences. The imposts were payable over three years and the issues were whether they were deductible under s 8-1(1) as outlays incurred in gaining or producing assessable income or in carrying on a business for that purpose or whether they were outgoings of capital or a capital nature and so not deductible by reason of s 8-1(2).

The primary judge made two findings in the alternative: first, that the imposts were not a cost of SPI deriving its income because they were payments out of SPI's profits after the calculation of SPI's taxable income; second, that the imposts were outgoings of a capital nature.

On the first question, the primary judge relied on the judgment of Justice Lockhart in *United Energy Ltd v Commission of Taxation* (1997) 78 FCR 169 (United Energy) to conclude that the payments were distributions of profits. On appeal, the Court disagreed with the primary judge's findings. Justices Edmonds and McKerracher held that the joint judgment of Justices Sundberg and Merkel in *United Energy* was to be preferred.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

On the second question, Justice Edmonds held that the imposts were part of the cost to SPI of acquiring the transmission licence, an asset of the business, even though the imposts did not form part of the purchase price under asset sale deed. His Honour therefore held that they were outgoings of capital or of a capital nature. In doing so, his Honour followed *Colonial Mutual Life Assurance Society Ltd v Federal Commissioner of Taxation* (1953) 89 CLR 428 and distinguished *Cliffs International Inc v Federal Commissioner of Taxation* (1978-1979) 142 CLR 140. Justice McKerracher returned to first principles, beginning chronologically with *Vallambrosa Rubber Co Ltd v Farmer* (1910) SC 519 and ending with *CityLink Melbourne Ltd v Commissioner of Taxation* (2006) 228 CLR 1 to conclude that the fact that the imposts did not form part of the purchase price was not determinative of their true characterisation. His Honour held that the imposts were on capital account because they were part of the cost of acquiring the transmission licence.

Justice Davies held that the imposts were to be characterised as working expenses, and therefore not of a capital nature. By majority, the appeal was therefore dismissed.

An application to the High Court for special leave to appeal was filed in May 2014.

MIGRATION – refugees – Unlawful non-citizens – refusal to grant a protection (class XA) visa – person assessed as satisfying definition of refugee – indefinite immigration detention – no realistic prospect of removal from Australia in reasonably foreseeable future – scope of Minister's discretion under s 501(1) of the *Migration Act 1958* (Cth) – whether the Minister's exercise of power was affected by jurisdictional error – whether the Minister was obliged to consider individual circumstances of the applicant – whether it is permissible for general deterrence to be a central consideration in making the decision – whether the Minister was obliged to consider legal consequences for the applicant of visa refusal – whether the Minister was obliged to consider the legal framework within which the discretion is exercised

CONSTITUTIONAL LAW – constitutional validity of s 501(6)(aa) of the *Migration Act 1958* (Cth) – whether the character test in s 501(6)(aa) allowing the Minister to refuse a visa on the basis that an applicant has committed a crime is supported by s 51(xix) of the Constitution

ADMINISTRATIVE LAW – judicial review – procedural fairness – whether the Minister was required to inform applicant that general deterrence would be a relevant or central consideration – whether procedural fairness is denied even where the applicant has not tendered evidence as to the submissions it would have made in response

NBNB v Minister for Immigration and Border Protection [2014] FCAFC 39
(9 April 2014, Chief Justice Allsop and Justices Buchanan and Katzmann)

This set of five applications challenged the exercise of Ministerial discretion under s 501 of the *Migration Act 1958* (Cth) to refuse protection visas to applicants who were assessed to be refugees within the meaning of the Convention Relating to the Status of Refugees, but failed the character

test, having been convicted of offences relating to disturbances at immigration detention facilities. The applicants could not be released within Australia, nor refoiled to their home countries, nor removed to a third country. Consequently, the applicants faced indefinite detention. This issue was not mentioned in the Minister's reasons for refusal.

A central question before the Court was whether the Minister was required to consider this consequence of indefinite detention. The Court examined the structure of the Migration Act and its accompanying directions, as well as Australia's international obligation of non-refoulment. When s 501 interacts with Australia's non-refoulment obligation, it may, as in these cases, produce the result that an applicant cannot be removed from detention. The Court concluded that each exercise of s 501 discretion must have regard to the legal framework within which it operates, and the consequences of decisions resulting from that framework, as an integral part of exercising that power. The Minister's failure to do this was thus a jurisdictional error.

The Court also considered whether the discretion could be exercised to deter others from committing offences in immigration detention. On this issue, the Court found that a decision based only on general deterrence principles would not consider the merits of a particular case, and would therefore be affected by jurisdictional error. Additionally, not indicating that general deterrence would be a material factor in the Minister's decision (as it was in these cases) denied the applicants natural justice.

A final question was whether the Minister adequately considered the applicants' serious mental health issues, and was obliged to obtain further information. The Court noted the references to mental health in the Minister's reasons, and determined that the argument was actually directed to whether appropriate weight had been given to the mental health issues and thus did not illuminate jurisdictional error.

TRADE MARKS – whether respondent's trade mark is capable of distinguishing the respondent's goods and services – whether and to what extent the respondent's trade mark is inherently adapted to distinguish the respondent's goods and services – whether the respondent's trade mark is descriptive – whether other traders acting without improper motive would wish to use the respondent's trade mark – the relevance of international usage of trade indicia – the relevance of post-lodgment date use of the respondent's trade mark – whether use of trade indicia constitutes use as a trade mark – whether the applicants' or respondent's trade marks are deceptively similar to prior trade marks – whether registration should be refused because the respondent had no intention to use the trade mark – the threshold for use or intended use of a trade mark – whether the suffix '.com.au' in a trade mark is a distinguishing feature – whether the use of the applicant's trade mark is honest concurrent use

Phone Directories Company Australia v Telstra Corporation Limited [2014] FCA 373
(11 April 2014, Justice Murphy)

This proceeding comprised two appeals against decisions of delegates of the Registrar of Trade Marks. The main appeal concerned Telstra's application in 2003 to register the word 'yellow' as a trade mark (the Yellow mark) in respect of broad classes of goods and services including print and online business directories. From 1975 Telstra had distributed and extensively marketed its business directories around Australia under various Yellow Pages trade marks, using the colour and word yellow in doing so. Two rival directory producers appealed against registration of the mark pursuant to ss 41, 44 and 59 of the *Trade Marks Act 1995* (Cth) (the Act).

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

Justice Murphy refused registration of the Yellow mark. His Honour held that yellow was a colour commonly used by Telstra and other traders in Australia (and overseas) in respect of business directories, which is likely to have formed or strengthened a desire by other traders in Australia to innocently use the word 'yellow'. He considered the Yellow mark descriptive rather than distinctive, not dislocated from or inappropriate to the designated products, descriptive of a colour commonly used on directories, and that there was to an extent a commercial imperative for other traders to use it. Pursuant to s 41(3) of the Act his Honour held that the word yellow has no inherent adaptability to distinguish the designated products.

Although Telstra's pre-lodgment date use of the colour and word yellow was extensive his Honour held that it did not use the word yellow, standing alone, and considered that it was not trade mark use. Under s 41(6) the mark did not in fact distinguish the designated products. Registration of the mark was refused.

