

Part 2: Year in review



As we start to emerge from the pandemic, I would like to take this opportunity to thank the Judges and staff for their commitment and dedication to the Court, the legal profession and court users during a period of challenging and competing priorities. Their innovation, flexibility and resilience has ensured the ongoing delivery of and access to justice for the Australian community.

Over the past 12 months a lot has been accomplished through what has been another extraordinary year. We have continued to augment key initiatives to further modernise the Court and transform and refine our operations, particularly in relation to digital practice and national operations and practice. The Court continued to focus on tailoring services to the needs of court users whilst supporting the delivery of the Government's COVID-19 recovery agenda. We also implemented a number of initiatives that focused on judicial and staff wellbeing which is of paramount importance to the Court.

During the year, we welcomed ten judges to the Court. Justice Rofe was appointed on 12 July 2021, Justice Downes was appointed on 2 August 2021, Justice Goodman was appointed on 11 November 2021, Justice O'Sullivan was appointed on 20 January 2022, Justice McElwaine was appointed on 24 January 2022, Justice Feutrill was appointed on 8 March 2022, Justice Meagher was appointed on 31 March 2022, Justice McEvoy was appointed on 26 April 2022, Justice Hespe was appointed on 27 April 2022 and Justice Raper was appointed on 2 May 2022. I would like to congratulate each of these judges on their appointment to the Court.

We also farewelled a number of judges. Justice Flick retired on 18 October 2021, Justice McKerracher retired on 5 December 2021, Justice Reeves retired on 1 January 2022, Justice White retired on 5 January 2022, Justice Kerr retired on 25 February 2022, Justice Griffiths retired on 1 April 2022, Justice Davies resigned on 1 April 2022 and Justice Anastassiou resigned on 29 April 2022. I would like to thank each of these judges for their significant contribution to the Court.

Once again, I am delighted to share our initiatives, successes and learnings over the past year.

Significant issues and developments

Embracing a digital future

Digital Court Program

The Digital Court Program continues to be a key priority for the Court, with the aim of streamlining core business systems and creating flexibility and operational efficiency. The Digital Court Program oversees the ongoing modernisation of critical document, workflow and case management tools to support the delivery of quality services to the Australian community. The program is delivering improvements to the tools used to manage the Courts' caseload through the development of a new application suite – CourtPath. CourtPath will provide a modern, stable platform across the Courts to deliver sustainable and genuine improvements to workflows, while supporting efficient case management. Following user-centred design principles, CourtPath is intuitive to use while ensuring timely and accurate access to critical information.

CourtPath is being developed in partnership with judges, registrars and court staff. Throughout 2021–22, foundational frameworks and initial digital court file capability have been developed. Enhancement and development of additional features continues, with a roadmap to deliver replacement of legacy systems over the next three to five years.

Digital litigation support

To support digital practice, new positions titled Digital Practice Officers were introduced in November 2021 to assist judges, chambers and court staff to increase efficiency of proceedings through enabling and refining digital practices. Some significant work included:

- improving file sharing solutions to enable parties, practitioners and court staff to securely access shared files, reducing cost and administration overhead within courts
- supporting judicial development of practice notes, to improve the consistency, efficiency and use of electronic court books, reducing use of paper and third-party solutions

- introducing bespoke technical solutions to facilitate complex matters such as *Ben Roberts-Smith v Fairfax Media Publications Pty Ltd* (ACN 003 357 720) & ORS (NSD1485/2018) which had national security, privacy and international considerations
- continuing support and improvements for e-hearings, with live streaming of high interest matters
- conducting judiciary training in the use of iPads and related software to improve effectiveness in court operations and other key tasks such as judgment writing
- conducting staff training to make better use of electronic court files, case management and online lodgment solutions.

Cyber security

Investment in cyber security continues to be critical, as technology is essential to court operations and the threat landscape continues to evolve. The Court appointed a new Chief Information Security Officer in early 2021, who has led the measurement of current cyber maturity and the establishment of a roadmap with key capability improvements over the next three years to increase protection of court assets, data and operations.

