

PART 3: THE COURT'S WORK IN 2023–24

Foyer of the Harry Gibbs Commonwealth
Law Courts Building in Brisbane

THE WORKLOAD OF THE COURT



The workload of the Court is organised by the nine NPAs. The Court's work within these practice areas can be broadly separated into three categories:

- proceedings allocated to judges in the Court's original jurisdiction ('Judge Original Jurisdiction')
- proceedings allocated to judges in the Court's appellate jurisdiction ('Judge Appellate Jurisdiction'), and
- proceedings allocated to registrars ('Registrar proceedings').

This part of the report provides a statistical overview of the work of the Court in the 2023–24 financial year together with a comparison to the 2022–23 financial year, where relevant.

Individual Docket System under the NCF

Fundamental to the effective, orderly and expeditious discharge of the Court's business is the individual docket system, as well as the NCF. The individual docket system is an integral feature of the management of the Court's work under the NCF. The general principle underlying the individual docket system is that a case is allocated to the docket of a particular judge at or about the time of filing with the intention that, subject to any necessary reallocation, it will remain with that judge for case management and disposition.

The objectives of the individual docket system include:

- savings in time and cost resulting from the Docket Judge's familiarity with the case. The system seeks to eliminate the necessity to explain the case afresh each time it comes before a judge
- consistency of approach throughout the case's history
- fewer listing events with greater results. The system aims at reducing the number of case management hearings and other events requiring appearances before the Court
- minimise unnecessary interlocutory disputes by permitting only interlocutory steps that are directed to identifying, narrowing or resolving the issues really in dispute between the parties
- better identification of cases suitable for Alternative Dispute Resolution (such as mediation), and
- earlier settlement of disputes or, failing that, a narrowing of the issues and a consequent saving of Court time.

Report against performance measures

Performance measures are set out in the Portfolio Budget Statements, a part of the Commonwealth performance framework established by the *Public Governance, Performance and Accountability Act 2013* (Cth). For the 2023–24 financial year, the Court had the following performance measures:

Performance measures	2023–24 result
85 per cent of proceedings completed within 18 months of commencement	83 per cent of proceedings were completed within 18 months of commencement
Judgments to be delivered within three months	79 per cent of judgments were delivered within three months

Judge Original Jurisdiction

In the 2023–34 financial year, 1,757 Judge Original Jurisdiction proceedings were commenced. This was an increase in filings of six per cent from the same period last year. The rate of finalisation in Court for Judge Original Jurisdiction proceedings in 2023–24 was 103 per cent—a 10 per cent improvement from 2022–23. 1,803 proceedings were finalised in the same period, with 72 per cent of the proceedings finalised within 18 months of commencement and 58 per cent within 12 months.

Of the Judge Original Jurisdiction proceedings commenced, 56 per cent were in the Commercial and Corporations NPA, followed by 14 per cent migration proceedings. New South Wales saw the largest percentage of filings by state, with 41 per cent of the filings, followed by 28 per cent in Victoria.

In this time, 1,651 judgments were delivered. These judgments include appellate judgments which were heard by a single judge and not a Full Court. Of these 1,651 judgments, 81 per cent were delivered within three months from the date of being reserved and 87 per cent were delivered within six months. This is a slight reduction from 2022–23 (82 per cent and 89 per cent respectively).

At the end of the current reporting period, the total number of Judge Original Jurisdiction proceedings was 2,550, a decrease from 2022–23.

