PART 3

THE WORK OF THE COURT IN 2018–19

The work of the Court in 2018–19

This part of the annual report details the Federal Court's performance and workload during the financial 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 practice and procedure, 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.

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 also hears appeals on questions of law from the Administrative Appeals Tribunal. This jurisdiction falls under the Administrative and Constitutional Law and Human Rights National Practice Area (NPA), which also includes complaints about unlawful discrimination and matters concerning the Australian Constitution. Figure A5.9.1 in Appendix 5 (*Workload statistics*) shows the matters filed in this practice area over the last five years.

In addition to hearing appeals in taxation matters from the Administrative Appeals Tribunal, the Court also exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation. Figure A5.9.7 in Appendix 5 (*Workload statistics*) 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 Court of the Federal Court. Figure A5.9.5 on page 144 shows the intellectual property matters filed over the last five years.

The Court also has jurisdiction under the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications and

is responsible for their mediation. It also hears and determines 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. In addition, the Court also hears appeals from the National Native Title Tribunal and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 29. Figure A5.9.6 on in Appendix 5 (*Workload statistics*) shows native title matters filed over the last five years.

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 seven arrests. One ship remained under arrest at the end of the fiscal year, pending sale. See Figure A5.9.2 in Appendix 5 (*Workload statistics*) on page 143 for the number of Admiralty and Maritime Law matters filed in the past 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 A5.9.4 in Appendix 5 (*Workload statistics*) on page 143.

The Court's jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* covers a diverse range of matters, from the appointment of registered 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.

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.

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 dealings or false advertising. These areas fall under the Commercial and Corporations NPA. Figure A5.9.3 in Appendix 5 (*Workload statistics*) on page 143 provides statistics on this practice area.

Since late 2009, the Court has also had jurisdiction in relation to indictable offences for serious cartel conduct. This jurisdiction falls under the Federal Crime and Related Proceedings NPA together with summary prosecutions and criminal appeals and other related matters.

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 and from other courts exercising certain federal jurisdiction.

In recent years, a significant component of its appellate work has involved appeals from the Federal Circuit Court concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed on page 29.

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 27.

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 2018–19

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

- *Counter-Terrorism Legislation Amendment Act (No. 1) 2018*
- *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019*
- *Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Act 2018*
- *Foreign Influence Transparency Scheme Act 2018*
- *Government Procurement (Judicial Review) Act 2018*
- *Health Legislation (Improved Medicare Compliance and Other Measures) Act 2018*
- *Home Affairs and Integrity Agencies Legislation Amendment Act 2018*
- *Imported Food Control Amendment Act 2018*
- *Industrial Chemicals Act 2019*
- *Office of National Intelligence (Consequential and Transitional Provisions) Act 2018*
- *Road Vehicle Standards Act 2018*
- *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018*
- *Treasury Laws Amendment (2018 Measures No. 4) Act 2019*
- *Treasury Laws Amendment (2018 Measures No. 5) Act 2019*
- *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*
- *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*
- *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019*
- *Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019*
- *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*, and
- *Underwater Cultural Heritage Act 2018*.

Amendments to the Federal Court of Australia Act

During the reporting year, the Federal Court of Australia Act was amended by the *Legislation Amendment (Sunsetting Review and Other Measures) Act 2018*. This gave effect to recommendations contained in the *Report on the Operation of the Sunsetting Provisions in the Legislation Act 2003*, to ensure that Rules made by the judges of the Federal Court would not be subject to the sunsetting framework set out in Part 4 of Chapter 3 of the *Legislation Act 2003*.

Fee regulation

The operation of the Federal Court and Federal Circuit Court Regulation 2012 remained unchanged in the reporting year.

The fee for filing applications under s 539 of the *Fair Work Act 2009* in certain circumstances is fixed at the same rate as prescribed under subsection 395(2) of the *Fair Work Act 2009*. That fee is adjusted on 1 July of each year for changes in the consumer price index by regulation 3.07 of the Fair Work Regulations 2009.

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 responsive to the needs of modern litigation. 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, the Federal Court Rules 2011 were amended by the Federal Court Amendment (Court Administration and Other Measures) Rules 2019 to, among other things:

- update references to the Court's CEO and Principal Registrar, as well as references to the Court's other registrars as a consequence of changes to the titles of the offices of court officials brought about by the *Courts Administration Legislation Amendment Act 2016*
- update references to regulations, including the Federal Court and Federal Circuit Court Regulation 2012
- ensure rules 8.05 and 8.06 reflect practices instituted following the implementation of the Court's National Court Framework
- clarify the appropriate practice for changing the return date of an electronically filed application
- clarify the requirements for amending an electronically submitted notice of cross-claim
- update Division 33.3 to reflect changes instituted by the *Treasury Laws Amendment (Putting Consumers First – Establishment of the Australian Financial Complaints Authority) Act 2018*, specifically in respect of appeals from the Australian Financial Complaints Authority
- ensure references to renumbered sections of the *Fair Work Act 2009* were accurately reflected in rules 34.03, 34.04 and 34.05
- extend the time available for the filing and service of a notice of appeal, under rule 36.03, to 28 days, to standardise the time period with other superior courts of record in Australia
- clarify the operation of rules 40.43 and 40.44 and item 15 of Schedule 3, and
- increase the rates of costs recoverable in Schedule 3 for work done to give effect to the recommendations made in the seventh, eighth, ninth, tenth and eleventh reports of the Joint Costs Advisory Committee.

Other rules

In some specialised areas of the Federal Court's jurisdiction, the judges have made rules that govern relevant proceedings in the Court; however, in each of those areas, the Federal Court Rules continue to apply where they are relevant and not inconsistent with the specialised rules.

The Federal Court (Corporations) Rules 2000 govern proceedings in the Federal Court under the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001*, as well as proceedings under the *Cross-Border Insolvency Act 2008* which involve a corporate debtor. There were no changes to the Federal Court (Corporations) Rules 2000 in the reporting year.

The Federal Court (Bankruptcy) Rules 2016 govern proceedings in the Federal Court under the *Bankruptcy Act 1966*, as well as proceedings under the *Cross-Border Insolvency Act 2008* involving a debtor who is an individual. There were no changes to the Federal Court (Bankruptcy) Rules 2016 in the reporting year.

The Federal Court (Criminal Proceedings) Rules 2016 govern all criminal proceedings in the Federal Court, including summary criminal proceedings, indictable primary proceedings and criminal appeal proceedings. There were no changes to the Federal Court (Criminal Proceedings) Rules 2016 in the reporting year.

The Admiralty Rules 1988 govern proceedings in the Federal Court under the *Admiralty Act 1988*. There were no changes to the Admiralty Rules 1988 in the reporting year.

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. The Chief Justice may approve a form for the purposes of the Federal Court Rules 2011, the Federal Court (Bankruptcy) Rules 2016 and the Federal Court (Criminal Proceedings) Rules 2016.

On 1 May 2019, the Chief Justice approved the revocation and reissuance of the following forms, with effect from 2 May 2019, for the purposes of the Federal Court Rules 2011:

- Form 23: *Request for service in a foreign country*
- Form 27: *Request for local service of foreign judicial documents*
- Form 43B: *Subpoena to produce documents*
- Form 43C: *Subpoena to give evidence and produce documents*
- Form 44: *Subpoena – Declaration by addressee Notice to addressee*
- Form 59: *Affidavit*
- Form 79: *Originating application under the Fair Work Act 2009 alleging dismissal in contravention of a general protection*
- Form 80: *Originating application under the Fair Work Act 2009 alleging unlawful termination of employment*
- Form 81: *Originating application under the Fair Work Act 2009 alleging discrimination*
- Form 98A: *Subpoena to give evidence (New Zealand)*
- Form 98B: *Subpoena to produce documents (New Zealand)*
- Form 98C: *Subpoena to give evidence and produce documents (New Zealand)*
- Form 103: *Election petition (ATSI Act)*
- Form 123: *Notice of cross-appeal*, and
- Form 130: *Notice of objection to bill of costs*.