Although His Honour found it was unnecessary to decide this, he also noted that, pursuant to s 41(5), if it was accepted that the Yellow mark has some inherent adaptability to distinguish it must be slight, the pre-lodgment date use of the mark was non-existent or light, and that together with other circumstances this meant that the mark does not or will not in fact distinguish the designated products. The extensive post-lodgment date use of the mark could not be determinative.

CONSUMER LAW – injunction sought to restrain alleged misleading or deceptive conduct – s 18 and s 232 Australian Consumer Law – promotional flyer published by franchisor of newsagent franchise – online blog article critical of flyer – online blog authored by director and co-owner of rival franchise group – whether article was conduct in trade or commerce – whether flyer was misleading or deceptive – class of consumers likely to be misled – whether article made imputations claimed by applicant – whether imputations misleading or deceptive or likely to mislead or deceive – whether Court's discretion should be exercised in favour of granting injunction – whether Court should order retraction of article or apology

Nextra Australia Pty Limited v Fletcher [2014] FCA 399 (24 April 2014, Justice Collier)

Mark Fletcher was a director and fifty per cent shareholder of the 'NewsXpress' newsagency franchise system. He also operated an online publication known as the 'Australian Newsagency Blog'. While the blog predominately concerned topics of general interest to newsagents, it had also been used to promote Mr Fletcher's commercial interests. Mr Fletcher had previously, for example, published articles about the benefits of membership with NewsXpress and endorsing point-of-sales software sold by another company which Mr Fletcher owned.

On 27 April 2011 Mr Fletcher published an article entitled *Nasty campaign from Nextra misleads newsagents*. The subject of the article was a flyer which had been sent out to newsagents by Nextra and the applicants alleged, among other things, that it incorrectly imputed that Nextra had sought to mislead people in the newsagency industry, thus itself being misleading. Mr Fletcher disclosed at the end of the article that he was a director of NewsXpress and in evidence admitted to having not seen the flyer first-hand. The applicant sought an injunction requiring Mr Fletcher to remove the blog, as well as restraining him from publishing it in any other form. A court-ordered apology and corrective advertising were also sought.

It was held that the publishing of the blog was in trade or commerce as the blog has been used at least in part for commercial purposes and the publishing of the article in question was an instance of where this was so. The article was held to be misleading or deceptive as it contained a number of incorrect imputations about Nextra's advertising practices that would be likely to lead readers into error.

The applicant was granted the injunction it sought; however, it was held that an apology would serve little purpose and that corrective advertising at that stage would likely be counterproductive and could contribute to further confusion.

An appeal to the Full Court was filed in June 2014.

INSOLVENCY – international cross-border insolvency – company incorporated in Cayman Islands said to have made a taxable capital profit in Australia – company wound up in Cayman Islands, its centre of main interests for the purpose of the UNCITRAL Model Law on Cross-Border Insolvency as incorporated into Australian law by the Cross-Border Insolvency Act 2008 (Cth) – company not a registered foreign company and not amenable to being wound up in Australia – Cayman Islands winding up recognised as the foreign main proceedings – joint foreign liquidators sought transfer of funds in Australia to Cayman Islands free of any claim of the Deputy Commissioner of Taxation (DCT) – whether DCT should be permitted to proceed against the funds in Australia through such proceedings as may be available, subject to equal treatment of other creditors – meaning of ‘adequate protection’ in the Model Law – hotchpot and equality.

Akers as a joint foreign representative of SAAD Investments Company Limited (in Official Liquidation) v Deputy Commissioner of Taxation [2014] FCAFC 57 (14 May 2014, Chief Justice Allsop and Justices Robertson and Griffiths)

Cross-border insolvency often produces competing priorities and circumstances not governed clearly by existing rules. Addressing these areas of uncertainty is challenging but vital to developing clear jurisprudence for liquidators and creditors.

Saad Investments Company Limited (Saad) was registered in the Cayman Islands. It held shares in an Australian company, the sale of which attracted capital gains tax liability. Saad was wound up in the Cayman Islands; this Court recognised those proceedings as main foreign proceedings. The consequence of such recognition under Art 21 of the Model Law on Cross-Border Insolvency (Model Law) is to freeze other dealings with respect to that company. The Court later modified its recognition orders, preventing remittal of assets to the Cayman Islands and granting leave to the Deputy Commissioner of Taxation (DCT) to proceed against Saad.

In this appeal, the Court considered whether the *Cross-Border Insolvency Act 2008* (Cth) (CBI Act) and Model Law permitted such orders in circumstances where DCT could not claim (a foreign revenue claim) in the Cayman Islands liquidation. A key concern was how equal and fair participation in funds was best achieved.

The Court concluded that nothing in the CBI Act, Model Law or any other relevant legislation prevented the DCT from seeking leave to proceed, or enforcing rights under the *Taxation Administration Act 1953* (Cth) where those rights will be lost if assets are remitted. The Court observed that in an Australian ancillary winding up, all creditors rank equally. Significantly however, the DCT's participation would be limited to the Australian proceedings while foreign creditors could make claims elsewhere. As in the nature of ancillary liquidations, to determine the disposition of assets on an equitable basis, the Australian liquidator could require foreign creditors to declare the value of their participation in the company's other assets before they obtained any Australian assets.

The Court considered that a liquidation configured in this hotchpot arrangement embraces the maxim that equity is equality, and resolves disposition difficulties in a fair, efficient manner, thus giving appropriate effect to domestic and international cross-border insolvency rules. Ultimately, therefore, the modification orders were effective and the appeal dismissed.

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JUDGES' ACTIVITIES

CHIEF JUSTICE ALLSOP

18 July 2013	Attended the Affinity Intercultural Foundation, 2013 Friendship & Dialogue Iftar Dinner at NSW Parliament House.
22 July	Attended the Australian Institute of Administrative Law Seminar presented by Professor Lorne Sossin, Dean of Osgoode Hall Law School, York University, Toronto on <i>The Boundaries of Judicial Review and Justiciability; comparing perspectives from Australia and Canada</i> .
22–23 August	Opened the International Commercial Law and Arbitration Conference at the Federal Court in Sydney. Panellist in Session Three 'From Genesis to Revelation: the origin and scope of the admiralty and maritime jurisdiction in the constitutions of the United States and Australia'.
September	Lecturer in Comparative Admiralty & Maritime Law Sydney University.
3 September	Chair of the first seminar in the National Commercial Law Seminar Series entitled 'Current issues in the Interpretation of Federal Legislation'.
18 September	Hosted the Australian Maritime and Transport Arbitration Commission (AMTAC) Annual Address 2013.
19 September	Opened the Maritime Law Association of Australia and New Zealand 40th Annual 2013 Conference at the Australian National Maritime Museum in Sydney.
22 September	Presented a paper entitled <i>IP Remedies and Their Legal and Equitable Origins</i> at the 27th Intellectual Property Society of Australia and New Zealand (IPSANZ) Annual Conference.
24 September	Attended, in Sydney, the live broadcast from Brisbane of the Richard Cooper Memorial Lecture <i>Indigenous sea rights – The Grotius heritage</i> presented by Ms Raelene Webb QC, President of the National Native Title Tribunal.
15 October	Attended the Australian National University (ANU) International Law Society Address in Canberra delivering a speech co-authored with Ms Jasmine Still <i>The Role of Experts in the Whaling in the Antarctic Case</i> .
21 October	Presented the second seminar in the National Commercial Law Seminar Series <i>Unconscionability and good faith in business transactions</i> at the Federal Court in Melbourne.
29 October	Presented the 2013 Clayton Utz Sydney University International Arbitration Lecture <i>The Authority of the Arbitrator</i> .
8 November	Attended the Family Court Conference in Melbourne and delivered a speech entitled 'Accrued' <i>Federal Jurisdiction and the Family Court</i> .