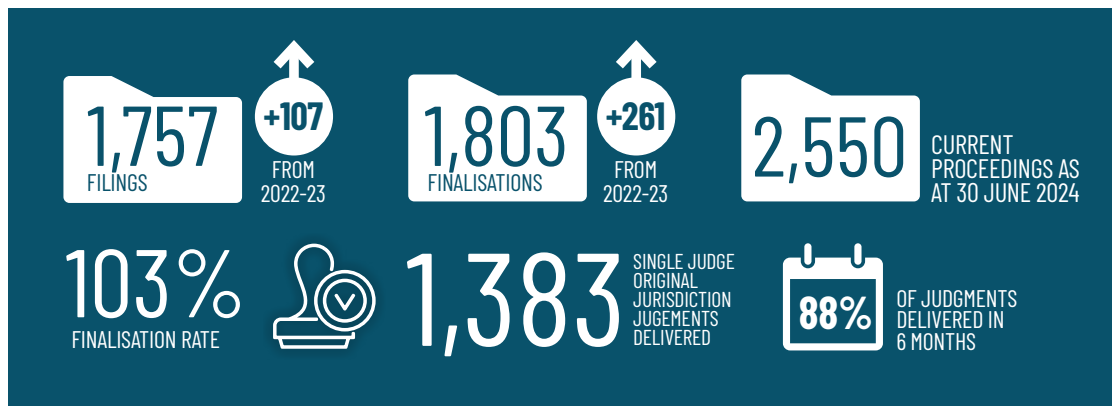


Table 3.1: Judge Original Jurisdiction caseload 2022–23 and 2023–24

Judge Original Jurisdiction caseload	2023–24	2022–23
Total filings	1,757	1,650
Total finalisations	1,803	1,542
Total current proceedings at 30 June 2024	2,550	2,596
Finalisation rate	103%	93%
Percentage disposed of within 12 months	58%	60%
Percentage of Single Judge delivered judgments (including Single Judge Appellate) within 3 months	81%	82%
Percentage of Single Judge delivered judgments (including Single Judge Appellate) within 6 months	87%	89%

Figure 3.1: Judge Original Jurisdiction, total filings by state and territory, 2022–23 to 2023–24

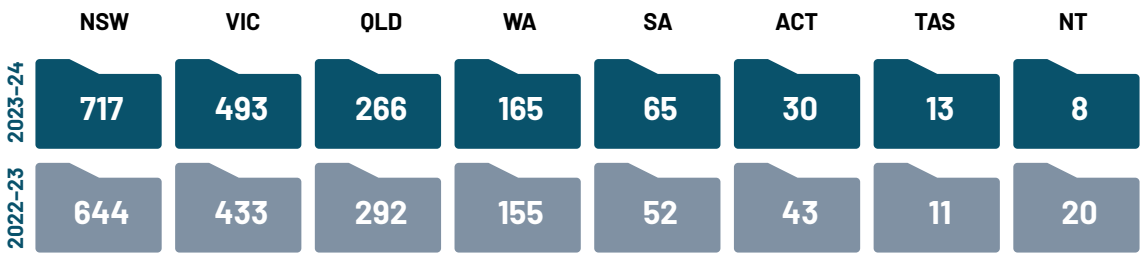
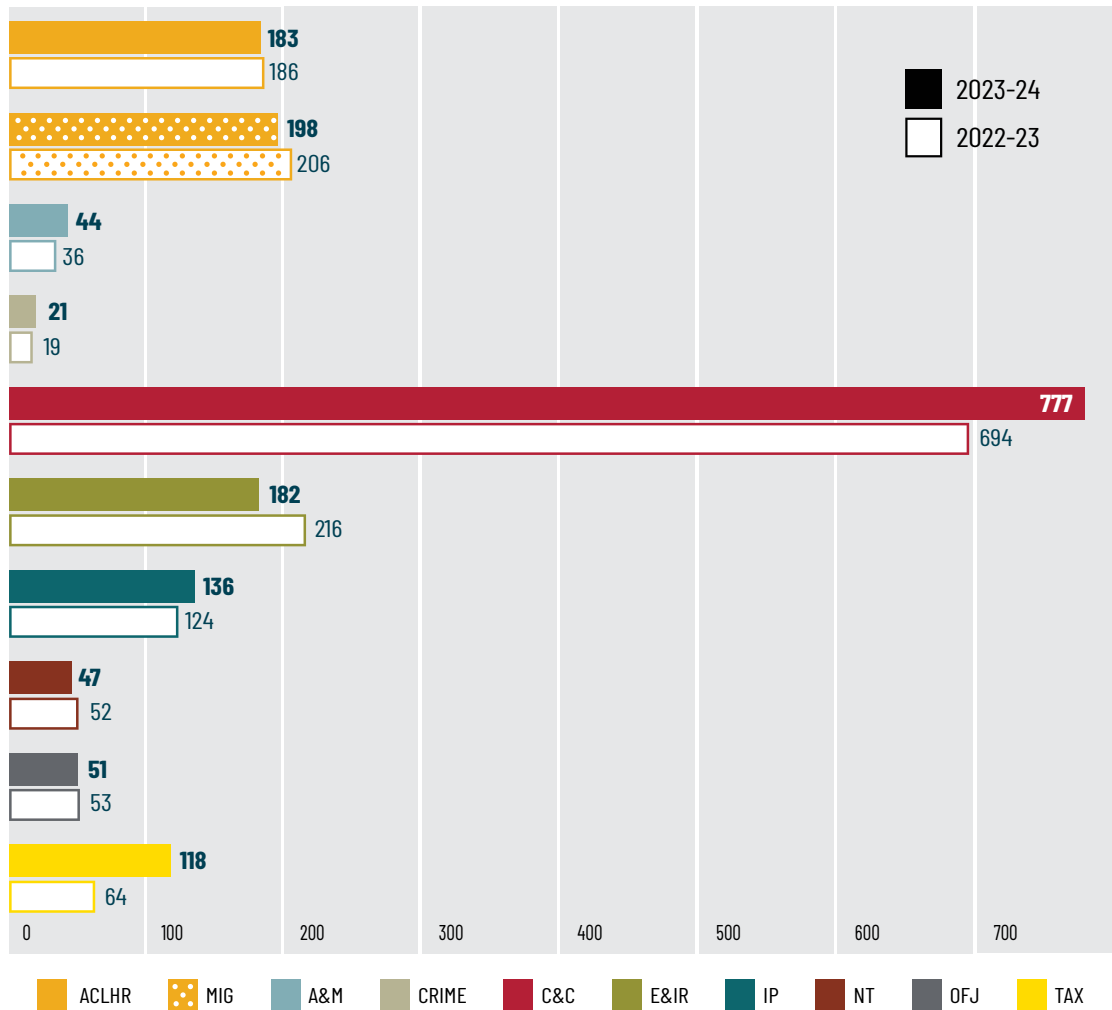