On 1 May 2019, the Chief Justice also revoked the following forms, with effect from 2 May 2019, for the purposes of the Federal Court Rules 2011:

- Form 88: *Information*, and
- Form 89: *Summons*.

On 1 May 2019, the Chief Justice approved the revocation and reissuance of the following forms, with effect from 2 May 2019, for the purposes of the Federal Court (Criminal Proceedings) Rules 2016:

- Form CP9: *Affidavit*
- Form CP42: *Subpoena to produce a document or thing*
- Form CP43: *Subpoena to attend to give evidence and to produce a document or thing*, and
- Form CP44: *Subpoena – Notice and declaration by addressee*.

No new forms were approved by the Chief Justice for the purposes of the Federal Court (Bankruptcy) Rules 2016 during the reporting year.

Practice notes

Practice notes are used to provide information to parties and their lawyers involved in proceedings in the Court on particular aspects of the Court's practice and procedure.

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 2011, rule 1.07 of the Federal Court (Bankruptcy) Rules 2016, rule 1.14, 1.15 and 4.20 of the Federal Court (Criminal Proceedings) Rules 2016 and the Court's inherent power to control its own processes. All practice notes are available on the Court's website.

In general, practice notes are issued to:

- complement particular legislative provisions or rules of court
- set out procedures for particular types of proceedings, and
- notify parties and their lawyers of particular matters that may require their attention.

A key component of the National Court Framework reforms has been the review of all of the Court's practice documents to ensure nationally consistent and simplified practice. Under the National Court Framework, the Court's practice documents have been consolidated and refined from 60 practice notes and administrative notices to a coherent suite of national practice notes.

The Court's practice notes fall into four primary categories:

Central Practice Note: This is the core practice note for court users and addresses the guiding National Court Framework case management principles applicable to all NPAs.

NPA Practice Notes: Interlocking with the Central Practice Note, these practice notes raise NPA-specific case management principles and are an essential guide to practice in an NPA.

General Practice Notes: These apply to all or many cases across NPAs, or otherwise address important administrative matters. A number of General Practice Notes set out particular arrangements or information concerning a variety of key areas, such as class actions, expert evidence, survey evidence, costs, subpoenas and accessing court documents.

Appeals Practice Note: The Court has made considerable changes to the management of appeals and related applications and has commenced work on developing the key features of a comprehensive Appeals Practice Note. The Court will continue that work, including undertaking external consultation and, in the interim, Appeals Practice Note APP 2 (Content of Appeal Books and Preparation for Hearing) continues to apply.

Since the issuing of the Court's national practice notes, the 12-month review period applicable to the General Practice Notes concluded in October 2017. The Court, through its National Practice Committee, has considered the feedback received and prepared amendments to nine of its national practice notes, which will be issued early in the next reporting year. The amendments cover a number of topics, including incorporating the concise statement method into the Central Practice Note, with correlative amendments to certain NPA Practice Notes, updating the Commercial and Corporations Practice Note following changes to insolvency law with the commencement of the *Insolvency Law Reform Act 2016*, and updating the Class Actions Practice Note.

In addition, following internal and external consultation, a new Defamation Practice Note has been developed within the Defamation sub-area of the Other Federal Jurisdiction NPA. The Court will continue to review its practice and procedure and welcomes feedback in respect of its practice notes and policy and practice generally.

Guides

The Federal Court also issues national guides. These guides cover a variety of subject areas, such as appeals, migration, human rights and insolvency matters. Other guides cover a range of practical and procedural matters, such as communicating with chambers and registry staff, clarifying the role and duties of expert witnesses, and providing guidance on the preparation of costs summaries and bills of costs. All guides are available on the Court's website.

Workload of the Federal Court and Federal Circuit Court

The Court has concurrent jurisdiction with the Federal Circuit Court 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 Federal Circuit Court in its general federal law jurisdiction.

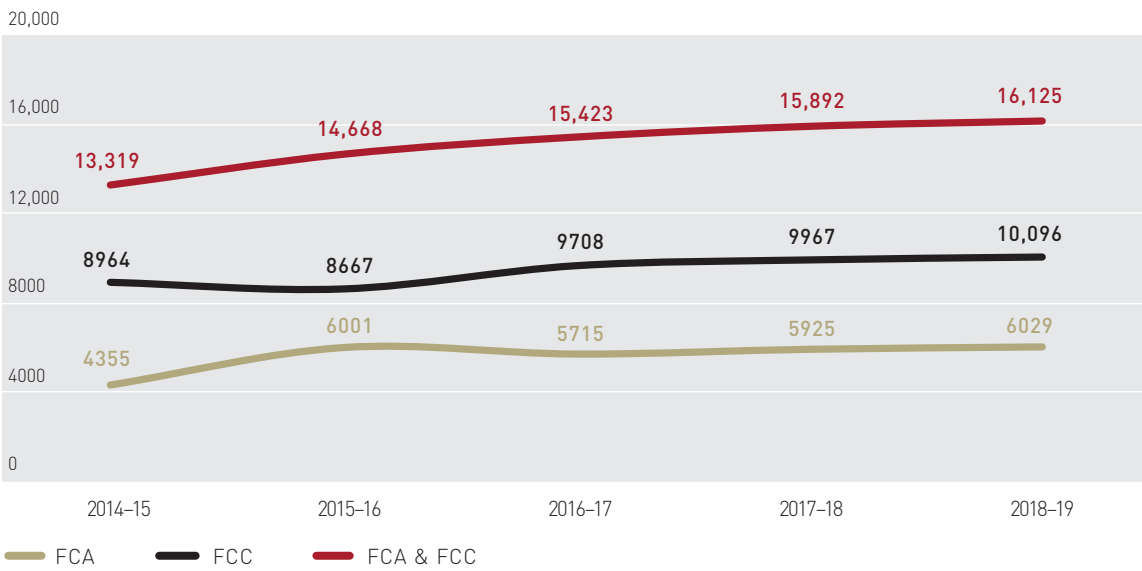
In 2018–19, a total of 16,125 matters were filed in the two courts. Any growth in filings has an impact on the Federal Court's registries, as they process the documents filed for both courts. The registries also provide the administrative support for each matter to be heard and determined by the relevant court. The Court was able to accommodate this increase easily due to the technology and systems it has set up, most notably electronic court files for all files and lodgment, to aid efficient case processing.

Case flow management of the Court's jurisdiction

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 practice and procedure designed to assist with the efficient disposition of cases according to law. This is further enhanced by the reforms of the National Court Framework.

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.

Figure 3.1: **Filings to 30 June 2019 – Federal Court of Australia and Federal Circuit Court of Australia**



Disposition of matters other than native title

In 1999–2000, the Court set a goal of 18 months from commencement as the period within which it should dispose of at least 85 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 18-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 2014 to 30 June 2019, 93 per cent of cases (excluding native title matters) were completed in less than 18 months; 88 per cent in less than 12 months; and 75 per cent in less than six months. See Figure A5.4 in Appendix 5 (*Workload statistics*). Figure A5.5 on page 139 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years.

