

Part 2: The year in review



Over the past year, the Court has continued to transform and refine its operations to support the needs of judges, stakeholders and the community. This year in review reports on court appointments and retirements, and provides an overview of the key initiatives to modernise systems and practice which provide the foundation for ongoing innovation and reform within the Federal Court.

The Court

On 7 April 2023 Justice Mortimer was appointed as the new Chief Justice of the Federal Court upon the retirement of former Chief Justice Allsop AC. Chief Justice Mortimer's appointment follows her service as a judge of the Court since 2013. She is the first female to be appointed Chief Justice since the Court was established in 1976 and only the fifth Chief Justice of the Court.

The Court has welcomed the appointment of five new judges in 2022–23. Justice Kennett was appointed on 19 December 2022, Justice Button was appointed on 16 January 2023, Justice Jackman was appointed on 6 February 2023, Justice Hatcher was appointed on 19 February 2023 as a judge of the Court and President of the Fair Work Commission and Justice Kyrou was appointed on 8 June 2023 as a judge of the Court and President of the Administrative Appeals Tribunal.

The Court farewelled Justice Greenwood who retired on 19 July 2022, Justice Jagot who took up an appointment on 17 October 2022 as a Justice of the High Court of Australia, Justice Ross AO who retired on 18 November 2022 and Justice Middleton who retired on 25 December 2022.

Significant issues and developments

Continued extension of the National Court Framework – Registrars

The Court continues to implement and extend the National Court Framework (NCF) to all matters across the Court including the work undertaken by judicial registrars.

The allocation of judicial registrar work is now undertaken on a national basis with national systems and processes (such as a national duty registrar system and national practice guides) to support and enhance the work undertaken. In 2022–23, further NCF developments included the establishment of a national Corporations List with dedicated registrars, support staff and contact points for the profession. This initiative enables a more efficient use of the judicial registrar resources and provides a more streamlined approach for practitioners, particularly those operating in more than one jurisdiction.

The past year has also seen the establishment of dedicated registrar assistance for matters involving self-represented applicants with a view to improving access to justice across the Court. A registrar-led Vulnerable Applicants Working Group (working with community legal groups) has also been established by the Court.

The Court continues to draw on the skills and expertise of its judicial registrars in each of the national practice areas by providing mediation and case management support to judges on a national basis.

Workload

In 2022–23, the total number of overall filings in the Court, comprising first instance, appellate and Registrar matters increased by eight per cent to 3,399. The number of filings which were commenced in, or transferred to, the Court's original jurisdiction increased by 15 per cent. The increase in filings can be attributed to a significant increase in the filing of matters pursuant to the *Corporations Act 2001* (Cth), particularly applications seeking the winding up of companies.

During the reporting year, 750 appellate proceedings were filed in the Court. They include 560 appeals and related actions (522 filed in the appellate jurisdiction and 38 matters filed in the original jurisdiction), 11 cross appeals and 179 interlocutory applications including applications for a stay, an injunction, expedition, security for costs and various other applications.

The Federal Circuit and Family Court of Australia (Division 2) continues to be a significant source of appellate work accounting for approximately 50 per cent of the appeals and related actions filed in 2022–23. The majority of these proceedings are being heard and determined by single judges exercising the Court's appellate jurisdiction.

There was an overall decrease in the total number of appeals filed in 2022–23 which was 522 compared with 649 in 2021–22. This decrease was attributable to a 24 per cent decrease in migration appeals, as well as decreases in the Commercial and Corporations and Native Title practice areas. These decreases were partially offset by increases in the areas of Administrative and Constitutional Law, Admiralty and Maritime and Employment and Industrial Relations.

In the reporting year, 691 appeals and related actions were finalised. Of these, 172 matters were filed and finalised. At 30 June 2023, there were 793 appeals currently before the Court, with 557 of these being migration appeals and related actions.

In 2022–23, 47 migration appeals and applications were filed in the Court's appellate jurisdiction related to judgments of single judges of the Court exercising the Court's original jurisdiction. A further 232 migration matters were filed in relation to judgments of the Federal Circuit and Family Court of Australia (Division 2).

Although the number of migration appellate filings decreased by 24 per cent since the last reporting year, 54 per cent of the Court's total appellate workload concerned decisions made under the *Migration Act 1958* (Cth).

The Court continues to apply procedures to streamline the preparation and conduct of these appeals and applications and to facilitate the expeditious management of the migration workload. The Court reviews all migration matters to identify cases raising similar issues or 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.