22 November	Keynote speaker at the 2013 Australian Government Solicitor Constitutional Law Forum dinner delivering a paper entitled <i>Some reflections on the nature of law and power</i> .
26 November	Attended and spoke at a dinner given in his honour by the Tax Bar Association at the Essoign Club, Melbourne.
5 December	Delivered the welcome address at the International Bar Association (IBA), Australian Centre for International Commercial Arbitration (ACICA) and Law Council of Australia Conference on Arbitration.
12 February 2014	Presented a speech entitled <i>Civility, reason, fairness and justice, and the law</i> at the Great Synagogue Law Service marking the beginning of the 2014 Law Term.
14 February	Attended the 2014 Constitutional Law Conference and dinner.
25 February	Took part in a seminar presented by The Honourable Justice Stephen Rothman AM entitled <i>The Impact of Bugmy and Munda on Sentencing Aboriginal and Other Offenders</i> .
28 March	Presented a joint paper entitled <i>Judicial Support of Arbitration</i> with Justice Croft at the Asia Pacific Regional Arbitration Group 10th Anniversary Conference.
28 March	Attended a ceremony held in Melbourne at which a Memorandum of Guidance between the Federal Court of Australia and the Dubai International Finance Centre Courts was signed by himself, on behalf of the Court, and by Chief Justice Michael Hwang SC, Chief Justice DIFC Courts. Each Chief Justice delivered a short address.
31 March	Attended the launch of the Federal Circuit Court of Australia 'Reconciliation Action Plan'.
15 May	Delivered a Victorian Bar Continuing Professional Development (CPD) Seminar entitled <i>Federal Court of Australia, recent developments and the future</i> .
18–21 May	Attended the American Law Institute Conference in Washington.
23 May	Spoke at the Canadian Federal Court of Appeal and Federal Court Seminar in Maritime Law in Ottawa, Canada.
27 May	Visited and met with judges of the United States Courts for the Second Circuit, New York.
28 May	Visited the United States Court of Appeals for the 7th Circuit. Various meetings were held with judges of the Court of Appeals concerning their electronic filing system.
26–27 August 2013	Justice MARSHALL co-hosted a visit to the Victoria District Registry by members of the Supreme People's Court of Vietnam.

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9 September	Appointed an Ambassador for the Wellness and the Law Foundation – a joint initiative of the Law Institute of Victoria and the Victorian Bar to combat depression in the legal profession.
20 September	Participated in the La Trobe Environmental Law Moot, presided over by Preston CJ of the Land and Environment Court of NSW.
14 May 2014	Addressed the Young Lawyers section of the NSW Law Society on the topic of <i>depression in the practice of law</i> .
26 June	Presided over the Golden Gavel awards for the Victorian Bar.
2013–14	Justice NORTH continued: <ul style="list-style-type: none"> • to serve as a member of the Monash Law School, Centre for Employment & Labour Relations Law Advisory Committee • as Chair of the Advisory Committee of the Centre for Employment and Labour Relations Law at the University of Melbourne • as Patron of the Institute of Post Colonial Studies.
22–23 August 2013	Justice MANSFIELD was a panellist for the session 'Australian Antitrust Treatment of Cartels: International Intersections and Comparisons' at the International Commercial Law and Arbitration Conference.
23–24 August	Attended the SA Bar Association Annual Conference.
11 September	Co-presented a session entitled <i>Hot Tubbing Expert Witnesses</i> for the Judicial Development Committee of South Australia.
17 September	Presented a session about the Federal Court to the South Australian Bar Reader's Course and Reading Programme.
26 September	Opened the new premises of The Legal Services Commission in South Australia.
9–13 March 2014	Attended the 21st Pacific Judicial Conference 2014 – 'Equal Access to Justice' in Auckland, New Zealand.
8 May	After dinner speaker at the 40th Anniversary of the <i>Trade Practices Act 1974</i> at Herbert Smith Freehills in Sydney.
24 May	Chaired the keynote session presented by Justice Steven Rares at the 2014 Competition Law Conference.
2013–14	Justice DOWSETT continued in his capacities as: <ul style="list-style-type: none"> • a member of the Programmes Advisory Committee of the National Judicial College of Australia (NJCA) • a Member of the Griffith Law School Visiting Committee (Brisbane) • a Community Member of the Board of the College of Law (Sydney).

19 July 2013	Attended a Bar Practice Course address and reception conducted by the Bar Association of Queensland.
22–23 August	Attended the International Commercial Law & Arbitration Conference in Sydney and chaired Session 3 – ‘From Genesis to Revelation: The origin and scope of the admiralty and maritime jurisdiction in the constitutions of the United States and Australia’.
27–30 August	As a member of the planning committee, attended the ‘Dialogues on Being a Judge Programme’ conducted by the NJCA.
12 September	Attended a presentation at the Supreme Court of Queensland by the Honourable Justice Andrew Phang Boon Leong, Judge of Appeal of the Supreme Court of Singapore.
24 September	Attended the TC Beirne School of Law 2013 Richard Cooper Memorial Lecture held at the Commonwealth Law Courts, Brisbane.
25–27 September	As a member of the Programmes Advisory Committee of the NJCA, attended the National Judicial Orientation Programme held in Hobart. Chaired and assisted in presenting Session 13 – ‘The Exercise of Discretions’.
11 October	Delivered the eulogy at the funeral of the late the Honourable Justice Bruce McPherson CBE at Ann Street Presbyterian Church, Brisbane.
22 October	In his capacity as a Community Member, attended the Annual General Meeting of the Board of the College of Law in Sydney.
7 November	Attended a dinner function in Brisbane hosted by The Intellectual Property Society of Australia and New Zealand Inc., the guest speaker being the Honourable Justice Philip McMurdo.
7– 9 February 2014	Attended a NJCA Programmes Advisory Committee meeting at the Australian National University in Canberra attended by the Attorney-General, Senator the Honourable George Brandis QC. Attended the ‘Sentencing: From Theory to Practice’ conference following the meeting.
27 February	Attended a function to honour newly elected life members of the Bar Association of Queensland, the Honourable Justice Patrick Keane and his Honour Judge Kiernan Dorney QC.
7– 9 March	Chaired and presented a Session–‘Development in Court Practice and Procedure Update’ at a conference hosted by the Bar Association of Queensland.
23 April	Welcomed guests including the Attorney-General, Senator the Honourable George Brandis QC and the Honourable Justice Patrick Keane of the High Court of Australia, to the official launch, by the Attorney-General, of the Queensland Public Interest Law Clearing House Incorporated Self Representation Service.