Delivery of judgments

In the reporting period, the Court handed down 2267 judgments for 2128 court files. Of these, 1006 judgments were delivered in appeals (both single judge and Full Court) and 1261 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. This was a slight increase from the number of judgments delivered in 2017–18.

The nature of the Court's workload means that a substantial proportion of the decisions in the matters that proceed to trial in the Court will be reserved by the trial judge 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 includes a summary of decisions of interest delivered during the reporting year and illustrates the Court's varied jurisdiction.

Workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 6029 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.1 on page 134.

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*, and
- *Federal Circuit Court of Australia Act 1999.*

During the reporting year, 163 matters were remitted or transferred to the Court:

- 10 from the High Court
- 35 from the Federal Circuit Court
- 39 from the Supreme Courts, and
- 79 from other courts.

Matters may be transferred from the Court under:

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

During 2018–19, no matters were transferred from the Court.

Matters completed

Figure A5.2 in Appendix 5 (*Workload statistics*) 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 5680.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 3863 (see Table A5.1).

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 2019 is set out in Table 3.1.

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)**

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Administrative law	52	38	11	7	8	116
Admiralty	9	13	7	7	3	39
Bankruptcy	106	39	26	21	11	203
Competition law	6	2	2	0	5	15
Trade practices	62	40	14	18	61	195
Corporations	532	133	88	42	112	907
Human rights	21	25	8	8	11	73
Workplace relations	1	0	0	1	1	3
Intellectual property	60	53	22	26	35	196
Migration	89	78	18	6	5	196
Miscellaneous	107	69	23	27	43	269
Taxation	19	69	29	9	24	150
Fair work	97	53	46	29	29	254
Total	**1161**	**612**	**294**	**201**	**348**	**2616**
Percentage of total	44.4%	23.4%	11.2%	7.7%	13.3%	100.0%
Running total	**1161**	**1773**	**2067**	**2268**	**2616**	
Running percentage	44.4%	67.8%	79.0%	86.7%	100.0%	

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

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Native title action	67	42	25	25	178	337
Percentage of total	19.9%	12.5%	7.4%	7.4%	52.8%	100.0%
Running total	**67**	**109**	**134**	**159**	**337**	
Running percentage	19.9%	32.3%	39.8%	47.2%	100.0%	

The number of native title matters over 18 months old increased. The number of native title matters between 12–18 months and 18–24 months old increased. Further information about the Court's native title workload can be found on page 29.

The Court will continue to focus on reducing its pending caseload and the number of matters over 18 months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 5.

The Court's appellate jurisdiction

The appellate workload of the Court constitutes a significant part of its overall workload. While most appellate matters arise from decisions of single judges of the Court or the Federal Circuit Court, some are in relation to decisions by state and territory courts exercising certain federal jurisdiction. For reporting purposes, matters filed in the original jurisdiction of the Court but referred to a Full Court for hearing are treated as appellate matters.

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 and complexity of such matters, the nature and complexity of issues raised on appeal, legislative changes increasing or reducing the jurisdiction of the Court and decisions of the Full Court or High Court (for example, regarding the interpretation or constitutionality of legislative provisions).

Subject to ss 25(1), (1AA) and (5) of the Federal Court Act, appeals from the Federal Circuit Court 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. Appellate matters will generally be listed in the next available Full Court and appellate sitting in the capital city where the matter was heard at first instance.

In the reporting year, Full Court and appellate matters were scheduled for hearing in all eight capital cities. When appeals are considered to be sufficiently urgent, the Chief Justice will convene a special sitting of a Full Court outside of the four scheduled sitting periods.

In 2018–19, the Chief Justice specially fixed eight Full Court or appellate matters for hearing outside of the four scheduled sitting periods, involving eight sitting days or part thereof.

The appellate workload

During the reporting year, 1658 appellate proceedings were filed in the Court. They include 1466 appeals and related actions (1412 filed in the appellate jurisdiction and 54 matters filed in the original jurisdiction), 26 cross appeals and 166 interlocutory applications such as applications for security for costs in relation to an appeal, a stay, an injunction, expedition or various other applications.

The Federal Circuit Court is a significant source of appellate work accounting for 74 per cent (1085 of the 1466) of the appeals and related actions filed in 2018–19. 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 Table A5.3 in Appendix 5 (*Workload statistics*). The number of migration appeals and related actions filed in 2018–19 increased by 11 per cent, from 1022 in 2017–18 to 1136 for the current reporting year.

In the reporting year, 1404 appeals and related actions were finalised. Of these, 673 matters were filed and finalised in the reporting year. At 30 June 2019, there were 945 appeals (comprising 901 filed in the appellate jurisdiction and 44 matters filed in the original jurisdiction) currently before the Court.

The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2019 is set out in Table 3.3.

Of the appellate and related matters pending at present, 57 per cent are less than six months old and 84 per cent are less than 12 months old. At 30 June 2019, there were 154 matters that were over 12 months old, 143 filed in the appellate jurisdiction (see Table 3.3) and 11 matters filed in the original jurisdiction. A higher number of migration appeals and applications have been held in abeyance pending the outcomes of decisions of the Full Court of the Federal Court and the High Court. These matters are being actively identified and collectively managed by the Court until the legal issues underlying them are determined.

Table 3.3: **Age of current appeals, cross appeals and interlocutory appellate applications at 30 June 2019**

CAUSE OF ACTION	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	TOTAL
Appeals and related actions	517	241	70	42	31	901
Percentage of total	57.4%	26.7%	7.8%	4.7%	3.4.%	100.0%
Running total	**517**	**758**	**828**	**870**	**901**	
	57.4%	84.1%	91.9%	96.6%	100.0%	

Managing migration appeals

In 2018–19, 63 migration appeals 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 1069 migration matters were filed in relation to judgments of the Federal Circuit Court and four from another source.

Table 3.4 shows the number of appellate proceedings involving the Migration Act as a proportion of the Court's overall appellate workload since 2014–15.

Approximately 80 per cent of the Court's appellate workload concerned decisions made under the *Migration Act 1958*. Although the number of migration appellate filings has increased by 11 per cent since the last reporting year, migration as a proportion of the Court's overall appellate workload has remained steady.

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. The Court reviews all migration matters to identify cases 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. The exceptions to this are where expedition of an appeal may be necessary or where a judge's commitments preclude listing allocated matters during the sitting period. Where any migration-related appellate proceeding requires an expedited hearing, the matter is allocated to a single judge or referred to a specially convened Full Court. 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.

The Court's native title jurisdiction

Statistics and trends

In 2018–19, the Court resolved a total of 72 native title applications (commenced under s 61 of the *Native Title Act 1993*), consisting of 49 native title applications and 23 non-claimant applications.

Of the finalised applications, 33 were resolved by consent of the parties or were unopposed, two were finalised following litigation and 37 applications were either discontinued or dismissed. There are several other matters in which a consent determination was made, however the file remains on foot due to the determination being conditional on a subsequent event or further issues such as costs which remain to be disposed of.

A total of 33 native title determinations were made in the reporting year, consisting of 29 claim applications and four non-claimant applications. A total of 27 determinations were made by consent,

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

APPEALS AND RELATED ACTIONS	2014–15	2015–16	2016–17	2017–18	2018–19
Migration jurisdiction	648	653	764	1022	1136
Percentage	71.2%	65.8%	73.0%	80.9%	80.5%
Total appeals and related actions	**910**	**993**	**1046**	**1263**	**1412**

two were as a result of litigation, and a further four were unopposed non-claimant applications.

Fifty-two new applications were filed under s 61 of the Native Title Act during the reporting period. Of these, 33 are native title determination applications, 13 are non-claimant applications and six were applications to revise existing determinations. Five of the revision applications were brought in the Northern Territory relating to a common issue regarding the effect of pastoral improvements on native title.

