

A photograph of a modern office hallway with glass walls and a grid overlay. The hallway is brightly lit, and the grid lines are white and semi-transparent. The text 'THE YEAR IN REVIEW' is written in large, bold, teal letters in the lower-left quadrant. On the right side, there is a vertical column of repeating teal text.

# THE YEAR IN REVIEW

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PART

# 2

14 SIGNIFICANT ISSUES  
AND DEVELOPMENTS



# THE YEAR IN REVIEW

**During 2017–18, 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

### 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 (NPA's), 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 National Court Framework reforms are now being extended to apply to the important legal work undertaken by the Judicial Registrars of the Court. Implementation of the extended reforms commenced in mid-2017, with a focus on restructuring the allocation and management of Judicial Registrar work. The key aims of these new arrangements are to ensure the effective, orderly and expeditious discharge of registrar work nationally and to more effectively support the judges of the Court and all court users. This will be achieved by fostering consistent national practice in all areas of registrar work and fully utilising the specialised knowledge and skills of Judicial Registrars.

## National practice notes – Developments

A key component of the National Court Framework was the review of the Court's practice documents to ensure nationally consistent and simplified practice. Following extensive consultation with the legal profession, other court users and internal consultation, a suite of 27 national practice notes (including the Central Practice Note, NPA Practice Notes and General Practice Notes) were issued by the Chief Justice. Many of the practice notes were issued on the basis of a 12-month review period to allow for further consultation with the legal profession and other court users. This review period formally closed in October 2017.

The Court, through its National Practice Committee, has considered the feedback received and reissued the Interest on Judgments Practice Note and is in the process of preparing minor amendments to a number of other practice notes. It has also commenced the process of considering, in more detail, its practice and procedure in the area of digital practices, appeals and its Other Federal Jurisdiction NPA.

The Court has also advised court users that, despite the close of the formal review period, the Court continues to welcome feedback in respect of its practice notes and policy and practice generally.

## Organisational review

The Court commissioned the Nous Group to undertake an organisational review to consider how it may be structured to best support its core work. A key purpose of the organisational review was to extend the National Court Framework reforms and the application of core National Court Framework principles to other areas of the Court's work.

A review of the structure was necessary because the environment in which the Court operates is a digital one, having moved away from paper-based processes in 2014.

The initial phase of the review focused on the most effective way to support the work of the Court's judges and registrars and to do so on a national basis. During the year, consultation continued in respect of the more administratively focused aspects of the Court's operations.

The review builds on the initial phase of the implementation of the legal structure and considers structural options as to how the Court might best deliver client, digital and in-court support. The structure needs to be one that is financially viable with an agile technology and people infrastructure to ensure it can respond to change, whether anticipated or not.

Necessary to this will be a workforce strategy that aligns the skills of our people with the broader strategy, focusing on serving the needs of those who use the Court (e.g. litigants, citizens, business users, visitors, witnesses, legal professionals and, importantly, registrars and judges).

Discussions with staff and their representatives about these potential reforms have commenced and will continue through the implementation phase.

## Digital innovation

### Digital Court Program

The Digital Court Program continues to be a priority for the Federal Court of Australia (FCA), the Family Court of Australia (FCoA) and the Federal Circuit Court of Australia (FCC) and the program is on track to streamline core business systems and create flexibility and operational efficiency across the three federal courts and the tribunals that the FCA supports. The merging of the corporate service functions of the courts on 1 July 2016 enabled the FCA to embark on this substantial program of works.

The mandate of the Digital Court Program is to design a new digital court platform that supports current and future needs of the federal courts, including the Family Court of Western Australia.

The Digital Court Program includes the development and implementation of electronic filing, a digital court file for family law, and improvements to the courts' existing case management system – a new document management system for the courts' digital information. The Digital Court Program is part of the courts' transformative agenda that will see the digitalisation of much of the courts forms, files and administrative processes.

The program provides the courts with an opportunity to leverage the advantages that technology provides. The wider community has an expectation that courts extend access to justice through the delivery of digital services, and the courts are committed to meeting this expectation by delivering modern useable digital platforms. The implementation of electronic filing for family law is a very important step on this digital journey.

The first case management system release was successfully launched in April 2018. Enhancements to eFiling are on target for release in September 2018. Additionally, the first phase of the delivery of a digital court file for family law is on target for rollout in October 2018.

Subsequent releases providing further functionality to the case management system, Digital Court File and eFiling are in planning stages, with an assessment of dependencies and timeframes underway for delivery in 2019 and 2020.