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8 May	Attended a seminar at the Supreme Court of Queensland, the guest speaker being the Honourable Dyson Heydon AC QC. The seminar was presented by the Bar Association of Queensland and the Queensland University of Technology.
2013–14	Justice KENNY is: <ul style="list-style-type: none"> • a member of the Council of the Australian Institute of Judicial Administration • an Executive member of Future Justice • a member of the Advisory Board of the Centre for International and Public Law, ANU • a Foundation Fellow of the Australian Academy of Law • a member of the International Law Advisory Board, Law School, Monash University • a College Fellow of St Hilda's College, University of Melbourne • a member of an Advisory Committee of the Australian Law Reform Commission for the purpose of the Commission's 'Copyright and the Digital Economy' reference, resulting most recently in ALRC Report 122, Copyright and the Digital Economy published in February 2014.
July 2013	Contributed a chapter <i>Colonies to Dominion, Dominion to Nation</i> in JT Gleeson, JA Watson and RCA Higgins (eds) 'Historical Foundations of Australian Law' (The Federation Press, 2013).
3 September	In conjunction with Professor Goldsworthy and Mr Moshinsky SC, spoke at the National Commercial Law Seminar Series on <i>Current Issues in the Interpretation of Federal Law</i> .
October	Participated as a member of the Selection Committee for Menzies Scholarships in Law for the 2014 academic year. Presented a paper at a seminar hosted by Victoria University on the topic <i>Indeterminacy of law: how do judges fill the gaps when the rules do not provide the answer?</i>
6 November	Gave the address at the Service of Commissioning for Mr Peter Worland, as Executive Director Uniting Care NSW and ACT.
12 November	Attended the launch of the Victorian Bar's programme 'Equality at the Victorian Bar, Making the Quantum Leap' – a response to the Law Council of Australia's National Attrition and Re-engagement Study.
21 February 2014	Attended and participated in the South African Constitutional Law Seminar at the Melbourne Law School, University of Melbourne.

3 March–30 June	<p>Judge in Residence, Melbourne Law School, University of Melbourne. Addresses to students included:</p> <ul style="list-style-type: none"> • The Role of Barristers and Judges in Civil Proceedings • Current Administrative Law and Future Trends • How Trade Mark Cases are run in the Federal Court • Management of Civil Litigation • Written Submissions and the Use of Narratives.
7 March	With Professor Otto and Dr Genovese, took part in a public conversation for International Women's Day 2014 at the Melbourne Law School.
14 March	Attended a conference on 'Judicial Discretion in Private Law', held in conjunction with the Judicial College of Victoria and the Melbourne Law School, the University of Melbourne. Chaired the session 'Discretionary and taxonomical reasoning'.
26–27 March	Delivered a paper entitled <i>The Growth and Decline of Australian Federal Courts?</i> And chaired the session 'Governor-General and the Republic' at the Melbourne Law School Sir Zelman Cowen Conference.
14 May	Acted as Moot Judge for the Sir Zelman Cowen Mooting Competition.
23 May	Spoke on the value of the Sir Ninian Stephen Menzies Scholarship in International Law at a celebration of the appointment of the scholarship's inaugural scholar.
May	Chaired a seminar jointly convened by the University of Melbourne Asian Law Centre and the Centre for Comparative Constitutional Studies called Consulting for Reform: State Responses to Constitutional Reform Proposals in Vietnam presented by Dr Bui Ngoc Son.
20 June	Presented a paper <i>Practices of Judging and Judgment</i> at the Association Transnational Law Schools (ATLAS) Agora 2014 hosted by the University of Melbourne Law School.
2013–14	<p>Justice BENNETT continued to be:</p> <ul style="list-style-type: none"> • Chair of the National Health and Medical Research Council [NHMRC] • a member of the Dean of Medicine's Advisory Group of The University of Sydney • involved in a number of other judicial and extra-judicial commitments including Arbitrator of the Court of Arbitration for Sport, member of the Law Academic Advisory Committee for the School of Law of The Chinese University of Hong Kong and member of Chief Executive Women.

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15 August 2013	Presented with a lifetime achievement award at the Australasian Women in Business Law Awards.
27– 28 August	Spoke at the 4th Global Forum on Intellectual Property [GFIP] 'The Changing Global Innovation Landscape: Whither IP?' in Singapore on the topic of <i>Views from the Bench on the Evolving Role of the Courts</i> .
22 November	Delivered the keynote address at the Annual Patent Colloquium at the Faculty Centre for Innovation Law and Policy in the University of Toronto, Canada, on the topic: <i>Views from the Top [or When Top Courts decide Patent Cases]</i> .
13 December	Spoke at a graduation ceremony for the Faculty of Medicine of the University of Sydney.
February 2014	Member of the Ad Hoc Division of the Court of Arbitration for Sport at the Winter Olympics in Sochi.
April	Attended and participated as a member of the Faculty at the 22nd Annual Conference on Intellectual Property Law & Policy, Fordham University School of Law, New York. Speaker/panellist in various sessions on topics including: <i>Perspectives from IP Pioneers and Patentable Subject Matter</i> .
21 May	Spoke on <i>Styles and effectiveness of argumentation in Court room: Comparative Perspectives; the role of case law under Australian patent law; and the Judicial System for IP Litigation in Australia and Members of the Commonwealth</i> at the Annual IP Teaching Workshop co-hosted by the Supreme People's Court of China and the University of Washington in Shanghai.
16–20 September 2013	Justice SIOPIS was the 15th Visiting Judicial Fellow at Flinders University Law School. During that time he delivered a public lecture entitled <i>Access to Justice and Lawyers' Ethical Obligations</i> and presented a paper to the law faculty entitled <i>Compensation for Infringements of Human Dignity</i> .
13 November	Chaired an Intellectual Property Seminar for the profession in Western Australia entitled 'Misleading or Deceptive Conduct and Trade Mark Law'.
12 March 2014	Chaired a seminar entitled 'Discrimination in the Workplace and the New Bullying Regime'.
October 2013	Justice EDMONDS participated on a panel at the Law Council of Australia Taxation Workshop discussing the amendments made to Part IVA of the <i>Income Tax Assessment Act 1936</i> .
January 2014	Presented the dinner address at the 26th Annual Conference of the Australasian Tax Teachers' Association entitled, <i>The Politics of Tax: Can it be Disinfected?</i> , subsequently published in the <i>Australia Tax Review</i> , Vol. 42 No. 1.

2013–14

Justice **GREENWOOD** is a longstanding Adjunct Professor in the University of Queensland Law School. During the reporting year he was asked by the Head of the TC Beirne School of Law to convene and chair a group of senior lawyers and Judges to formulate a submission to the Review Panel appointed by the Vice Chancellor of the University to conduct a review of the School of Law. He prepared and circulated an extensive written submission as to the future direction for the University of Queensland's School of Law.

Chair of an Advisory Committee advising the University of Queensland Head of the Law School, Professor Sarah Derrington, on any matters about which the Head of School needs advice and assistance from the legal profession and Judges.

Member of a national appointments panel chaired by the Vice Chancellor, convened to consider international applications for the position of Head of School of the Griffith University Law School.

Member of the Board of Griffith University's Key Centre for Law, Governance and Ethics.

Member of the Convening Group responsible for organising a conference on governance and ethics in association with the G20 Conference to be held in Brisbane in 2014.

Gave a paper to the Queensland Bar Association on approaches to native title proceedings and background issues concerning the conduct of such proceedings; opened the Australasian Intellectual Property Academic Lawyers Association Conference in Brisbane; and gave an address to the University of Queensland Law School on the topic of federal jurisdiction.

Representative member for the Federal Court on the Acquisitions Committee of the Library Committee of the Supreme Court of Queensland Library.

Member of the Governing Council of Brisbane Boys College, a large independent secondary school in Brisbane.