No additional compensation applications have been filed over the past reporting year subsequent to the precedent High Court decision in *Griffiths* on 13 March 2019. The pre-existing three compensation applications filed in Queensland are being actively case managed and the three in Western Australia are awaiting resolution of the appeals against the registration of the South-West Noongar Indigenous Land Use Agreements (ILUAs) before further case management.

At the end of the reporting year, there were 267 current native title applications, comprising 216 determination applications, 38 non-claimant applications, six compensation applications, and seven variation applications. This is a downward trend from the 289 extant at the end of the previous financial year and reflects some intensive case management by the Court to resolve aging claims and groups of matters.

There were a number of additional applications managed by the native title practice area not brought under s 61 of the Native Title Act. In total, there were 88 native title related matters disposed of (including 14 appeals and two non s 61 applications) with 82 new matters filed and a pending caseload at the end of the reporting year of 281 files. These total figures are reflected in Appendix 5 (*Workload statistics*).

There are 44 consent determinations and 14 native title claim hearings of either the substantive matter or separate questions currently forecast for the 2019–20 financial year. Many of those hearings will be conducted on-country, although the Court is generally adopting the practice of only one on-country determination per claim group.

The Court continues to focus on directed case management by specialist registrars and judges and on mediation of whole or part matters, predominantly conducted by registrars. The objective of both processes is to identify the genuine issues in dispute between the parties and the most effective means of resolving those disputes. This process accords with the Court's responsibilities under the *Native Title Act 1993* and the overarching purpose under sections 37M and 37N of the *Federal Court of Australia Act 1976* to facilitate the just resolution of disputes according to the law as quickly, inexpensively and efficiently as possible.

While full native title trials are reducing in number, there remain a significant number of litigated separate questions and interlocutory proceedings.

Mediation may be conducted on-country, including with large groups to deal with intra and inter-Indigenous disputes, between claimant and non-claimant applicants and between applicant and regional agencies of a state government. The complexity of disputes is increasing in nature and the increased intensity of current court facilitation is demonstrated by the increase of listings from 120 mediations and 554 case management hearings in 2016–17; to 148 mediations and 789 case management hearings in 2017–18; to 316 mediations, 983 case management hearings and a further 90 regional case management conferences held during 2018–19.

Stakeholder engagement

The Court discontinued the Priority List that was previously published to the Court website as it was no longer utilised in a uniform manner and native title stakeholders indicated that they therefore no longer relied upon it. It was decided that systemic issues on a regional or state-wide basis were better identified and addressed through regular user group forums.

In Queensland, a forum involving practice area judges and registrars was convened in June 2019. As a result, a Standing Native Title User Group was established to meet with the registrars every six months, with the 12 monthly meeting including the judges and a broader group of attendees to exchange information and provide a forum to identify systemic issues relevant to Queensland native title applications.

A similar forum involving practice area judges and registrars was convened in Western Australia in June 2019 adopting a workshop model. A user group and forum structure mirroring the Queensland model was agreed to be established for future stakeholder engagement in Western Australia.

Significant litigation and developments

Queensland

Regional call overs continue to be a key feature of the Court's approach to the management and progression of native title claims in Queensland. Call overs have been convened in Cairns with regard to the Northern Region, and in Brisbane with regard to the Southern Region. The case management landscape in Queensland has also involved regional approaches in a number of instances. Notably:

- In the Cape York, Torres Strait and Carpentaria Region, the 'Torres Strait cluster' of overlapping claims has been the subject of intensive case management and mediation. This cluster has otherwise been marked by significant progress in that a new applicant for the Torres Strait Regional Seas Claim Part B was authorised by the claim group in February, with orders replacing the previous applicant with the new applicant being made by the Court in April.
- In the Northern Region, the 'Cairns cluster' of overlapping claims was referred by the Court under s 54A of the *Federal Court Act 1976* (Cth) and rule 28.61 of the Federal Court Rules 2011 (Cth) to two independent referees – the President of the National Native Title Tribunal, the Honourable John Dowsett AM QC, and the anthropologist Dr Paul Burke for inquiry and report. This is the first time a referral under s 54A and rule 28.61 has been made in the context of native title proceedings. The final report of the referees is due to be provided to the Court in December 2019.
- In the Southern Region, the 'GNP cluster', or 'Gangulu cluster' as it is also known, of overlapping claims has been the subject of intensive case management, expert conferencing and mediation. Separate question hearings are likely to take place in these matters in 2020.

A number of other claims have been the subject of intensive case management and mediation, including the Quandamooka People #4 claim, which concerns the land and waters of Moreton Island; and the overlapping matters of Koa People, which is a claimant application, and Robyn Kennedy, which is a non-claimant application. These claims concern land and waters in the vicinity of Winton in central western Queensland.

In contrast to previous years, there were no on-country hearings held during the reporting period. However, a number of on-country hearings are programmed to occur in 2020 including the Kurtijar People, Wangan and Jagalingou People and the 'Wakaman cluster' applications.

Two non-claimant matters from Queensland and New South Wales respectively, have been programmed for hearing by the Full Federal Court at first instance in the next reporting period to consider the power of the Court to make a negative determination in circumstances that the applicant has the benefit of s 24FA of the *Native Title Act 1993* following the decision of Reeves J in the decision of *Pate v State of Queensland (2019)* FCA 25.

South Australia

There have been two significant consent determinations made in South Australia, with both matters having had a long history in the Court. The Adnyamathanha, Ngadjuri and Wilyakali overlap proceedings (SAD6001/1998) was determined on 14 December 2018 by Justice White at Orroroo, South Australia. This application was made in respect of extensive areas of land in the north and east of South Australia.

The Nukunu (Area 1) claim (SAD6012/1998) was determined on 17 June 2019 by Justice Charlesworth at Port Germein, South Australia. There was an agreement reached between parties for a determination of native title in relation to part of the land to which the Nukunu claim relates, with the remaining portion of the claim to be determined separately. The determination area covers an area of approximately 15,000km^2 in the mid north of South Australia.

Two on-country hearings are forecast for the second half of 2019 including the Oodnadatta Common Overlap proceedings and Wirangu #2 (Part A), being a 1998 matter.

New South Wales

The Bundjalung People of Byron Bay's application filed in 2001 was determined by consent in April 2019 at Brunswick Heads following an extensive period of negotiation and mediation, resulting in an ILUA which underpinned the determination.

Significant tenure work in the Ngemba Ngiyampaa and Widjabal Wia-bal matters during the reporting period has resulted in a series of separate questions regarding the effect of many New South Wales tenures on native title being heard by the Court or programmed for hearing.

The Court has engaged an independent expert, funded by the representative body NTSCORP, as a consequence of a mediation between overlapping applicants and indigenous respondents in the Hunter Valley region. The final report will be filed and inform next steps for management of a regional case management approach.

Western Australia

Following the most recent consent determinations in the East Kimberley and intensive efforts to finalise aged matters in the region, 93.5 per cent of the Kimberley is now determined native title.

Intensive case management of claims in the Pilbara region has resulted in an increase in on-country mediation to narrow issues in dispute. In some matters, aspects of unresolved disputes are programmed for hearing in the next financial year. In relation to the Geraldton region, significant progress has been made in mediation to finalise a comprehensive regional agreement between the Applicant and State of Western Australia to settle four previous overlapping native title claims in the Geraldton region. This progress follows on from significant consent determinations made in November and December 2018 following mediation and intensive case management.