Figure 3.2: Judge Original Jurisdiction, total filings by NPA, 2022–23 to 2023–24



For a more detailed look at each of the NPAs, see pages 32–72.

Judge Appellate Jurisdiction

There was a nine per cent increase in the total number of appeals filed – from 518 in 2022–23 to 567 in 2023–24. This increase is attributable to an increase in filings across most NPAs excluding Migration, Admiralty and Maritime and Employment and Industrial Relations.

In the reporting year, 578 appeals and related actions were finalised – a finalisation rate of 102 per cent, with 65 per cent of appellate matters finalised within 18 months of filing. At 30 June 2024, there were 788 appeals currently before the Court, with 525 of these being migration appeals and related actions. Appellate proceedings may be determined by a Full Court bench or a single judge exercising the Court’s appellate jurisdiction. In 2023–24, 194 appellate matters were finalised by a Full Court, with 384 finalised by a single judge exercising the Court’s appellate jurisdiction, of which 259 proceedings were Migration matters.

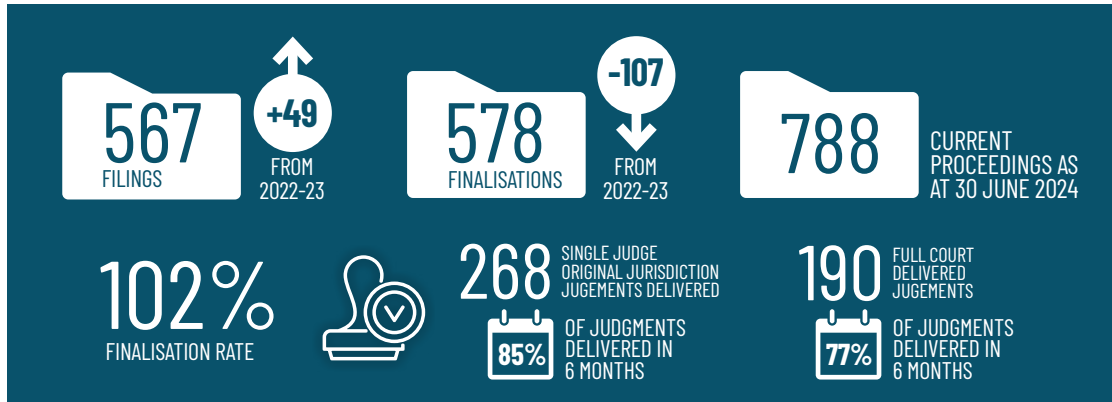


Table 3.2: Judge Appellate Jurisdiction total caseload 2022–23 and 2023–24

Total caseload (Judge Appellate)	2023–24	2022–23
Total filings	567	518
Total finalisations	578	685
Total current proceedings at 30 June 2024	788	799
Finalisation rate	102%	132%
Percentage of appellate proceedings disposed of within 12 months	48%	49%
Total Full Court delivered judgments (*)	190	198
Percentage of Full Court delivered judgments within 3 months	64%	61%
Percentage of Full Court delivered judgments within 6 months	77%	79%