2 July 2013

Justice **RARES** delivered the keynote speech *Striking the Modern Balance between Freedom of Contract and Consumer Rights* at the Conference of the International Association of Consumer Law held at the University of Sydney.

26 July

Attended the seminar 'Judges and the Academy: Where Theory and Practice Intersect' at Monash University's City Chambers in Melbourne.

2 August

Presented a paper *Using the 'Hot Tub' – How Concurrent Expert Evidence Aids Understanding Issues* to the Intellectual Property Society of Australia & New Zealand at Gilbert + Tobin Lawyers in Sydney.

7 August

Delivered a speech on the *Federal Court's International Arbitration List* at the NSW Bar Association's Arbitration Workshop.

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15 August	Participated in the NSW Bar Association event 'Judicial Q&A'.
21–23 August	Attended the International Commercial Law and Arbitration Conference hosted by the Federal Court in Sydney and delivered a commentary on 'From Genesis to Revelation: The Origin and Scope of the Admiralty and Maritime Jurisdiction in the Constitutions of the United States and Australia'.
19–20 September	Attended the Maritime Law Association of Australia and New Zealand Conference and gave the FS Dethridge Memorial Address <i>Far from Halcyon Isle: Maritime Liens, Renvoi and Conflicts of Law</i> .
24–25 September	Presented and taught at the National Judicial Orientation Programme.
27 September–1 October	Attended the Comité Maritime International Symposium in Dublin, Ireland and chaired the panel session 'The need for regulation of the liabilities caused by off-shore exploration'.
11–13 October	Attended the Judicial Conference of Australia Colloquium co-presenting a session dealing with concurrent evidence. Elected Vice President of the Judicial Conference of Australia.
1 March 2014	Presented a talk on <i>Ethical Issues Arising in the Context of Litigation</i> to the New South Wales College of Law Masters programme.
28 March	Attended the seminar 'Judges and the Academy' at the University of Melbourne.
7 April	At the invitation of the Australian Law Reform Commission, participated in a roundtable discussion concerning the Commission's Issues Paper on Serious Invasions of Privacy in the Digital Era.
24 May	Keynote speaker at the Competition Law Conference delivering a paper entitled <i>Competition, Fairness and the Courts</i> .
26 May	Participated in a consultation meeting with the Australian Law Reform Commission about its Native Title Inquiry.
30 May	Chaired and delivered the opening remarks at the Future of Law Reporting in Australia Forum 2014 and the Annual Conference of the Consultative Council of Australian Law Reporting at the High Court of Australia.
13 June	Delivered a speech on <i>The Commercial Consequences of Consumer Protection Legislation</i> at the Commercial Law Association seminar.
17–20 June	Presented and taught at the National Judicial Orientation Programme.
2013–14	Justice TRACEY was a member of: <ul style="list-style-type: none"> • the Law Course Steering Committee of the Australian Catholic University • the Advisory Board of the Centre of Public Law at the Law School of the University of Melbourne • the Juris Doctor Programme Advisory Board of the Graduate School of Business and Law at the RMIT University.

23 March	Delivered a paper entitled <i>Unreasonableness before and after Li</i> at the Australian Government Solicitor's Campbell Seminar Series.
28 March	Launched 'Justice in Arms' to mark the 70th Anniversary of the Australian Army Legal Corps. The launch took place at the Law School at the University of Melbourne.
2013–14	Justice MIDDLETON continues to be: <ul style="list-style-type: none"> • a Council Member of the University of Melbourne • Chairman of the University of Melbourne Foundation • a member of the American Law Institute • an alternate Member of the National Judicial College of Australia • a member of the Judicial Liaison Committee for the Australian Centre for Commercial International Arbitration • board member of the Victorian Bar Foundation • fellow of the Australian Academy of Law • a Member of the Editorial Board of <i>The Journal of the Intellectual Property Society</i> of Australia and New Zealand.
2–5 July	Attended the Australian Bar Association Conference in Rome.
18 September 2013 & 18 March 2014	Delivered a paper in conjunction with Mr David O'Callaghan QC to the Victorian Bar Readers' Course on <i>Written Advocacy</i> .
1 May	Presented a lecture at the Australian Catholic University in Melbourne entitled <i>Comparative Law in Practice – A Timor-Leste Experience</i> .
19–21 May	Attended the American Law Institute's 91st Annual Meeting held in Washington DC.
27 May	In conjunction with the Hon. Justice James Judd, Justice of the Supreme Court of Victoria, and at the invitation of the Victorian Bar Council, delivered a talk entitled <i>Managing Commercial Litigation from an In-House Counsel Perspective</i> .
2013–14	Justice GORDON is a member of the Elders and Respected Persons Panel of Tarwirri – The Indigenous Law Students and Lawyers Association of Victoria.
24 October	Delivered a Class Action Seminar 2013 – <i>Current Issues in Shareholder Class Actions</i> .
8 May 2014	Prepared a reply to Professor Roger Scruton's paper on 'Building and Composing' for The Boston, Melbourne, Oxford, Vancouver Conversazioni on Culture and Society.
22 August	Chaired a session on 'Investor State Arbitrations' at the International Commercial Law and Arbitration Conference.

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26 August	Co-hosted a delegation from the Supreme People's Court of Vietnam.
3 February 2014– 7 March	With Justice Bromberg, participated in the Indigenous Clerkship Programme in conjunction with the Supreme Court of Victoria and the Victorian Bar.
19 February	Hosted the Chuo Summer School for Japanese students – University of Melbourne.
3 March–26 May	Co-taught 'Statutes in the 21st Century' in the Law Master's programme at the University of Melbourne.
2013–14	Justice PERRAM contributed to 'Key Issues in Judicial Review' edited by Neil Williams. Participated in preparation of the ALRC report on Copyright and the Digital Economy.
18 July	Gave a speech at the ALRC Copyright Inquiry Workshop.
22–23 August	Convened the International Commercial Law and Arbitration Conference with the Law Council of Australia at the Federal Court in Sydney.
29 August	Delivered a speech to the Commonwealth Treasury on <i>tax reform</i> .
8 January 2014	Attended meetings with Judges and staff of the 2nd Circuit Federal Courts in New York to observe those courts' implementation of an electronic court file system.
3 April and 2 June	Chaired meetings of the ALRC Audit Committee.
16 April	Delivered commentary in Brisbane to the Queensland Bar Association on a paper given by Dr Eva Micheler on capital reductions.
9–13 June	Delivered a speech to Indonesian Supreme Court Judges at a Competition Law Symposium held in Jakarta.
23 August 2013	Justice FOSTER chaired the session 'Australian Antitrust Treatment of Cartels: International Intersections and Comparisons' at the Federal Court's International Commercial Law and Arbitration Conference.
27 August	Attended the Supreme Court of New South Wales Annual Corporate Law Conference.
24 May	Chaired the session 'A fly in the ointment for the ACCC – implications of the Cement Australia decision for the interpretation of section 46' at the 2014 Competition Law Conference.
2013–14	Justice BARKER attended meetings as a member of the Committee on Indigenous Justice Issues in Western Australia convened by the Chief Justice of Western Australia.