Ashwin on behalf of the Wutha People v State of Western Australia (No 4) [2019] FCA 308 concerned whether native title existed over an area of 32,630 square kilometres in the Goldfields Region of Western Australia. Justice Bromberg found that not all of those in the native title group had authorised the claim as the applicant contended that there were 'multiple pathways' (including non-descent based pathways) available to a person to acquire or possess native title rights in the claim area, however had limited the native title claim group to persons who had acquired or possessed native title rights by means of a single descent-based pathway. His Honour concluded that by limiting the authorising group to only one of the multiple pathways, there was the possibility that only a sub-set of all of the actual native title holders had authorised the claim. In light of this, Justice Bromberg declined to exercise his discretion to hear and determine the claim despite the defect in authorisation as it would prejudice the interests of persons who were not included in the claim group but may be a native title holder. Following judgment, orders were made dismissing the application.

Northern Territory

In the Northern region, on 24 October 2018, the Court made a determination of native title by consent over the town of Larrimah. This is the first time the right to take resources for any purpose (including commercial purposes) has been recognised by consent in the Northern Territory.

In the Central region, various prescribed bodies corporate have filed five revised native title determination applications seeking to amend previous determinations. These previous determinations contain 'pastoral improvement' clauses that reflect *De Rose v State of South Australia (No 2)* [2005] FCAFC 110. This was overturned by the High Court in *Western Australia v Brown (2014)* HCA 8 and the applications seek to reflect his change in law.

In *Northern Land Council v Quall* [2019] FCAFC 77, the Full Court found that a representative body cannot delegate its certification function under s 203BE(1)(b) of the *Native Title Act 1993*. Here, the Chief Executive Officer had signed the certificate for registration of an ILUA between the Northern Land Council and the Northern Territory of Australia. The Full Court stated that an important consideration was whether or not the power or function to be delegated involves the formation of an opinion. In this case, it did, as the representative body is required, by s 203BE(5) of the Native Title Act to include an express statement that the body holds the opinion that all reasonable efforts have been made to ensure those who may, or do, hold native title in the ILUA area have been identified and that such identified persons agree to the making of the agreement.

Assisted dispute resolution

Assisted dispute resolution (ADR) is an important part of the efficient resolution of litigation in the Court context, with cases now almost routinely referred to some form of ADR. In addition to providing a forum for potential settlement, mediation is an integral part of the Court's case management.

In recognition of the Court's unique model of mediation and commitment to a quality professional development program, the Court became a Recognised Mediator Accreditation Body in September 2015 and implemented the Federal Court Mediator Accreditation Scheme (FCMAS). The FCMAS incorporates the National Mediator Accreditation Standards and the majority of court-ordered mediations are conducted by registrars who are trained and accredited by the Court under the FCMAS.

In the native title jurisdiction, while native title registrars now conduct most mediations of native title matters, the Court maintains a list on its website of appropriately qualified professionals if there is a need to engage an external mediator or co-facilitate 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 program across years and to provide academics and policy makers with data upon which they may base their work.

Mediation referrals are summarised in Table 3.5. As in previous years, the data should be considered in light of various 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 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 where a private mediator is used during the course of the litigation. Similarly, the statistics provided in Table 3.5 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.

As shown in Table 3.5, the main practice areas where mediation referrals are made are commercial and corporations, and employment and industrial relations. Although the reporting of these statistics is by reference to NPA rather than cause of action, as in past years, the mediation referrals by matter type is broadly consistent with past years.

A collection of statistics concerning the workload of the Court by NPA is contained in Appendix 5 (*Workload statistics*).

Improving access to the Court and contributing to the Australian legal system

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 practice and procedure. 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 and the Australian Institute of Judicial Administration, and in other law reform, community and educational activities.

An outline of the judges' work in this area is included in Appendix 8 (*Judges' activities*).

Table 3.5: **Mediation referrals in 2018–19 by NPA and registry**

NPA	NSW	VIC	QLD	WA	SA	NT	TAS	ACT	TOTAL
Administrative and constitutional law and human rights	11	31	8	2	0	1	1	3	57
Admiralty and maritime	7	1	2	0	0	0	0	0	10
Commercial and corporations	58	89	19	28	4	0	4	6	208
Employment and industrial relations	47	70	14	26	2	1	4	5	169
Federal crime and related proceedings	0	0	0	0	0	0	0	0	0
Intellectual property	33	34	6	1	2	0	0	0	76
Migration	0	1	1	0	0	0	0	0	2
Native title	6	0	13	8	3	1	0	0	31
Other federal jurisdiction	13	3	1	0	0	0	0	0	17
Taxation	1	0	3	3	0	0	0	0	7
Total	**176**	**229**	**67**	**68**	**11**	**3**	**9**	**14**	**577**

Practice and procedure reforms

The National Practice Committee is responsible for developing and refining policy and significant principles regarding the Court's practice and procedure. It is comprised of the Chief Justice, NPA coordinating judges and the national appeals coordinating judges, and is supported by a number of registrars of the Court.

During the reporting year, the committee met and dealt with a range of matters including:

- considering feedback received in respect of its national practice notes
- preparing amendments to nine national practice notes
- consulting on and drafting a new Defamation Practice Note as part of the Defamation sub-area of the Other Federal Jurisdiction NPA
- developing the framework for a new appeals practice note, and
- managing responsibilities and support for each NPA, including enhancing and developing national arrangements for liaison with the profession (including through court user-groups and forums in key practice areas), and developing a framework for skilled and experienced Judicial Registrar support for each NPA (including in class actions, migration and intellectual property).

In addition, the National Practice Committee worked closely with the Digital Practice Committee to continue to ensure the development of leading policy and practice in the area of digital and technological practice within the Court.

Liaison with the Law Council of Australia

Members of the National Practice Committee meet with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure, as required. The available members of the two committees met on 3 December 2018 to discuss a range of matters, including information regarding the workload of the Court and the disposition of proceedings, case management procedure, digital hearings, and policy and practice (including practice notes).

Representatives of the Court and representatives of the Law Council's Federal Court Liaison Committee also discussed updates to the Case Management Handbook.

Assistance for self-represented litigants

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

During the reporting year, the Attorney-General's Department continued to provide funding to LawRight, Justice Connect, JusticeNet SA and Legal Aid Western Australia to provide basic legal information and advice to SRLs in the Federal Court and the Federal Circuit Court.

These services involved dissuading parties from commencing or continuing unmeritorious proceedings, providing assistance to draft or amend pleadings or prepare affidavits, giving advice on how to prepare for a hearing and advising on how to enforce a court order. While the services are independent of the courts, facilities are provided within court buildings to enable meetings to be held with clients.

Tables 3.6, 3.7 and 3.8 provide broad statistics about the number of SRLs appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of SRLs is not a mandatory field in the Court's case management system, and the representation status of a party during the course of a proceeding may vary from time to time, statistics shown in the tables are indicative only. In the reporting year, 751 people who commenced proceedings in the Court were identified as self-represented. The majority were appellants in migration appeals.

Table 3.6: Actions commenced by SRLs during 2018–19 by registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	3	463	5	92	21	0	41	126	751
Percentage of total	0%	63%	1%	12%	3%	0%	5%	18%	100%

Due to rounding, percentages may not always appear to add up to 100 per cent.

Table 3.7: Proceedings commenced by SRLs in 2018–19 by cause of action

CAUSE OF ACTION	TOTAL ACTIONS	% OF TOTAL
Administrative law	37	5%
Admiralty	0	0%
Appeals and related actions	538	72%
Bankruptcy	27	4%
Bills of costs	0	0%
Competition law	0	0%
Consumer protection	7	1%
Corporations	10	1%
Cross claim	0	0%
Fair work	16	2%
Human rights	10	1%
Industrial	0	0%
Intellectual property	3	0%
Migration	75	10%
Miscellaneous	15	2%
Native title	13	2%
Taxation	0	0%
Total	**751**	**100%**

Due to rounding, percentages may not always appear to add up to 100 per cent.