Figure 3.3: Judge Appellate Jurisdiction total filings by state and territory 2022–23 and 2023–24

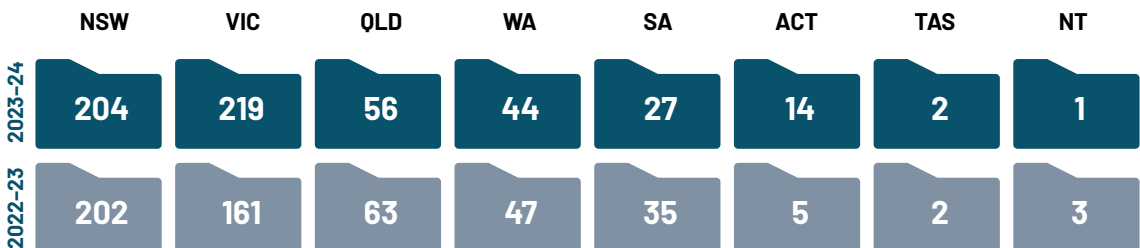
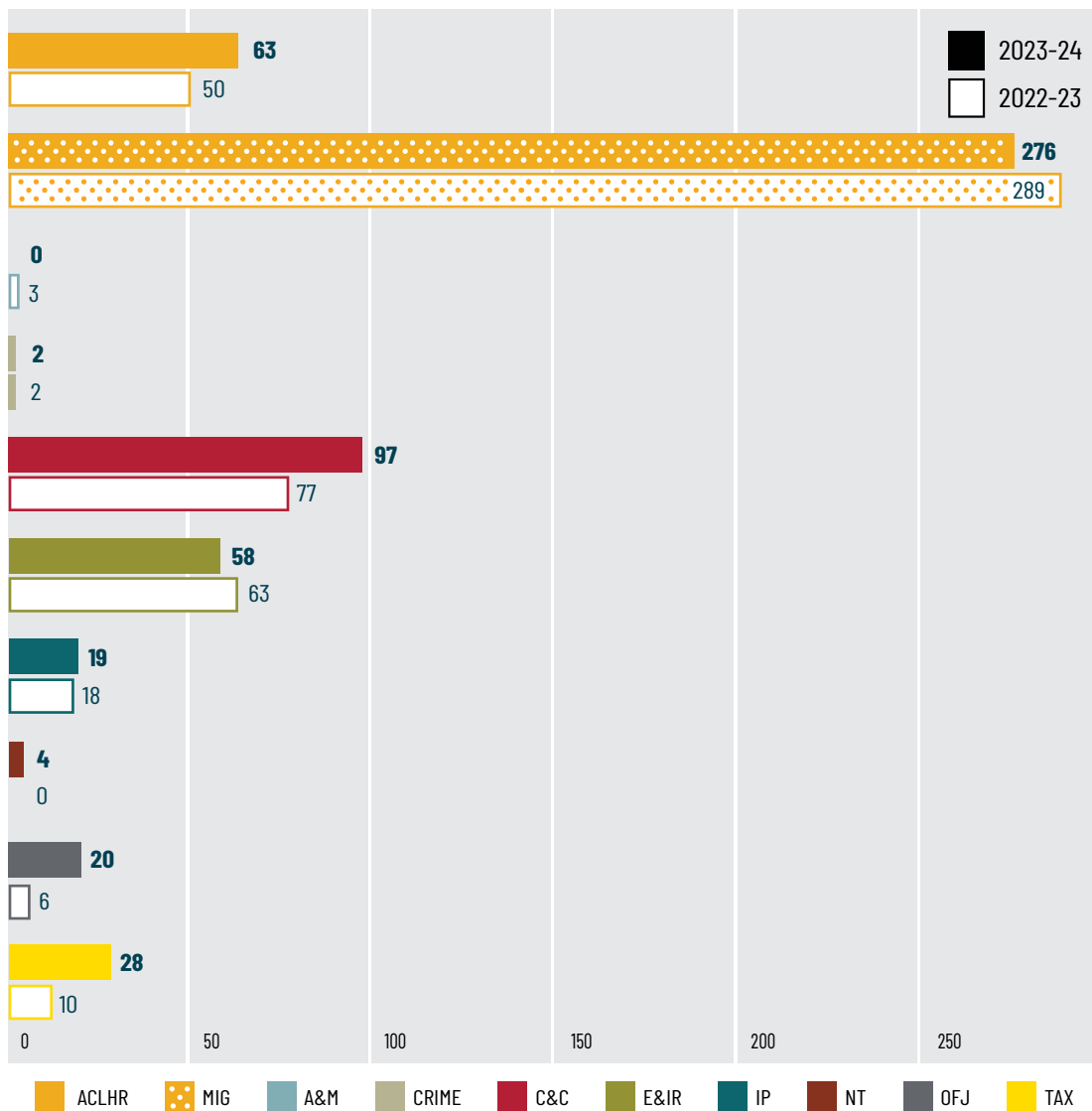