### Digital Practice Committee

The Court established a Digital Practice Committee (formerly the Digital Hearings Committee) consisting of judges and registrars responsible for driving the implementation of digital practices throughout the Court. One of the committee's goals is to oversee the Court's objective to create an environment where actions, which are commenced digitally, are also case managed and heard digitally.

### Working digitally

The Court has adopted a new approach to the working environment by utilising a variety of new and existing technologies. This new approach is called 'working digitally'.

The Court identified that in order to drive digital innovations and meet community expectations, the judges, registrars and staff needed to be fully equipped with the digital tools to connect, collaborate and work in a digital environment. This cultural change will improve efficiencies across the organisation and its benefits would be reaped by litigants and the profession.

The 'working digitally' approach is the foundation to the next steps of digital innovation, including digital hearings.

## 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.

The Court will engage in external consultation and apply a measured and considered pilot approach to ensure that the technology and requirements meet the needs of the Court, the legal profession and the litigants before it becomes available nationally.

## Artificial intelligence and big data

In 2017, the Court established an Artificial Intelligence Committee. 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 is developing a pilot project that will use 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. By applying this technology, the application will learn, understand and apply precedents and like cases to make just and equitable recommendations.

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.

## Workload

In 2017–18, the total number of filings (including appeals) in the Court increased by 4 per cent to 5921. Filings in the Court's original jurisdiction (excluding appeals) remained consistent at 4659.

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 FCA and the FCC in general federal law increased by 11 per cent to 15,892.

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

In the Bankruptcy jurisdiction, FCA registrars dealt with, and disposed of, 2712 FCC bankruptcy matters, which equates to 92 per cent of the FCC's bankruptcy caseload.

Among the total disposals (8180), 45.8 per cent of the FCC's general federal law workload is dealt with by registrars, and 54.2 per cent is dealt with by judges.

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

## Performance

The Court has two targets for timely completion of cases:

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

During the reporting year, the Court completed 92.6 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 93.3 per cent.

### 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 2017–18, the Court handed down 2028 judgments for 1743 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 a significant increase from last year by 312 judgments. The data indicates that 82 per cent of appeals (both Full Court and single judge) were delivered within three months and 79 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 FCA, the National Native Title Tribunal, the FCoA, the FCC and the Commonwealth Courts Corporate Services (Corporate Services).

The financial statements show an operating surplus of \$2.760 million before depreciation costs of \$16.253 million. The entity had an approved deficit for the year of \$2.5 million, which was not required, with actual results being \$5.260 million better than expected and is as a result of the entity closely monitoring costs to ensure savings were achieved wherever possible, consistent with the overall strategy of better positioning itself to manage within a financially constrained environment.

The next three-year budget cycle continues to challenge the entity to make further savings. From 2018–19 the entity is aiming to achieve a balanced budget. 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 Digital Court Program and support the courts' ongoing digital transformation and improve service delivery.

## Merger of corporate services

Throughout 2017–18, 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 on finalising a new single enterprise agreement for the entity. This was approved on 5 June 2018 by 96 per cent of staff who participated in the ballot. In addition, work continued on consolidating information technology (IT) systems and amalgamating projects targeted at simplifying the combined court environment to deliver more contemporary practices and efficiency improvements at a reduced cost.

Work on consolidating the content management systems for the websites and intranets commenced during the year. This project will reduce the number of web and intranet systems used by the courts and the National Native Title Tribunal from four to one. It is expected that the new system will be procured before the end of 2018, with progressive migration to the new system commencing in early 2019.

This project will bring a number of benefits, including more contemporary digital information services, more responsive systems to meet the demands of the increases in types of devices used by the community, and lower costs through a consolidated system for search, maintenance and support.

Several prominent accommodation projects are underway:

- Work was undertaken on addressing the serious accommodation problems in the Newcastle registry. The Court has now undertaken a feasibility study for the expansion of the Newcastle registry into the adjoining building, which will address many of the shortcomings of the current accommodation.
- Work has commenced on establishing a dedicated registry in Rockhampton, with the appointment of a permanent judge to that location.
- A detailed scoping and developing statement of requirements for full security equipment upgrades through all registries was undertaken in 2017–18, with rollout scheduled in 2018–19.

Other key projects commenced or finalised during the year include:

- data centre consolidation
- rollout of new personal computer (PC) hardware across all courts and tribunals
- implementation of a new standard operating environment
- finalisation of a consolidated risk management framework across the entity
- review of all emergency plans across the entity
- updated and consolidated business continuity plan, and
- rollout of updated eLearning modules across the entity.

A report on the delivery of corporate services in 2017–18 can be found in Part 4 (Management of the Court).



**Warwick Soden**  
Chief Executive Officer and Principal Registrar  
Federal Court of Australia