Table 3.8: Appeals commenced by self-represented litigants in 2018–19 by cause of action

CAUSE OF ACTION	TOTAL ACTIONS	% OF TOTAL
Administrative law	9	2%
Admiralty	0	0%
Bankruptcy	10	2%
Competition law	0	0%
Consumer protection	3	1%
Corporations	1	0%
Fair work	11	2%
Human rights	2	0%
Industrial	0	0%
Intellectual property	2	0%
Migration	496	92%
Miscellaneous	3	1%
Native title	1	0%
Taxation	0	0%
Total	**538**	**100%**

Due to rounding, percentages may not always appear to add up to 100 per cent.

Direct financial counselling project in bankruptcy proceedings

With the assistance of Consumer Action in Melbourne and Uniting Communities in Adelaide, the Court has, in conjunction with the Federal Circuit Court, been able to facilitate a program of targeted financial counselling assistance to SRLs in bankruptcy proceedings. Since the latter part of 2014 in Melbourne and 2018 in Adelaide, a financial counsellor sits in the courtroom in every bankruptcy list. The registrar presiding is able to refer an SRL to the financial counsellor for an immediate confidential discussion so that the SRL better understands his or her options when faced with the prospect and consequences of bankruptcy.

In Melbourne, during the reporting year, there were 67 referrals of debtors in proceedings to financial counsellors, 58 of which have been determined. In 43 of those proceedings (74 per cent), they were resolved by consent. While statistics are not yet available from Adelaide, registrars have reported favourably about the program.

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 self-represented 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 fees regulation (see below).

Court fees and exemption

Fees are charged under the Federal Court and Federal Circuit Court Regulation 2012 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.

During the reporting year, the rate of the fee that was payable depended on whether the party liable to pay was a publicly listed company (for bankruptcy filing and examination fees only); a corporation; a public authority (for bankruptcy filing and examination fees only); a person; a small business; or a 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 $73.20)
- 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 under s 23 of the *International Arbitration Act 1974* for the issue of a subpoena requiring the attendance before or production of documents to an arbitrator (or both)
- 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, and
- 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 1993* or has been granted funding to perform some functions of a representative body under s 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, or
- 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 that had been granted Legal Aid or funding under the *Native Title Act 1993* has 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, e.g. '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. Details of the fee exemptions during the reporting year are set out in Appendix 1 (*Financial statements*).

Freedom of Information

Information Publication Scheme

As required by subsection 8(2) of the *Freedom of Information Act 1982* (FOI Act), the Federal Court has published, on its website at www.fedcourt.gov.au/ips, materials relating to the Information Publication Scheme. This includes the Court's current Information Publication Scheme plan as well as information about the Court's organisational structure, functions, appointments, annual reports, consultation arrangements and FOI contact officer as well as information routinely provided to the Australian Parliament.

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; they may, however, be accessible by way of an application for inspection of court documents under 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 website and a number of free legal information websites for access by the media and the public. Judgments of public interest are published by the Court 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. Online free access legal information websites providing access to Federal Court judgments include AustLII and JADE.

Information for the media and televised judgments

The Director, Public Information deals with media inquiries, most of which relate to specific cases, however, duties also include issues management, which often requires high-level contact and coordination.

Media regularly contact the Director, Public Information for access to judgments and information on how to access files. This requires close liaison with, and the support of, registries and judges' chambers.

The Director, Public Information is responsible for briefing new associates about how the Court deals with the media, arranges camera access in cases of public interest, and contacts journalists when mistakes have been made.

In matters of extensive public interest, the Court has established online files where all documents deemed accessible are placed. This removes the need for individual applications to registry and makes it easier for journalists and court staff.

In the reporting year, such files were created for the following:

- Ben Roberts-Smith matters
- *Jack de Belin v Australian Rugby League Commission Limited*
- *Friends of Leadbeater's Possum Inc v VicForests*
- *Sanda v PTTEP Australasia (Ashmore Cartier),* and
- *Rush v Nationwide News*.

A significant highlight of the year was the special arrangements made for media covering the *Rush v Nationwide News* hearing. These included the provision of a special media room, regular upload of documents to an online file and the live televising of the judgment. The support of chambers and the web team were critical to the success of this operation.

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 2018–19, members of the Court were involved in seminars relating to arbitration, employment and industrial relations, commercial law, tax, and class actions.

Working with the Bar

Registries across the country hosted advocacy sessions and a number of bar moot courts and moot competitions and assisted with readers' courses during the year. The New South Wales registry hosted a silks ceremony on 17 October 2018. The Queensland registry hosted a silks ceremony in December 2018.

User groups

User groups have been formed along NPA lines to discuss issues related to the operation of the Court, its practice and procedure, to act as a reference group for discussion of developments and proposals, and as a channel to provide feedback to the Court on particular areas of shared interest. During the reporting year, user groups met both nationally and locally in a number of practice areas.

Legal community

During the year the Court's facilities were made available for many events for the legal community including:

- **Brisbane** – the Professor Michael Whincop Memorial Lecture, the Australian Law Reform Commission class action seminar, the Australian Bar Association seminar on taxes and debt recovery, international commercial arbitration, a new silks ceremony in December 2018, the Griffith Law School Alumni event, and the Richard Cooper Memorial Lecture.

- **Melbourne** – the annual international arbitration lecture, the Australian Academy of Law symposium, and the Maritime Law Association of Australia and New Zealand seminar.
- **Perth** – the registry hosted the AMTAC address, the 2018 arbitration seminar, an employment and industrial relations seminar, a national commercial law seminar, pro bono lawyers function and the CIArb Series arbitration clauses. The Royal Commission into Aged Care was also hosted by the Court in June 2019.
- **Sydney** – the Tristan Jepson Memorial Foundation Lecture, the NSW Hellenic Australian Lawyers Association Oration, the Whitmore Lecture, the Tony Blackshield Lecture, the Australian Association of Constitutional Law lecture, the AMTAC address, and the Mahla Pearlman Oration.
- **Hobart** – the UNCITRAL Coordinating Committee UN Day.

Education

The Court 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 other organisations that have an interest in the Court's work. The following highlights some of these activities during the year.

The Court hosted many work experience students across multiple registries. Students are given a program that exposes them to all areas of the Court's operations over the course of one week.

The Court hosted a number of school visits and educational tours across its registries. In South Australia, the registry hosted a visit by Year 11 legal studies students from the Glenunga International High School. In Queensland, the registry hosted a visit by year 12 students from the Southern Cross School. In Melbourne the registry hosted a visit by year 7 students from Camberwell Boys Grammar.

The Court's support for and work with universities continued through the year.

- The New South Wales registry hosted four moot courts for the University of New England.
- The Queensland registry hosted the IMLAN moot (TC Beirne School of Law), the Aboriginal and Torres Strait Islander Students' moot competition, the Maritime moot with students from the University of Queensland and the grand final of the QILC 2018 moot.
- The Victorian registry hosted a number of moot courts for Monash, Melbourne, New England, La Trobe, Victoria and Deakin universities. The registry also hosted the RMIT Clarb Australia Pre-Moot Grand Final.
- The Tasmanian registry hosted students from the University of Tasmania as part of their labour law excursion. The registry also provided facilities for the AAT national mooting competition grand final in October 2018.
- In the Australian Capital Territory, Judicial Registrar Lackenby presented to masters students of dispute resolution at the Australian National University. The paper was titled *ADR in the Federal Court and the AAT*.