2 August 2013	Chaired a Native Title User Group meeting concerning the development of tenure processes in native title proceedings.
19–20 May 2014	Attended and presented on the topic of <i>oral decision making</i> at the 2014 Administrative Appeals Tribunal National Conference.
13 June	Presented a paper entitled <i>A long and winding road: Issues of proof in native title in the second decade of the 21st century</i> at the Fourth Annual LegalWise Native Title Conference.
2013–14	Justice KATZMANN continues to be involved in a number of extra-judicial commitments including: <ul style="list-style-type: none"> • director of the Tristan Jepson Memorial Foundation • since September 2013, as a director of Neuroscience Research Australia (NeuRA) • member of the Advisory Committee of the Gilbert + Tobin Centre of Public Law.
2–5 July 2013	Attended the Australian Bar Association Conference in Rome.
14 September	Assisted with judging course participants at the inaugural Australian Bar Association Appellate Advocacy Course in Sydney.
28 October	At the invitation of Professor Michael Legg, discussed case management with law students from the University of New South Wales.
14 February 2014	Attended the Gilbert + Tobin Centre of Public Law Constitutional Law Conference.
19 February	Presented a paper on <i>Pleadings and Case Management</i> at the College of Law Judges' Series.
22 March	Attended the Judicial Commission of New South Wales' Ngara Yura Community Visits Programme: Site Visit to the Aboriginal Heritage Office at Northbridge.
5–9 May	Attended the International Association of Women Judges Conference in Arusha, Tanzania.
23 August 2013	Justice FARRELL was a member of the convening committee for the Federal Court and Law Council of Australia International Commercial Law and Arbitration Conference.
23 August 2013	Justice MORTIMER attended the International Commercial Law and Arbitration Conference in Sydney.
29 September	Presided on the Monash University International Humanitarian Law Moot.
19 February 2014	Addressed the first year Juris Doctor students at Melbourne University.
21 February	Attended an expert seminar on South African Constitutional Law for Australian Lawyers at Melbourne Law School.

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3 March	Addressed the new Bar Readers in Melbourne.
15 March	Keynote speaker at the Law Council of Australia Immigration Law Conference presenting a paper entitled <i>Judicial Review Developments in Migration Law</i> .
29 April	Keynote speaker at the Campbell Lectures series on 'Procedural Fairness' presented by Australian Government Solicitor (AGS). Delivered a paper entitled <i>the patterns of procedural fairness</i> .
7 May	Keynote speaker at the National Commercial Law Seminar Series titled 'Things every commercial lawyer should know about judicial review'.
12 June	Presided over the semi-final of the International Law Association's 2014 Public International Law Moot at Melbourne University.
2013–14	<p>Justice PERRY continued as:</p> <ul style="list-style-type: none"> • a director and fellow of the Australian Academy of Law • a member of the Advisory Committee to the Gilbert + Tobin Centre of Public Law, University of New South Wales • a member of the Law School Advisory Board, University of Adelaide • a Squadron Leader with the Royal Australian Air Force, Legal Specialist Reserves. <p>Accepted the role of a section-editor with the <i>Australian Law Journal</i> and was appointed to the Judicial Council on Diversity established by the Council of Chief Justices as the Federal Court's representative.</p>
25 October 2013	Attended the Women Lawyers Association of New South Wales Achievement Awards and received the award for Women Advocate of the Year for her work at the Bar before taking judicial appointment.
15 November	Attended the 2013 Public Law Weekend, Administrative Law Conference, Australian National University, and presented a paper entitled <i>The Administrative Review Council report on judicial review: Renaissance of the ADJR Act?</i>
14 February 2014	Attended the Gilbert + Tobin Centre of Public Law Constitutional Law Conference and chaired a session on 'Chapter III of the Constitution and the Kable Doctrine'.
21 February	Attended an Expert Seminar on South African Constitutional Law held by the University of Melbourne and presented a paper on <i>The Role of the Courts under the South African Constitution: An Australian Comparison</i> by way of a commentary on a paper presented by the Hon Dennis Davis, Judge of the High Court of South Africa and President of the Competition Appeal Court.
22 March	Gave the keynote address entitled <i>Tips from the top: effective pre-trial preparation</i> at the New South Wales Young Lawyers CPD conference in Sydney.

29 March	Spoke at the New South Wales Bar Association CPD Conference in Sydney on <i>Effective advocacy: perspectives from the Bench</i> .
5 April	Addressed the women barristers forum on <i>Women at the bar: aspirations and inspirations</i> .
11 April	Attended the official launch of the Hellenic Australian Lawyers Association.
5 May	Presented a lecture in the 'Foundations of Law Guest Lecture Series' held by the Sydney Law School, University of Sydney, entitled <i>The rule of law and judicial independence</i> .
4 June	Attended the National Native Title Conference 2014, Australian Institute of Aboriginal and Torres Strait Islander Studies and presented a paper entitled <i>Characterising native title rights: a desert rose by any other name</i> .

APPENDIX 9

STAFFING PROFILE

Note: The Federal Court Registrar and NNTT Registrar are holders of public office and are not included in this appendix.

Table 9.1 – Staffing overview by location
(actual occupancy as at 30 June 2014 – includes full-time and part-time staff)

LEVEL	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	NNTT	TOTAL
SES2	1	1	1	–	–	–	–	–	–	–	–	3
SES1	1	–	1	1	1	1	–	–	–	2	2	9
FCL2	–	6	5	2	1	3	–	–	–	4	–	21
FCL1	–	–	–	–	–	–	1	–	–	–	2	3
FCM2	6	1	1	1	–	1	–	–	–	1	4	15
FCM1	17	4	2	1	2	1	–	–	–	2	11	40
FCS6	17	25	14	6	2	6	–	1	1	11	26	109
FCS5	11	33	22	9	5	7	–	–	–	2	2	91
FCS4	5	8	12	10	7	6	4	2	3	6	21	84
FCS3	1	10	2	2	1	–	–	3	1	–	2	22
FCS2	1	–	1	–	–	–	–	–	–	–	14	16
FCS2 CCO	–	22	12	10	6	7	–	1	–	1	–	59
FCS1	–	–	–	–	–	–	–	–	–	–	–	–
Total	60	110	73	42	25	32	5	7	5	29	84	472

SES	Senior Executive Service Officer
FCL	Federal Court Legal
FCM	Federal Court Manager
FCS	Federal Court Staff
CCO	Casual Court Officer
PR	Principal Registry
NAT	National. Includes the following staff: <ul style="list-style-type: none"> • Chambers of Chief Justice • Federal Court Native Title staff • Appeals • Tribunals
NNTT	National Native Title Tribunal

Table 9.2 – Staffing by gender, classification and location (as at 30 June 2014)