There was a 19 per cent increase in the number of matters referred to mediation when compared with the previous reporting period. Increases have been in native title (169 per cent), administrative and constitutional law and human rights (69 per cent), defamation (39 per cent) and employment and industrial relations (35 per cent). Commercial and corporations and intellectual property mediation referrals remained consistent with the referrals in 2021–22.

All registries recorded an increase in mediation referrals from 2021–2022 with Queensland increasing by 44 per cent, Western Australia by 35 per cent, South Australia by 26 per cent and Victoria by 23 per cent.

Further information about the Court's workload, including the management of appeals, is included in Part 3 (*Report on Court performance*) and Appendix 5 (*Workload statistics*).

Performance

The Court has two performance indicators for timely resolution of cases:

- Eighty-five per cent of cases to be completed within 18 months of commencement

During the reporting year, the Court completed 79 per cent of cases in less than 18 months. Whilst the Court was not able to achieve its benchmark in 2022–23, figure A5.4 shows that 86 per cent of cases (excluding native title matters) were completed within 18 months over the last five reporting years.

- 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 other issues affecting the Court.

During 2022–23, the Court handed down 1,723 judgments for 1,541 court matters (noting that some matters involve more than one judgment being delivered – e.g. interlocutory decisions – and sometimes one judgment will cover multiple matters). Overall, 76 per cent of appeals (both Full Court and single judge) were delivered within three months; 79.3 per cent of judgments at first instance were delivered within three months of the matter being reserved; and 78.4 per cent of total judgments were delivered within three months.

Financial management and organisational performance

From 1 July 2016, the *Courts Administration Legislation Amendment Act 2016* (Cth) established the amalgamated Entity, known as the Federal Court of Australia.

The financial figures outlined in this report are for the consolidated results of the Federal Court, the National Native Title Tribunal, the Federal Circuit and Family Court (Division 1), the Federal Circuit and Family Court (Division 2), the Commonwealth Courts Corporate Services and the Commonwealth Courts Registry Services.

The financial statements for 2022–23 show an ordinary operating surplus of \$4.862 million before depreciation costs of \$37.067 million and taking into account principal repayments of lease liabilities of \$19.921 million. The Entity was budgeting a break-even position for the year, with the surplus stemming from delays in judicial appointments (and resultant savings in employee expenses) and the time taken to recruit staff to fill newly funded positions. The Courts operate under strict budgetary controls ensuring that the Entity operates within the appropriation.

The next three-year budget cycle continues to challenge the Entity to make further savings. With over 60 per cent of the Entity's costs relating to property and judicial costs, which are largely fixed, the ability to reduce costs is limited.

In 2017–18, the Entity received \$14 million in additional funding under the Modernisation Fund over a three-year period. This funding enabled the Entity to deliver a digital court file for family law and supported the Courts' ongoing digital transformation. With funding ceasing in 2020–21, the Entity continues the digital transformation project through reallocation of internal resources.

A number of new Government measures appropriated additional funding to the Entity for 2022–23 and forward years. In 2022–23, \$17.921 million was provided for improving women's safety. These funds were used to expand the successful Lighthouse pilot program to 15 family law registries nationally. There was also \$0.700 million provided to expand the jurisdiction in small claims industrial relations matters.

Embracing a digital future

Digital Court Program

The Digital Court Program continues to be a key priority for the Courts, streamlining core business systems to enhance flexibility and operational efficiency. The progressive implementation of a new application suite, CourtPath, is the current primary focus of this program.

CourtPath is being developed in partnership with judges, registrars and court staff. The program is modernising critical document, workflow and case management tools to deliver sustainable improvements to workflows and support efficient case handling.

Internal staff are delivering CourtPath, following user-centred design principles to ensure it is intuitive to use while providing timely, accurate and secure access to critical materials. It uses familiar, predictable design patterns seen in many modern applications to minimise the need for user training.

Work progressed throughout 2022–23 to expand the system to cater for all file types across the Courts in line with the program roadmap. Consolidation into a single platform will streamline court activity and reduce costs associated with maintaining multiple legacy platforms.

Cyber security

Cyber security remains critical to safeguard operations and protect court users and internal and external stakeholders. Throughout the reporting year, a commitment to safeguarding sensitive information, critical infrastructure and data, has been the key priority, delivering outcomes in line with the Court's strategic cyber security objectives.

Key initiatives have included advanced threat protection for all court devices, integrated vulnerability identification, ongoing development of a cyber-aware culture and enhanced incident response.

Internal cyber security capability was enhanced throughout 2022–23, including the expansion of the Governance Risk and Compliance, Cyber Architecture and Cyber Engineering teams.