Overseas delegations

Registries regularly host visiting delegations from overseas courts who are interested in learning more about the Court's operations. This year overseas delegations visited the following registries:

- New South Wales – in December 2018 the registry hosted a delegation from the Tokyo District Court. Judge Yuriko met with Justice Perram and Justice Katzmann.

- Australian Capital Territory – in February 2019, the Canberra registry hosted a delegation from the Ministry of Law and Human Rights, Republic of Indonesia. The delegation learnt about bankruptcy and corporate insolvency and sat in on Registrar Lackenby's corporations and bankruptcy lists. In March 2019, Rie O, Court Clerk from the Tokyo Family Court and Visiting Scholar from the ANU College of Law, visited the Canberra registry to learn about the role of registrars in our court and court practice and procedure.

Complaints

During the reporting year, complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. For the purpose of collecting data about complaints, several discrete reports made by a complainant about a single issue or a set of related issues were recorded as a single complaint.

There were 12 complaints in the reporting year. This figure is up from 11 complaints recorded last year. 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, or complaints about the merits of a decision of a registrar, which may only be dealt with by way of review.

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

Involvement in legal education programs and legal reform activities (contribution to the legal system)

The Court is an active supporter of legal education programs, 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, and
- held positions on advisory boards or councils or committees.

An outline of the judges' work in this area is included in Appendix 8 (*Judges' activities*).

National standard on judicial education

In 2010 a report entitled 'Review of the National Standard for Professional Development for Australian Judicial Officers' was prepared for the National Judicial College of Australia. The Court was invited and agreed to adopt a recommendation from that report to include information in the Court's annual report about:

- participation by members of the Court in judicial professional development activities
- whether the proposed standard for professional development was met during the year by the Court, and
- if applicable, what prevented the Court meeting the standard (such as judicial officers being unable to be released from court, lack of funding etc.).

The standard provides that judicial officers identify up to five days a year on which they could participate in professional development activities.

During 2018–19 the Court offered the following activities:

- eleven education sessions were scheduled at the judges' meeting on 29–31 August 2018 (in Sydney)
- eight education sessions were scheduled at the judges' meeting on 27–29 March 2019 (in Brisbane), and
- judges were offered the opportunity to attend the Supreme Court and Federal Court judges' conference held in Hobart, Tasmania on 21–23 January 2019.

Education sessions offered at the judges' meetings in 2018–19 included:

- workshops on the following national practice areas:
  - native title
  - admiralty and maritime
  - commercial and corporations
  - other federal jurisdiction – defamation law, and
  - administrative and constitutional law and human rights – migration.
- digital roadshow – benefits of using electronic resources
- innovation: technology and its discontents
- concise statements and the National Court Framework Practice Notes
- court referred alternative dispute resolution: perceptions of members of the judiciary
- Federal Court and Law Council of Australia joint conference on competition law, including sessions on:
  - penalties
  - substantial lessening of competition
  - concerted practices, and
  - economic evidence.
- session for judges under three years: managing your judicial practice
- the US federal judiciary – relations with the legislative and executive
- how the Court manages migration work
- using digital court books for single judge migration hearings: one way to learn how to work with a digital court record
- the story of a boat person who made it to Australia, and
- ex tempore reasons; revising reasons; when reasons are required.

In addition to the above, judges undertook other education activities through participation in seminars and conferences. Some of these are set out in Appendix 8 (*Judges' activities*).

In 2018–19, the Federal Court met the National Standard for Professional Development for Australian Judicial Officers.

Work with international jurisdictions

In 2018–19, the Court continued to coordinate a number of projects and activities to support governance, access to justice and the rule of law within neighbouring judiciaries. By collaborating with courts, predominantly across the Asia Pacific region, the Court was able to contribute to a number of our partners' important reform and development priorities.

Supreme Court of the Union of Myanmar

In August 2018, our Solutions Architect (Business Intelligence) provided further assistance to the Supreme Court of the Union of Myanmar as it continues to strengthen its capacity to collect and report on key court performance indicators. The visit comprised a workshop on improving data collection and analysis, which explored the role, benefits and processes for data collection and automation, data analysis, data monitoring, court reporting and key performance indicators. The Court also provided editing assistance in the preparation of the annual report.

National and Supreme Courts of Papua New Guinea

In September 2018, the Queensland registry hosted a five-person delegation from the National and Supreme Courts of Papua New Guinea (PNG). The delegation met with the acting National Judicial Registrar and District Registrar and a Senior Legal Case Manager to discuss the Court's electronic case filing systems and processes. Delegates also met with the Manager of Library and Information Services to discuss the development of PNG's new court library. In October 2018, the Manager of Library and Information Services visited Waigani, Port Moresby to conduct training for library staff on legal cataloguing, legal publications and online legal research. A blueprint for improving library services was developed and approved. A national survey about library needs has been conducted and the results are currently being analysed.

High Court of the Solomon Islands

In September 2018, the Federal Court of Australia and the High Court of the Solomon Islands embarked on a component of the Memorandum of Understanding that relates to building the leadership skills of the Chief Magistrate. Meeting with the Senior Registrar, the Chief Magistrate discussed the range of challenges and opportunities in regard to the Magistracy and her leadership of the Magistrates Court, along with a guided approach to ongoing cooperation and options for moving forward.

In February 2019, the Deputy Principal Registrar visited the Solomon Islands and met with Chief Justice Palmer, staff of the Australian High Commission, officers of representative bodies and other governmental and policy staff. The purpose of the visit was to develop a model for self-administration and discuss the scope and form of legislation that will enable the judiciary to manage its own affairs, independent of the government. The Deputy Principal Registrar and Chief Justice Palmer also discussed strategies and capacity issues in relation to managing funds internally. Two representatives from PNG also participated to contribute their experience and views on the development and implementation of their self-administration model. The courts will continue to collaborate on this important project in the coming year.

Supreme Court of Indonesia

Chief Justice Allsop and the CEO and Principal Registrar visited Jakarta in June 2019 to discuss progress made by the judiciary in recent months and priority reform and development objectives. A plan for ongoing engagement between the Federal Court of Australia and the Supreme Court of Indonesia is being developed.

Regional collaborations

The Court manages the New Zealand government funded Pacific Judicial Strengthening Initiative (PJSI), a five-year initiative that aims to build fairer societies by supporting the courts in 14 Pacific Island Countries (PICs) to develop more accessible, just, efficient and responsive justice services.

The PJSI comprises projects across five areas with the following intended outcomes:

1. Improved capacity of judicial leadership to assess needs, plan, own and lead judicial development locally.
2. Marginalised and vulnerable groups are better able to access justice in and through courts.
3. Partner courts operate with a higher level of professionalism.
4. Partner courts exhibit more responsive and just behaviour and treatment that is fair and reasonable (substantive justice).
5. Cases are disposed of more efficiently (procedural justice).

Leadership

In September 2019, the second regional judicial leadership workshop was held in Auckland, New Zealand. Participants shared experiences about what judicial leadership means in the Pacific and developed plans to address the challenges faced in implementing current leadership action plans.

The Executive Committee met remotely in October 2018, and in Palau in April 2019. The latter meeting was held adjacent to the fourth Chief Justices' Leadership Forum, which was attended by 12 Chief Justices. The forum and committee endorsed PJSI's progress, including the independent mid-term review and the design for PJSI's two-year continuation.

