

# PART 2

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## THE YEAR IN REVIEW



# Federal Court of Australia

Annual Report 1998-1999

# The year in review

**D**uring 2018–19, the Court continued 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 forward-thinking approach to managing its work and its commitment to the relentless improvement of practices, processes and technology has provided ongoing recognition of its leading role as a modern and innovative court.

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.

## Significant issues and developments

### Digital Court Program

The Digital Court Program (DCP) continues to be a priority for the Federal Court, the Family Court and the Federal Circuit Court and it is on track to streamline core business systems and create flexibility and operational efficiency across the three federal courts and the tribunals. The DCP commenced on 1 July 2017 with an anticipated completion date of first phases in June 2020. Key

components of the DCP include an electronic court file project, an electronic lodgment project, and a case management project. Collectively, these projects will help to modernise and transform how court services are delivered, both internal and public-facing services, as well as resolving issues related to the courts' ageing Information Technology (IT) infrastructure.

### The New SmartCourt Digital Strategy

With the objective of further improving access to justice, and building on digital innovations over the past decade, the Court has conceived a new SmartCourt Digital Strategy that will be delivered over five years, through three programs:

**1. Online Services:** will increase the range of transactional services available online. In addition to enabling court users to access, input and update information about themselves and their matter, it will provide information and tools to support early dispute resolution. The program will also develop user pathways enabling court users to determine and take steps to progress a matter with the Court.

It will also consolidate the three courts' websites to provide high-quality user centric access to information, advice and services.

**2. Digital Court:** will enable parties to appear by any device where it is easier or safer for them to do so. Parties will be able to view the same version of the 'electronic court-book' with real time access to supporting case papers. They will also be able to simultaneously view and comment on digitised evidence and access voice transcripts of hearings. Judges and staff will also be able to confidentially annotate and review private working copies of electronic documents.

**3. Accountability:** will assure the integrity and security of data according to robust personal information protection charters. It will also expand the range of data and analysis published about the courts' performance.

The strategy will be harmonised with the IT Strategy and Infrastructure Plan that will deliver the foundations required to support it. Our complementary Digital Support Framework will build the tools, skills and capacity of internal and external users to use its digital support and services.

The Court is currently prioritising, sequencing and determining the requirements to implement each program, with implementation to commence in the 2019-20 year.

## Digital hearings

The Court is advanced in implementing a common digital hearing procedure to be available to any judge who wishes to use it for any hearing (except for the mega trials, which would continue to use external advisers). The procedure is focused on being cost effective and easily accessible to all litigants.

Commencing in June 2019, the Federal Court developed a plan for the first official digital hearing pilot. That plan included the format of the digital court book, courtroom layout, in-court support (digital hearing operator), IT support (equipment set up, boosting of existing hardware, troubleshooting and availability to attend to issues as they arise) and arranging a private working copy of the digital court book for the judge.

The pilot used existing courtroom cabling that has the ability to broadcast from one PC (operated by the digital hearing operator, in this case a trained court officer) to monitors, which had been set up on the bench, bar tables, witness box and projector screen for the gallery. One of the innovations was that the public gallery was able to see all the documentary evidence, and follow on with the submissions and arguments being presented.

An evaluation report for consideration by the Digital Practice Committee and the broader Federal Court judges is currently being developed that will address a number of key elements:

- the IT infrastructure, software and hardware used to run the pilot, including the courtroom setup (photographs to be used)
- personnel and resourcing needed to prepare for and run the pilot
- case management practices, including orders made to facilitate the digital hearing pilot

- details about how the digital court book was prepared and its final format
- feedback from the parties and their legal representatives on the digital hearing pilot
- feedback from the public gallery on the digital hearing pilot
- challenges (if any) experienced and where solutions were identified, include these, and
- future implications (if any) to consider when the Court adopts digital hearings in this way.

The learnings from the digital hearing pilot will directly influence future digital hearings in the Court.

The Court has engaged in, and will continue to engage in, external consultation and apply a measured and considered approach to ensure that the technology and requirements meet the needs of the Court, the legal profession and the litigants as digital hearings are run more frequently.

## Artificial intelligence and big data

The Court established an Artificial Intelligence Committee in 2017. This committee is looking at the potential to use artificial intelligence and machine learning technologies to interrogate the Court's 'big data' and use what it learns to enhance access to justice and assist in resolving disputes as quickly, inexpensively and efficiently as possible.

The Court has developed a successful pilot project that uses artificial intelligence and machine learning technologies to make recommendations to parties in relation to property settlements and division of assets in the family law jurisdiction following the breakdown of a relationship. Although only within a proof of concept environment, by applying this technology, the application has learnt to understand and apply precedents and like cases to make just and equitable recommendations. The accuracy ratings have been quite impressive, reaching levels between 90 and 97 per cent. These accuracy ratings give the Court a good indication of what could be possible for artificial intelligence and the judicial sector in the future.

The growth of the pilot will provide a mechanism for early dispute resolution by empowering couples to reduce areas of dispute. The Court understands that the wider community expects technology to be used to increase access to justice by establishing less costly and quicker dispute resolution methods, and the Court believes this is one way of meeting that expectation.

The Court continues to look for appropriate ways to progress from the proof of concept to a project, as well as other business opportunities that could positively leverage off artificial intelligence, machine learning and big data applications.