Figure 3.4: Judge Appellate Jurisdiction, total filings by NPA, 2022-23 and 2023-24



Registrar workload

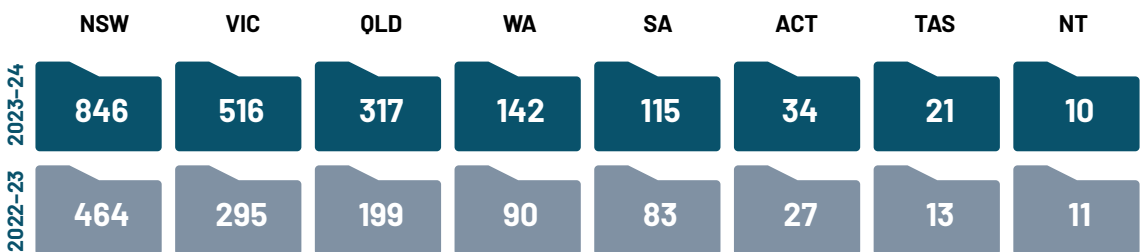
The workload of registrars in the Court is diverse and widespread. This section captures the main areas of registrar workload including:

- registrar filings, which are predominantly corporations and corporate insolvency and general and personal insolvency proceedings, heard by registrars in regular judicial registrar lists, and
- Alternative Dispute Resolution and Case Management referrals, which are proceedings (generally docketed to judges), which have been referred to registrars to provide specified assistance in accordance with the Registrars' powers, with the aim to manage the work of the Court effectively and efficiently.

Table 3.3: Total caseload (registrar), 2022–23 to 2023–24

Total caseload (registrar)	2023–24	2022–23
Total filings	2,001	1,182
Total finalisations	1,885	973
Total current proceedings at 30 June 2024	575	459
Finalisation rate	94%	82%
Percentage disposed of within 12 months	98%	96%

Figure 3.5: Total filings by state and territory (registrar), 2022–23 to 2023–24



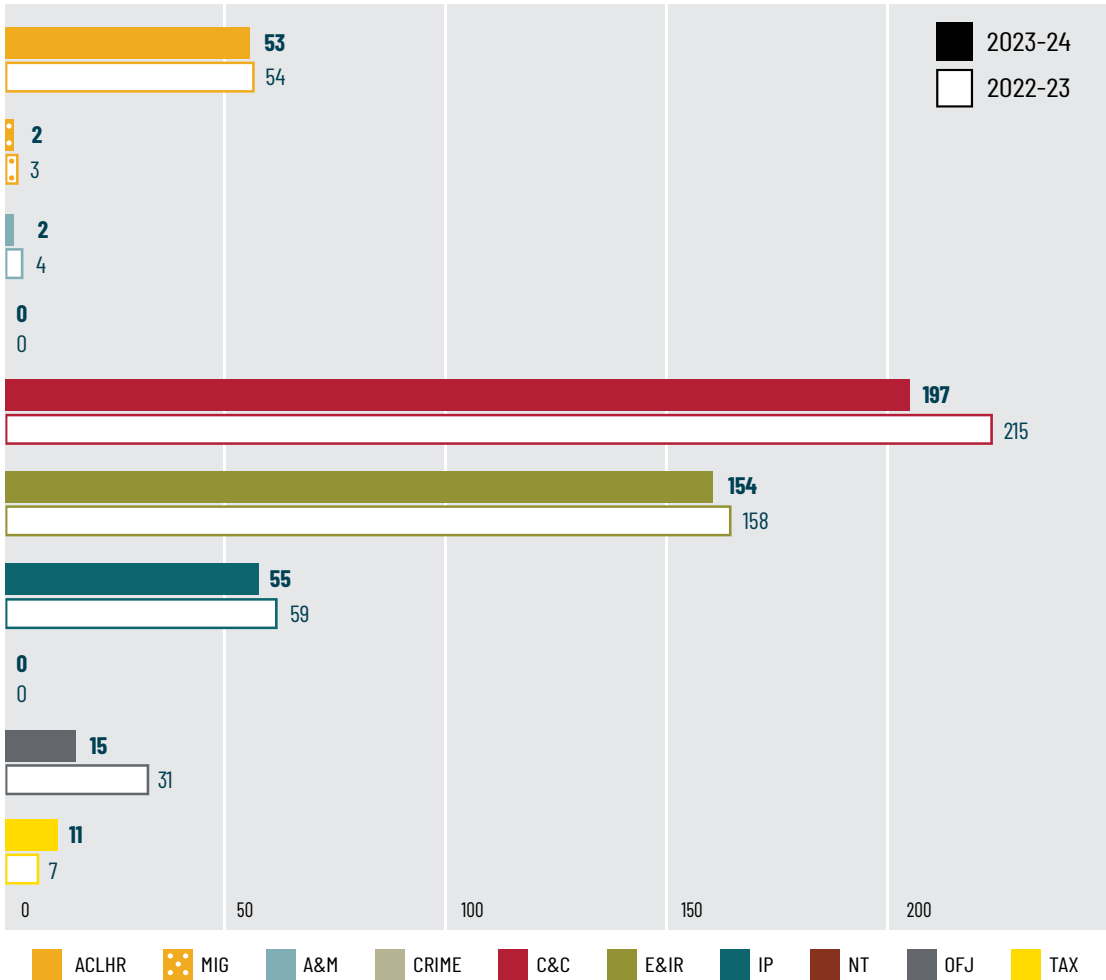
Assisted dispute resolution (mediation)