The Court continues to strengthen cyber security maturity in line with the Australian Cyber Security Centre recommendations and Protective Security Policy Framework requirements.

Protection of endpoints (servers, laptops and similar) has been significantly improved over 2021–22 and enhanced security will continue to be deployed through 2022–23. Vulnerability identification and reduction has also been significantly improved and remains an ongoing priority.

Video conferencing and digital practice

As hybrid hearings, involving courtroom and remote participants, become a frequent option to conduct matters, the need for technology within the courtroom is more important than before. The focus for 2021–22 was to provide clearer audio and video, as well as larger screens for easier viewing for judges and parties within the courtrooms by upgrading ageing equipment. Software updates improve the remote joining and courtroom experience, including simplifying the connection process, sharing content throughout the courtroom, and the ability to customise participant layout. Additional courtrooms will be enabled for video conferencing throughout the coming year, with the goal to have the majority of courtrooms enabled within the 2022–23 financial year.

To support increasing demand for digital services and document viewing within court, four courtrooms were enabled with integrated eTrial and video conference capability. This allows content to be displayed on multiple screens within the courtroom, and to remote parties and live stream. The new jury courtroom in the New South Wales registry has been set up to enable jury members to have their own individual screen to view content.

Access to justice via live streaming of hearings for media and the public continues to be provided by the Court. High profile matters including defamation, migration and employment matters, have been particularly popular for streaming, with up to 90,000 peak viewers. Streaming is also important for the Courts to deliver other events such as judicial training seminars and ceremonial sittings.

Extension of the National Court Framework

The Court continues to implement the National Court Framework reforms and is now applying the reform principles to the work undertaken by judicial registrars. These reforms have involved the allocation of judicial registrar work on a national basis, introduction of a national duty registrar system and the development of national practice guides to support and enhance the work undertaken by judicial registrars. The Court continues to draw on the skills and expertise of its judicial registrars in each of the national practice areas by providing mediation and case management support to judges on a national basis. The Court continues to progress and embed the reforms.

Workload

In 2021–22, the total number of overall filings in the Court, comprising first instance, appellate and registrar matters decreased by 3 per cent to 3,143. However, the volume of first instance filings which forms a significant component of judicial workload, increased by 3 per cent. The only area of the Court's workload to record a decrease in filings of note was appellate migration.

There was an increase in filings in the Commercial and Corporations National Practice Area. Filings remained consistent (when compared to last financial year) in the Native Title, Taxation, Intellectual Property and Federal Crime National Practice Areas. There was a reduction in filings in the Administrative and Constitutional Law and Human Rights, Admiralty and Maritime, Employment and Industrial Relations, Other Federal Jurisdiction and Migration National Practice Areas.

Appeal filings have also decreased, driven largely by a reduction in Federal Court appellate migration filings.

It is noted that save for Migration and Other Federal Jurisdiction, those National Practice Areas that experienced a reduction in filings in 2021–22, maintained a volume of filings generally comparable with 2019–20 figures.

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

Performance

The Court has two targets for timely completion of cases:

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

During the reporting year, the Court completed 79.1 per cent of cases in less than 18 months.

A key factor contributing to the Court not achieving the benchmark this year was that a number of complex matters required face-to-face hearings that could not be conducted as a result of significant periods of restrictions imposed by Government in response to the COVID-19 pandemic.

- *Judgments to be delivered within three months*

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and other issues affecting the Court.

During 2021–22, the Court handed down 1,906 judgments for 1,656 court matters (some matters involve more than one judgment being delivered – e.g. interlocutory decisions – and sometimes one judgment will cover multiple matters). Overall, 76 per cent of appeals (both Full Court and single judge) were delivered within three months; 81.9 per cent of judgments at first instance were delivered within three months of the matter being reserved; and 80.3 per cent of total judgments were delivered within three months.