## Extension of the National Court Framework

The National Court Framework is a fundamental reform to the Court and the way it operates. The key purpose of the National Court Framework is to reinvigorate the Court's approach to case management by further modernising the Court's operations so that the Court is better placed to meet the demands of litigants and can operate as a truly national and international court.

The Court began the process of implementing the National Court Framework reforms in 2015. These reforms have been successfully implemented in respect of the judicial

work of the Court, including organising and managing the Court's work by reference to nine National Practice Areas (NPAs), the introduction of a national allocation system for judicial work and national duty judge arrangements, as well as nationally consistent and simplified practice through a suite of national practice notes.

The Court is now extending the National Court Framework, and its core principles, to the work undertaken by judicial registrars of the Court. This aims to ensure an efficient, effective and nationally consistent approach to the allocation and management of that work, and to utilise the specialised knowledge and skills of registrars to enhance mediation and case management support for judges. Judicial registrars undertake a variety of important work, including supporting judges in their cases by conducting mediations and a range of case management work (such as conferences of experts) and determining certain cases, primarily in corporations and personal insolvency cases. The Court is applying a similar national approach to the allocation of judicial registrar work, and developing a nationally consistent approach to the way in which judicial registrars undertake their work. These additional reforms commenced in 2018 and will be fully implemented in 2019.

## Workload

In 2018–19, the total number of filings (including appeals) in the Court increased by 2 per cent to 6029. Filings in the Court's original jurisdiction (excluding appeals) remained consistent at 4617. This is a statistically insignificant shift and the filings have remained substantially increased compared to a low of 3445 original jurisdiction filings in 2014–15.

Combined filings of the Federal Court and the Federal Circuit Court in general federal law increased by 1 per cent to 16,125.

The Court's registries also undertake registry services for the Federal Circuit Court. The workload of the Federal Circuit Court has continued to grow over the last five years. It should be noted that the Federal Court registrars continue to hear and determine a substantial number of cases in the Federal Circuit Court.

In the Bankruptcy jurisdiction, Federal Court registrars dealt with, and disposed of, 2563 Federal Circuit Court bankruptcy matters, which equates to 91 per cent of the Federal Circuit Court's bankruptcy caseload.

Among the total disposals (8206), 47 per cent of the Federal Circuit Court's general federal law workload is dealt with by registrars, and 53 per cent is dealt with by judges.

Further information about the Court's workload, including the management of appeals, is included in Part 3 (*The work of the Court in 2018–19*) and Appendix 5 (*Workload statistics*).

## Performance

The Court has two targets for timely completion of cases:

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

During the reporting year, the Court completed 93.1 per cent of cases in less than 18 months. As shown in Figure A5.5 and Table A5.5 in Appendix 5, over the last five years, the Court has consistently exceeded its benchmark of 85 per cent, with the average over the five years being 93.1 per cent.

- 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 2018–19, the Court handed down 2267 judgments for 2128 court files (some files involve more than one judgment being delivered – e.g. interlocutory decisions – and sometimes one judgment will cover multiple files). This is an increase from last year of 239 judgments. The data indicates that 85 per cent of appeals (both Full Court and single judge) were delivered within three months and 80 per cent of judgments at first instance were delivered within three months of the date of being reserved.

## Financial management and organisational performance

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

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

The financial statements show an operating surplus of \$4.594 million before depreciation costs of \$13.882 million. The entity was budgeting a break-even position for the year, with the surplus stemming from a number of projects that have been delayed to future years following uncertainty surrounding the passage of legislation in family law. 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 overarching 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 is enabling the entity to develop the DCP and support the courts' ongoing digital transformation and improve service delivery.

## Corporate services

Throughout 2018–19, work continued on consolidating the merger of corporate services, focusing on ensuring the evolving needs of judges and staff across all the courts and tribunals are satisfied, while delivering on required efficiencies to meet reduced appropriations.

A key focus during the year was the development of a single set of human resource policies across the entity, given the finalisation of the enterprise agreement in June 2018. In addition, work continues on consolidating IT systems and amalgamating projects targeted at simplifying the combined court environment to deliver more contemporary practices and efficiency improvements at a reduced cost.

A key project during the year was the delivery of the digital court file for family law, with deployment of a technical release on 1 July 2019, together with a number of enhancements to the eFiling functionality which facilitated an increase to the number and types of forms which can be submitted electronically.

Several property projects were delivered during the year with a number of other prominent accommodation projects underway:

- relocation and design of new corporate services accommodation within the Canberra Law Courts building in Canberra, after the exit from the previous Canberra location
- development application approval and detailed design documentation was completed for the expansion of the Newcastle registry into the adjoining building. Work will commence early in the new financial year with expected completion in early 2020
- new mediation suite fit out in Darwin
- new fit out for the expanded National Native Title Tribunal accommodation within the Commonwealth Law Courts building in Brisbane, and
- preliminary design for the relocation of Corporate Services and the construction of additional courtrooms and chambers in the Queens Square Law Courts building in Sydney to accommodate the expanded criminal jurisdiction.

Other projects commenced or finalised during the year include:

- rollout of *Expense8*, a new travel booking system that has simplified processes across the three courts and tribunals
- data centre consolidation
- finalisation of tender process for a major security upgrade across the three courts and tribunals
- closure of the National Support Office accommodation in Canberra
- refinement of emergency and business continuity planning processes to accommodate organisation structural changes across the registries, and
- rollout of updated eLearning modules across the entity.

A detailed report on the delivery of corporate services in 2018–19 is in Part 4 (*Management of the Court*).



**Warwick Soden**

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