LEVEL	GENDER	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	NNTT	TOTAL
SES2	Male	1	1	–	–	–	–	–	–	–	–	–	2
	Female	–	–	1	–	–	–	–	–	–	–	–	1
SES1	Male	1	–	1	–	–	1	–	–	–	1	1	5
	Female	–	–	–	1	1	–	–	–	–	1	1	4
FCL2	Male	–	4	5	1	–	2	–	–	–	–	–	12
	Female	–	2	–	1	1	1	–	–	–	4	–	9
FCL1	Male	–	–	–	–	–	–	–	–	–	–	1	1
	Female	–	–	–	–	–	–	1	–	–	–	1	2
FCM2	Male	4	1	–	–	–	1	–	–	–	1	2	10
	Female	2	–	1	1	–	–	–	–	–	–	2	6
FCM1	Male	12	–	2	–	–	–	–	–	–	–	3	17
	Female	5	4	–	1	2	1	–	–	–	2	8	23
FCS6	Male	5	1	–	–	–	–	–	–	–	2	8	16
	Female	12	24	14	6	2	6	–	1	1	9	18	93
FCS5	Male	6	11	5	6	3	2	–	–	–	1	2	36
	Female	5	22	17	3	2	5	–	–	–	1	–	55
FCS4	Male	1	4	3	2	1	1	–	1	–	1	3	17
	Female	4	4	9	8	6	5	4	1	3	5	18	67
FCS3	Male	1	6	–	–	1	–	–	2	–	–	1	11
	Female	–	4	2	2	–	–	–	1	1	–	1	11
FCS2	Male	–	5	2	7	4	3	–	1	–	1	1	24
	Female	1	17	11	3	2	4	–	–	–	–	13	51
Total		60	110	73	42	25	32	5	7	5	29	84	472

SES Senior Executive Service Officer

FCL Federal Court Legal

FCM Federal Court Manager

FCS Federal Court Staff

CCO Casual Court Officer

PR Principal Registry

NAT National. Includes the following staff:

- Chambers of Chief Justice
- Federal Court Native Title staff
- Appeals
- Tribunals

NNTT National Native Title Tribunal

APPENDIX 9

STAFFING PROFILE

Table 9.3 – Staffing by gender, classification and employment type (as at 30 June 2014)

LEVEL	GENDER	ONGOING		NON-ONGOING		INTERMITTENT	TOTAL
		FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	INTERMITTENT/ IRREGULAR	
SES2	Male	2	–	–	–	–	2
	Female	1	–	–	–	–	1
SES1	Male	5	–	–	–	–	5
	Female	4	–	–	–	–	4
FCL2	Male	12	–	–	–	–	12
	Female	6	1	1	1	–	9
FCL1	Male	1	–	–	–	–	1
	Female	1	1	–	–	–	2
FCM2	Male	8	–	1	–	–	9
	Female	5	–	1	–	–	6
FCM1	Male	15	–	2	–	–	17
	Female	17	4	2	–	–	23
FCS6	Male	13	–	3	–	–	16
	Female	73	6	14	–	–	93
FCS5	Male	15	–	21	–	–	36
	Female	19	1	34	1	–	55
FCS4	Male	8	1	8	1	–	18
	Female	46	10	8	1	1	66
FCS3	Male	8	–	1	1	1	11
	Female	5	4	2	–	–	11
FCS2	Male	1	–	–	–	–	1
	Female	10	1	3	–	1	15
FCS2/CCO	Male	–	–	–	–	23	23
	Female	–	–	–	–	36	36
Total		275	29	101	5	62	472

SES Senior Executive Service Officer

FCL Federal Court Legal

FCM Federal Court Manager

FCS Federal Court Staff

CCO Casual Court Officer

Table 9.4 – Salary ranges by classification level under Enterprise Agreement or Determination (as at 30 June 2014)

COURT DESIGNATION	AUSTRALIAN PUBLIC SERVICE (APS) CLASSIFICATION	SALARY
CLERICAL ADMINISTRATIVE POSITIONS		
Federal Court Staff Level 1	APS Level 1	\$43 108
		\$47 641
Federal Court Staff Level 2	APS Level 2	\$48 786
		\$54 100
Federal Court Staff Level 3	APS Level 3	\$55 568
		\$59 975
Federal Court Staff Level 4	APS Level 4	\$61 936
		\$67 247
Federal Court Staff Level 5	APS Level 5	\$69 080
		\$73 248
Federal Court Staff Level 6	APS Level 6	\$74 610
		\$85 705
Federal Court Manager Level 1	Executive Level 1	\$95 493
		\$103 131
Federal Court Manager Level 2	Executive Level 2	\$110 087
		\$124 838
		\$129 018
LEGAL POSITIONS		
Federal Court Legal 1	From APS Level 3	\$62 389
	To Executive Level 1	\$121 285
Federal Court Legal 2	Executive Level 2	\$140 503
		\$146 011
SENIOR EXECUTIVE POSITIONS		
Senior Executive Service Band 1	SES Band 1	\$182 439
Senior Executive Service Band 2	SES Band 2	\$259 817

APPENDIX 9

STAFFING PROFILE

Table 9.5 – Senior Executive Service (SES) (as at 30 June 2014)

REGISTRY		SES LEVEL
PRINCIPAL REGISTRY		
Executive Director, Corporate Services	Gordon Foster	Senior Executive Band 2
Deputy Registrar	John Mathieson	Senior Executive Band 1
Acting Deputy Registrar, Native Title	Ian Irving	Senior Executive Band 1
Acting Deputy Registrar, Native Title	June Eaton	Senior Executive Band 1
NEW SOUTH WALES DISTRICT REGISTRY		
District Registrar	Michael Wall	Senior Executive Band 2
VICTORIA DISTRICT REGISTRY		
District Registrar	Sia Lagos	Senior Executive Band 2
Deputy District Registrar	Daniel Caporale	Senior Executive Band 1
QUEENSLAND DISTRICT REGISTRY		
District Registrar	Heather Baldwin	Senior Executive Band 1
SOUTH AUSTRALIA DISTRICT REGISTRY		
District Registrar	Katrina Bochner	Senior Executive Band 1
WESTERN AUSTRALIA DISTRICT REGISTRY		
District Registrar	Martin Jan PSM	Senior Executive Band 1
NATIONAL NATIVE TITLE TRIBUNAL		
Acting Director Operations West	Debra Fletcher	Senior Executive Band 1
Director Operations East	Frank Russo	Senior Executive Band 1

APPENDIX 10

COMPLIANCE WITH ANNUAL REPORT REQUIREMENTS

This is a guide to the report's compliance with the requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

AIDS TO ACCESS	PAGE NUMBER
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Overview of the Court's performance and financial results	14
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Portfolio structure	n/a

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GLOSSARY

Administrative Notices	See Practice Notes.
Alternative procedure agreement	A type of Indigenous land use agreement.
Appeal	An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Circuit Court judge may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.
Appellate jurisdiction	The power given to a court to hear appeals in certain matters.
Applicant	The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts. In the National Native Title Tribunal the applicant is the person or persons who make an application for a determination of native title or a future act determination.
Application	The document that starts most proceedings in the Federal Court.
Area agreement	A type of Indigenous land use agreement.
Body corporate agreement	A type of Indigenous land use agreement.
Cause of action	A term used in the Federal Court's case management system to classify proceedings commenced with the Court. There are sixteen main causes of action and five supplementary causes of action.
Compensation application	An application made by Indigenous Australians seeking compensation for loss or impairment of their native title.
Cross appeal	An application by a respondent in an appeal also seeking a review of the lower court or tribunal decision and made in response to the appeal. A cross appeal is not required if the respondent is simply seeking that the decision of the lower court or tribunal be upheld.
Cross claim	A claim made in a proceeding by one party against a co-party, such as the first respondent (or defendant) against the second respondent (or defendant). However if the claim in the proceeding is by one party against an opposing party, such as the respondent (or defendant) against the applicant (plaintiff), it is called a counter claim. A cross claim has to be closely connected to what is in dispute in the original claim or a counter claim.
Directions	Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
Discovery	A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.