In August 2018 and February 2019, PJSI delivered local project management and planning workshops in the Federated States of Micronesia and Vanuatu. The workshops aimed to develop self-reliance and confidence among participants to lead, design, deliver, monitor, and evaluate ongoing judicial/court development activities using established steps, processes, methods and tools. Judicial officers and court staff valued the opportunity to discuss the Court's innovations to improve access to justice and their roles in associated activities.

Access to Justice

In October 2018 and March 2019, access to justice visits took place in the Cook Islands and Vanuatu. The Cook Islands visit comprised 10 consultations with 75 court users in four locations. Consultations highlighted the need for increased public awareness of the role and functions of the courts and basic-level education on legal rights and responsibilities. A workshop with the Court took place in Rarotonga, with the intention of recognising and responding to the significant barriers that the consultations suggest impede access to justice.

The activity in Vanuatu comprised a week of consultations on the islands of Pentecost, Santo, Malo and Epi, and a three-day workshop with the Court in Port Vila. Consultations revealed that 75 per cent of participants consider the courts to be independent, honest, competent, and to act with integrity. Two-thirds consider the courts are fair and provide access to justice/remedies, while half consider the courts to be efficient. Participants discussed their experiences and perceptions of the courts, which has since prompted court officers to develop plans to improve access to justice and court services as well as publish public information on the courts.

Professionalism

In November 2018, a workshop was held in Port Moresby to build the capacity of partner courts in the collection of data, and the systems, processes and planning required to monitor, manage and report on court performance.

In January 2019, local orientation activities took place in Tarawa, Kiribati. The visit included a two-day train-the-trainer session, followed by a lay judicial orientation workshop. The workshop promoted the competence of magistrates to perform their duties; built the capacity of local trainers to conduct judicial orientation training; and promoted excellence in the delivery of justice across Kiribati.

A regional lay judicial officer decision making workshop was held in February 2019 in Honiara, Solomon Islands. The aim of the workshop was to improve the decision making ability of the participants through the development of judgment writing, presentation and reasoning skills.

A judicial mentoring toolkit was developed and is currently being piloted by a newly appointed Supreme Court judge in Vanuatu. The judge is being mentored by PJSI's adviser and an expatriate judge from New Zealand who sits on the Supreme Court. The pilot will be reviewed and the results used to refine the toolkit and approach for adaptation to other PICs.

The Pathway Project continues its collaboration with the PNG Centre for Judicial Excellence to build the institutional and human capacity for it to deliver ongoing education to judicial and court officers in PNG and across the Pacific. In March 2019, a train-the-trainers workshop for the PNG CJE took place in Port Moresby, to better assess needs, design, deliver and evaluate judicial training activities.

In May 2019, a PJSI adviser visited the University of the South Pacific (USP) in Port Vila to evaluate and refine the Certificate of Justice commissioned by PJSI and piloted by the USP. On

completion of the pilot, it is expected that 85–90 students will successfully complete these four courses in the Certificate of Justice at the end of semesters 1 and 2 of 2019. A Diploma of Justice, providing a second year of study following the Certificate of Justice, is currently being developed following approval from the USP Senate. It is intended to provide a pathway into degree-level study, and eventually, legal practice. It is anticipated that the Diploma of Justice will be launched in 2020.

Substantive justice

Gender and family violence workshops were delivered in Vanuatu, Palau, the FSM and Samoa in August 2018, November 2018, February 2019 and May 2019. The workshops fostered understanding of the gender inequality at the source of gender and family violence, identified strengths and weaknesses in the Court's approach to related cases, and determined how the weaknesses will be addressed.

Two human rights workshops took place in Tonga in February 2019. Discussions included how human rights standards can be applied in both substantive and procedural justice as well as accountability and access to justice. Strong demand for orders under the *Family Protection Act 2013* is requiring the Tongan courts to create equally accessible and responsive mechanisms to deliver appropriate outcomes.

Procedural justice

In July 2018, PJSI conducted an accountability visit to support the Samoan judiciary in analysing data collected through their information management system. Following this, the Ministry of Justice and Courts Administration in Samoa are working towards creating an electronic database to enable the entry of court related data and the production of reports.

PJSI has continued to support the collection, analysis and reporting of court performance data: providing remote support to 10 PICs over the last financial year and communicating with all 14 PICs. PJSI published the *Third Court Performance Trend Report* updating the Court Performance Baseline Report of 2011. It presents a picture of significant improvements in court annual reporting over the last seven years.

The PJSI efficiency adviser undertook visits to the Nauru, Tokelauan and PNG Courts in January, March and May 2019. The visits aimed to provide support to assist the courts to dispose of cases in a reasonable time.

The activity in Nauru comprised the development and conduct of an efficiency self-assessment, along with refinements to the Nauru Judiciary's Improvement Plan, to address identified areas for improvement.

The in-country work with Tokelau (in Samoa) achieved the following outcomes: the conduct of an efficiency review; the development of an efficiency improvement plan; collation of outstanding data for the 2016–17 and 2017–18 annual reports; development of a draft standard operating procedure for case-flow as well as a draft complaints procedure; and the establishment of time goals.

The work with PNG supported the National Court and Supreme Court of PNG to identify strategies to manage and dispose of cases in a way that is just, timely, efficient and fair.

Further support to Palau was provided through a leadership incentive fund grant, which introduced periodic efficiency reviews. The results of these reviews inform actions to address ongoing deficiencies in performance against time goals.

Under the Information and Communications Technology Project, support to PNG was bolstered by a data system assessment that took place in July 2018. The aim of the assessment was to plan for improvements to the breadth and quality of available and reported court performance data. To that end, an assessment was made of the information currently captured and reported on, versus the information the judiciary wishes to capture and report on; along with the system's functionality and human capacity required to achieve the latter. A data systems assessment was also conducted in the Marshall Islands in October 2018. The assessment focused on the quality of

data maintained within extant online records, and readiness to move towards a Case Tracking System.

Australian Competition and Consumer Commission

Pursuant to a Memorandum of Understanding with the Australian Competition and Consumer Commission, the Court prepared four 'judicial primers' for the Association of Southeast Asian Nations (ASEAN) member states. The judicial primers were drafted by Justice Middleton and the National Judicial Registrar-Appeals. The primer series was launched by Justice Robertson in Jakarta. Justice Robertson also delivered to the same audience of Indonesian judges a workshop on 'Using Circumstantial Evidence: Judicial Perspectives from Australia (Procedures and Principles)' and following the event, Justice Middleton recorded a video for broader dissemination across the ASEAN region.

Visitors to the Court

During the year, the Court hosted visitors from the following countries.

Sri Lanka: In August, a delegation of Sri Lankan judges visited the Court to discuss court matters of common interest, including case management of appeals and first instance matters. The delegation comprised of judges from the Sri Lankan Supreme Court and Court of Appeal. They were hosted by Justice Kenny, National Judicial Registrar Luxton, the Acting Director of Court Services and the Melbourne Law School.

China: In October 2018, a delegation of Hong Kong Special Administrative Region officials visited the Court to learn about the role and functions of the Court in Australia's legal system. The delegation was hosted by Justice Yates, a Judicial Registrar, a Legal Case Manager, and a Client Services Officer. Topics discussed included the relationship between the State and Federal governments, the Australian court system, the Court's powers and case management system.

Nepal: In June 2019, a delegation from the National Judicial Academy, Nepal (NJA-Nepal) visited the Court's Queen's Square premises in Sydney. Justice Yates hosted the delegation, presenting an overview of the Australian court system and discussed the value of the e-courtroom during a trial. The delegation observed Justice Yates preside over a court hearing, toured the registry and asked questions about the Court's operations.