Financial management and organisational performance

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

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

The financial statements for 2021–22 show an operating surplus of \$17.896 million before depreciation costs of \$34.692 million and taking into account principal repayments of lease liabilities of \$19.209 million. The entity was budgeting a break-even position for the year, with the surplus stemming from significant judicial vacancies, lower employee expenses as a result of the judicial vacancies and newly funded positions being appointed across the financial year and the impact of COVID-19 on a number of operational expense areas. The Courts operate under strict budgetary controls ensuring that the entity operates within the appropriation.

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

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

A number of new Government measures appropriated additional funding to the entity for 2021–22 and forward years. In 2021–22, \$22.053 million was provided for improving access and safety for children and families. \$1.196 million was provided under the women's economic security package and \$1.021 million for the migration litigation and merits review. The migration litigation and merits review funding was supported by increases to administered receipts. \$673,000 was also provided under the Jobmaker plan to support jobs creation through industrial relations reforms.

Wellbeing

The health and wellbeing of judges and staff is of paramount importance to the Court, and is particularly important given the continuing impact of the COVID-19 pandemic. A program of resilience, mindfulness and wellbeing sessions, utilising the services of an external facilitator, continues to be delivered on an ongoing basis. These sessions have been extremely important in underpinning our response to the COVID-19 pandemic and ensuring judges and staff feel supported and engaged.

An active judicial wellbeing committee has developed a comprehensive network of psychologists and psychiatrists in each state and territory to assist when required, and a revamped judges' portal, introduced in February 2022, provides a range of information, case studies and other support material on managing stress, mindfulness and wellbeing resources. We will continue to introduce material to assist judges in this significant area.

Diversity and inclusion

The Court is committed to a diverse and inclusive workplace, which includes ensuring its workforce reflects the broader communities in which our employees work. The Court focuses on ensuring it creates a safe and supporting environment in which employees can bring their true selves to work, as well as ensuring recruitment and other processes are strictly merit-based. From a gender diversity perspective, females now fill 59 per cent of positions at Senior Executive Service classifications and 64 per cent of positions at Executive Level classifications.

An important element of diversity and inclusion is ensuring employees are treated with dignity, courtesy and respect at all times in the workplace. The Court has adopted a zero tolerance approach to inappropriate workplace behaviour and recently updated its anti-discrimination, bullying and harassment policies to ensure they remain current and at best practice standards. The Court provided mandatory refresher training to all employees on these policies in 2021–22 to ensure employees understand expected standards of behaviour in the workplace, as well as ensuring all employees know how they can raise a concern if they experience inappropriate behaviour. The Court conducts this training on a quarterly basis to ensure all new employees are similarly aware of the Court's policies and expectations in this regard.

A judicial workplace conduct procedure provides a sensitive, prompt and effective means of resolving complaints about judges, including by ensuring accountability for unacceptable behaviour, support for participants involved, confidentiality and procedural fairness. Chief Justice Allsop AO spoke about this topic in a speech given at the Queensland Law Society Symposium in March 2022.

A new judicial workplace conduct committee, chaired by Justice Markovic, will develop education programs specific for judges as well as a dedicated portal on judicial workplace conduct.

Reconciliation Action Plan

The inaugural Federal Court entity Reconciliation Action Plan (RAP) for 2020–21 was launched in September 2020. There are four levels of RAP – Reflect, Innovate, Stretch and Elevate – which suit organisations at the different stages of their reconciliation journey. The Court's reconciliation journey began with a Reflect RAP in which it shared its vision for reconciliation as well as laid the foundation for future RAPs.

The Court has focused on creating employment opportunities for Aboriginal and Torres Strait Islanders, with its Aboriginal and Torres Strait islander employment rate increasing from 1.9 per cent in 2020–21 to 2.3 per cent in 2021–22 and will continue doing everything it can to sustain or improve our capacity in this area. The Court is currently working on its next RAP at the Innovate level, which it is aiming to launch in 2022–23.



Sia Lagos

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