Docket system	A system by which each case is allocated to a particular judge who will then see the case through to completion. In the Federal Court the system is called the Individual Docket System (IDS).
Exhibit	A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.
Filing of documents	The process of the Court accepting a document or documents lodged by a party to a proceeding.
First instance	A proceeding heard in the Court's original jurisdiction.
Full Court	Three or more judges sitting together to hear a proceeding.
Future act	A proposed activity on land and/or waters that may affect native title.
Future act determination application	An application requesting the National Native Title Tribunal (NNTT) to determine whether a future act can be done (with or without conditions).
Future act determination	A decision by the NNTT either that a future act cannot be done, or can be done with or without conditions. In making the determination, the Tribunal takes into account (among other things) the effect of the future act on the enjoyment by the native title party of their registered rights and interests and the economic or other significant impacts of the future act and any public interest in the act being done.
Good faith negotiations (native title)	All negotiation parties must negotiate in good faith in relation to the doing of future acts to which the right to negotiate applies (<i>Native Title Act 1993</i> s 31(1)(b)). See the list of indicia put forward by the NNTT of what may constitute good faith in its Guide to future act decisions made under the Right to negotiate scheme at www.nntt.gov.au . Each party and each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s 136B(4)).
Hearing	That part of a proceeding where the parties present evidence and submissions to the Court.
ILUA	Indigenous land use agreement, a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).
Interlocutory application	Interlocutory proceedings are for dealing with a specific issue in a matter – usually between the filing of the application and the giving of the final hearing and decision. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).
Judgment	The final order or set of orders made by the Court after a hearing, often accompanied by reasons which set out the facts and law applied in the case. A judgment is said to be 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is said to be 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.
Jurisdiction	The extent of legal authority or power of the Court to apply the law. The Federal Court has jurisdiction under more than 150 Acts of the Commonwealth Parliament and has original and appellate jurisdiction.

GLOSSARY

Litigants	Individuals, organisations or companies who/which are the parties to a proceeding before the Court.
Mediation (or Assisted Dispute Resolution)	A process in which an impartial third party (the mediator) assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.
Milestone agreement	An agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.
National Native Title Register	The record of native title determinations.
National Native Title Tribunal Member	A person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.
Native Title determination	A decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).
Native title claimant application/claim	An application made for the legal recognition of native title rights and interests held by Indigenous Australians.
Native title representative body	Representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australian Government to provide a variety of functions under the <i>Native Title Act 1993</i> . These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for determinations of native title and area agreements (ILUA), resolving intra-Indigenous disputes, agreement-making and ensuring that notices given under the NTA are brought to the attention of the relevant people.
Non-claimant application	An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.
Notification	The process by which people, organisations and/or the general public are advised by the relevant government of their intention to do certain acts or by the NNTT that certain applications under the Act have been made.
On country	Description applied to activities that take place on the relevant area of land, for example mediation conferences or Federal Court hearings taking place on or near the area covered by a native title application.
Original jurisdiction	The authority or legal power of the Court to hear a case in the first instance.
Parties	People involved in a court case. Applicants, appellants, respondents, defendants, are generally called 'parties'.
PBC	Prescribed body corporate, a body nominated by native title holders which will represent them and manage their native title rights and interests once a determination that native title exists has been made.

Practice Notes and Administrative Notices	<p>The Court publishes Practice Notes and Administrative Notices. Practice Notes are issued by the Chief Justice on advice of the judges of the Court. Administrative Notices are issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notice relates.</p> <p>Practice Notes provide guidance on practice and procedure required or followed by the Court nationally to supplement what might be contained in statutes or the Court's Rules.</p> <p>Administrative Notices provide guidance on practice and procedure required or followed by the Court in the District Registry to which the notice relates to supplement what might be contained in statutes or the Court's Rules.</p>
Proceeding	The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.
Register of Indigenous Land Use Agreements	A record of all Indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.
Register of Native Title Claims	The record of native title claimant applications that have been filed with the Federal Court, referred to the Native Title Registrar and generally have met the requirements of the registration test.
Registered native title claimant	A person or persons whose names(s) appear as 'the applicant' in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.
Registration test	A set of conditions under the <i>Native Title Act 1993</i> that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with certain other rights, while their application is under way.
Regulation	The Federal Court and Federal Circuit Court Regulation 2012 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.
Respondent	The individual, organisation or corporation against whom/which legal proceedings are commenced. Also known as a 'defendant' in admiralty and corporations matters and in some courts. In an appeal it is the party who/which did not commence the appeal.
Rules	Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules 2011, Federal Court (Corporations) Rules 2000 (for proceedings under the <i>Corporations Act 2001</i>) and Federal Court (Bankruptcy) Rules 2005 (for proceedings under the <i>Bankruptcy Act 1966</i>).
Self Represented Litigant	A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.
Setting Down Fee	A fee that must be paid when a date is set for hearing a matter. It includes the first day's hearing fee and, usually, has to be paid at least 28 days before the hearing.

FEDERAL COURT REGISTRIES

Principal Registry

Law Courts Building
Queens Square Sydney NSW 2000
Phone: (02) 9230 8567 **Fax:** (02) 9280 1381
Email: query@fedcourt.gov.au
<http://www.fedcourt.gov.au>
Contact hours: 8.30am–5.00pm

Australian Capital Territory District Registry

Nigel Bowen Commonwealth Law Courts Building
Childers Street, Canberra City ACT 2600
Phone: (02) 6267 0666 **Fax:** (02) 6267 0625
Email: actman@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

New South Wales District Registry

Level 17 Law Courts Building
Queens Square, Sydney NSW 2000
Phone: (02) 9230 8567 **Fax:** (02) 9230 8535
Email: nswdr@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Northern Territory District Registry

Level 3 Supreme Court Building
State Square, Darwin NT 0800
Phone: (08) 8941 2333 **Fax:** (08) 8941 4941
Email: ntrereg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

Queensland District Registry

Level 6 Harry Gibbs Commonwealth
Law Courts Building
119 North Quay, Brisbane QLD 4000
Phone: (07) 3248 1100 **Fax:** (07) 3248 1260
Email: qldreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

South Australia District Registry

Level 5 Roma Mitchell Commonwealth
Law Courts Building
3 Angas Street, Adelaide SA 5000
Phone: (08) 8219 1000 **Fax:** (08) 8219 1001
Email: sareg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Tasmania District Registry

Edward Braddon Commonwealth
Law Courts Building
39-41 Davey St, Hobart TAS 7000
Phone: (03) 6232 1615 **Fax:** (03) 6232 1601
Email: tasreg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Victoria District Registry

Level 7 Owen Dixon Commonwealth
Law Courts Building
305 William Street, Melbourne VIC 3000
Phone: (03) 8600 3333 **Fax:** (03) 8600 3351
Email: vicreg@fedcourt.gov.au
Counter hours: 9am–4.30pm
Contact hours: 8.30am–5.00pm

Western Australia District Registry

Level 6 Peter Durack Commonwealth
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Phone: (08) 9268 7100 **Fax:** (08) 9221 3261
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- TTY users phone 133 677 then ask for your local registry's phone number as listed above
- Speak and Listen users phone 1300 555 727 then ask for your local registry's phone number as listed above
- Internet relay users connect to the NRS and then ask for your local registry's phone number as listed above.
- SMS relay text 0423 677 767 and ask for your local registry's phone number as listed above.

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Commonwealth of Australia 2014

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