Assisted dispute resolution (ADR) is an important part of the efficient resolution of litigation in the Court context, with nearly 30 per cent of original jurisdiction proceedings being referred to mediation. In addition to providing a forum for potential settlement, mediation is an integral part of the Court's case management practices. The Court continues to conduct mediations both in person and by remote access technology where appropriate.

In recognition of the Court's unique model of mediation and commitment to a quality professional development program, the Court has been a Recognised Mediator Accreditation Body since September 2015 and has 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.

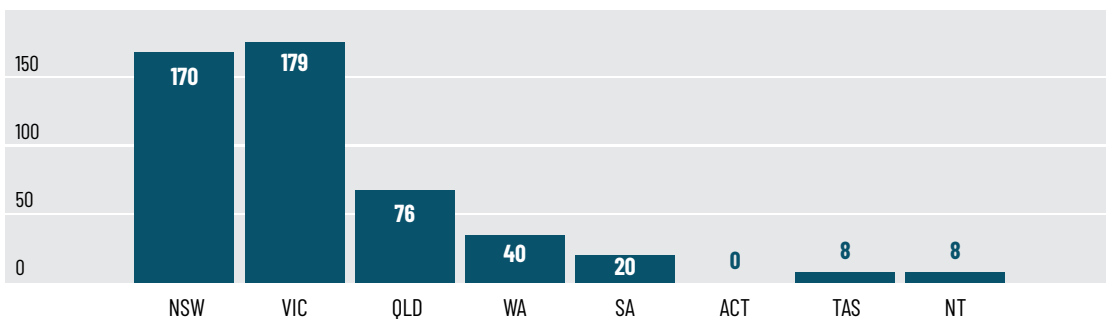
In 2023–24, there was an 11 per cent decrease overall in the number of proceedings referred to mediation compared with 2022–23. The largest number of mediation referrals were made in the Commercial and Corporations practice area, with 197 referrals, closely followed by the Employment and Industrial Relations practice area, with 154 referrals.

Figure 3.6: Proceedings referred to mediation and allocated to registrars – comparison between 2023–24 and 2022–23, by NPA



The above table excludes the Native Title NPA and the Federal Crime and Related Proceedings NPA, which have dedicated registrars and are managed differently to other NPAs.