The Court continues to strengthen cyber security maturity in line with the Australian Cyber Security Centre recommendations, Protective Security Policy Framework and Essential Eight compliance and regulatory requirements. Work remains ongoing to strengthen data protection, improve vulnerability

management, optimise identity and access management and update governance risk and compliance processes, policies, standards and procedures.

Digital practice

To support the Court's digital practice, assist judges, chambers and court staff and increase the efficiency of proceedings, digital practice officers were introduced in 2021. This team has delivered significant improvements in core court operations including expansion of video conferencing capability, hearing solutions, digital courtrooms and live-streaming of high profile matters along with efficiency improvements via better use of existing digital tools.

Video conferencing remains an integral part of court proceedings, allowing broader access to justice. During 2022–23, 36 additional courtrooms were enabled with video conferencing. Seventy five per cent of courtrooms now have video conferencing capability.

Courtroom technology has been installed and upgraded to provide a more consistent experience for parties attending in-person, virtually or in hybrid proceedings. Key improvements include a modern infrared hearing solution in all courtrooms to support attendees with hearing impairments; simpler audio, video and content sharing; and upgraded video conferencing hardware for 15 courtrooms, increasing the number of screens and cameras available.

To enable judges to sit in remote hearings, two digital courtrooms were introduced in the Court's premises at Queens Square in Sydney.

The Federal Court has an ongoing commitment to open justice by live streaming proceedings. In 2022–23, 232 court proceedings were live-streamed, including high public interest matters such as *Ben Roberts-Smith v Fairfax Media Publications*, *Bruce Lehrmann v Network Ten Pty Limited*, *Loretta Kikuyu v Minister for Health NSW & Anor* and *Australian Vaccination-Risks Network Incorporated v Secretary, Department of Health*. Additionally, court and judicial events were live streamed including judicial welcome and farewell ceremonies, seminars and lectures such as *Ngara Yuru Lecture*, *UNCCA UN Lecture*, *Employment and Industrial Relations Seminar*, *William Ah Ket Scholarship*, the *Native Title Stakeholders Forum* and the *Silk Bows*.

Wellbeing

The Court has maintained its focus on supporting employee wellbeing and implemented a number of initiatives to support employees who may be facing professional or personal challenges. All employees can access a free and confidential counselling service via the Court's employee assistance provider, as well as the option of attending seminars on topics such as building resilience.

The Court engaged the employee assistance provider to deliver wellbeing and vicarious trauma training to flood-affected employees, while also maintaining sessions focused on building resilience to support overall employee wellbeing. The Court also offers discounted gym membership and online and in-person yoga sessions.

Diversity and inclusion

The Court is committed to a diverse and inclusive workplace in which its workforce reflects the broad communities in which the Court's employees work. The Court focuses on creating a safe and supportive environment in which employees can bring their true selves to work, as well as ensuring recruitment and other processes are strictly merit-based. Consistently with the Court's commitment to a gender diverse workforce, currently females hold 61 per cent of positions at Senior Executive Service classifications and 74 per cent of positions at Executive Level classifications.

An important element of diversity and inclusion is ensuring employees are treated with dignity, courtesy and respect at all times in the workplace. The Court has a zero tolerance approach to inappropriate workplace behaviour and has updated its anti-discrimination, bullying and harassment policies to ensure they remain current and reflect best practice. The policies provide a formal process for employees to raise a concern if they experience inappropriate behaviour in the Court.

The Court facilitated annual refresher training to all employees to reinforce policies and initial training delivered in 2022–23. This mandatory training is to ensure employees understand expected standards of behaviour in the workplace and know how they can raise a concern if they witness or experience inappropriate behaviour. The Court has recorded these training sessions to enable them to be delivered to all new employees.

The Court has focused on creating employment opportunities for Aboriginal and Torres Strait Islanders, with its Aboriginal and Torres Strait Islander employment rate increasing from 2.3 per cent in 2021–22 to 2.5 per cent in 2022–23. The Court is currently working on its next Reconciliation Action Plan (RAP) at the Innovate level, which it is aiming to launch in 2024. Innovate is the second level of the RAP framework (Reflect, Innovate, Stretch and Elevate) and is focused on developing and strengthening relationships with Aboriginal and Torres Strait Islander peoples, engaging staff and stakeholders in reconciliation, and developing and piloting innovative strategies to empower Aboriginal and Torres Strait Islander peoples.

I would like to take this opportunity to thank the judges and staff for their continued commitment and dedication to the Court, the legal profession and court users.



Sia Lagos

Chief Executive Officer and Principal Registrar
Federal Court of Australia