Figure 3.7: Proceedings referred to mediation and allocated to registrars by state and territory, 2023–24



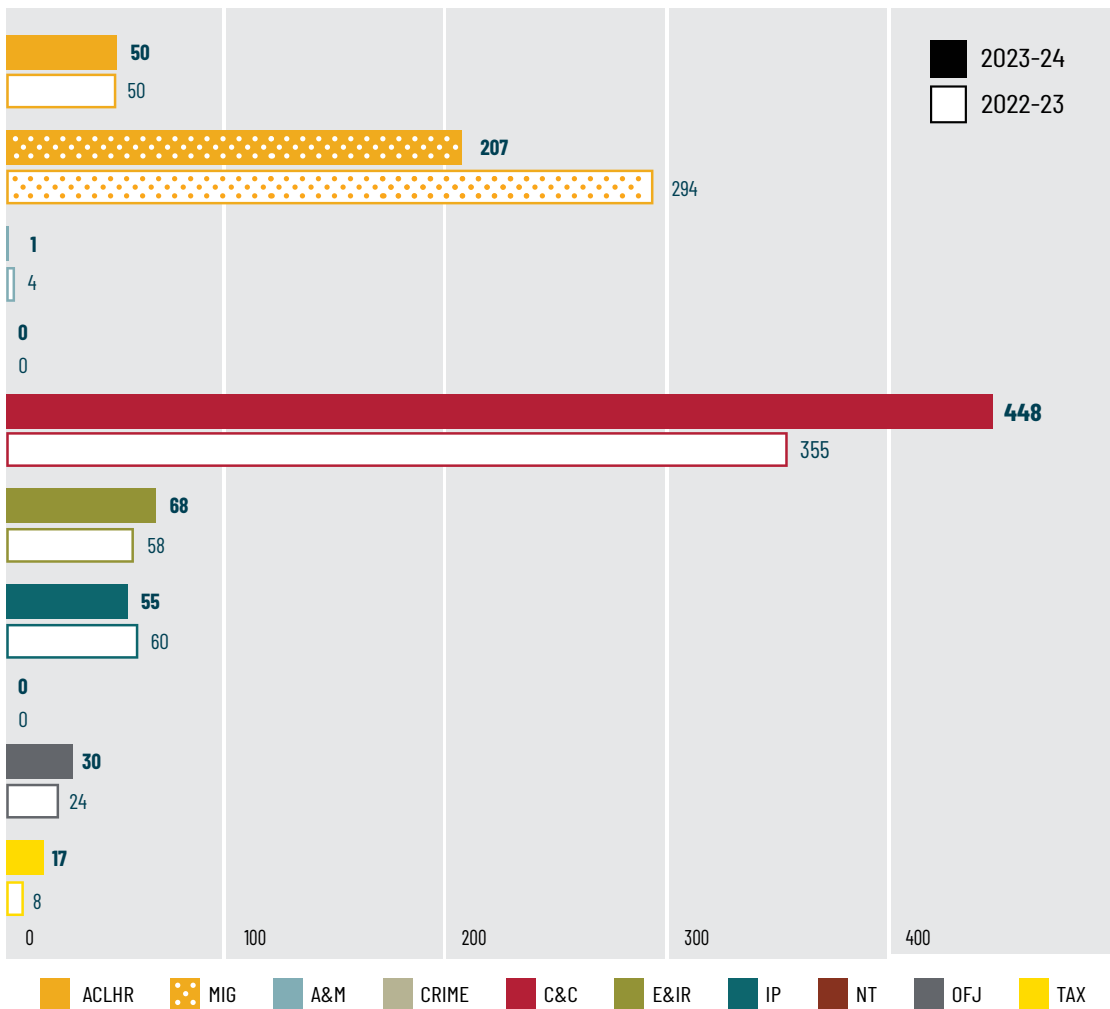
Note: These figures exclude Native Title mediation allocations, due to the nature of this work, these proceedings are managed separately by dedicated Native Title registrars.

Case management

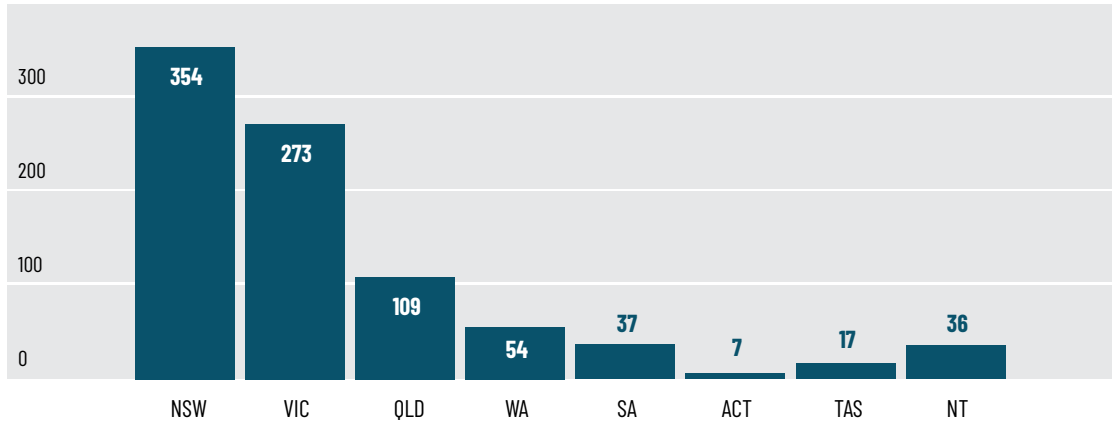
Case management allocations refer to proceedings formally allocated to registrars through the Court's allocation protocols. It is understood that registrars are often allocated additional work, that is not captured by these protocols as well as additional workload arising from managing registrars' lists and other management functions within the Court.

Case management allocations include referrals made to registrars by judges or registrars for things such as: case management in a judge docket matter (including general case management, case management of class actions etc.); costs; discovery / privilege / evidence; enforcement; expert conclave / expert conference / expert conferral; interlocutory applications; referee inquiry and report; security for costs; remuneration; examinations; long form bills of cost, short form bills of cost and any other referrals that are within the scope of the registrars' delegated powers.

Figure 3.8: Case management work allocated to registrars by NPA, 2022-23 to 2023-24



The above table excludes the Native Title NPA and the Federal Crime and Related Proceeding NPA, which have dedicated registrars and are managed differently to other NPAs.

Figure 3.9: Case management work allocated to registrars by state and territory, 2023–24

Note: These figures exclude Native Title case management allocations, and due to the nature of this work, these proceedings are managed separately by dedicated Native Title registrars.



REPORT BY NATIONAL PRACTICE AREA

The workload statistics in each NPA report refer to judge original jurisdiction and appellate workload and does not include registrar workload, which is captured separately on pages 28–29.

Administrative & Constitutional Law & Human Rights

About this NPA

The Administrative and Constitutional Law and Human Rights (ACLHR) NPA comprises proceedings concerning the judicial review of decisions and conduct involving Commonwealth enactments and powers on grounds relating to the legality, rather than the merits, of the decision, including judicial review applications: pursuant to section 39B of the *Judiciary Act 1903*, under the *Administrative Decisions (Judicial Review) Act 1977*, under sections 476A and 476B(3) of the *Migration Act 1958*, appeals on questions of law from the Administrative Appeals Tribunal, the Superannuation Complaints Tribunal and the National Native Title Tribunal, complaints about unlawful discrimination no longer being dealt with by the Australian Human Rights Commission, and proceedings concerning the Australian Constitution.

National ACLHR Coordinating Judges



Justice Collier



Justice Moshinsky



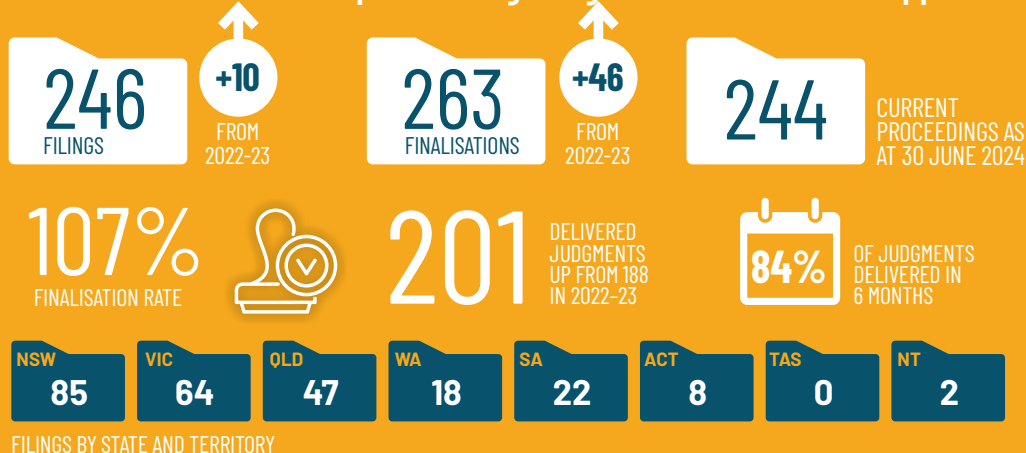
Justice Jackson

Administrative and Constitutional Law and Human Rights NPA judges

NSW	VIC / TAS	QLD	SA / NT	WA
Justice Perram	Justice Murphy	Justice Collier	Justice Charlesworth	Justice Banks-Smith
Justice Nicholas	Justice Beach	Justice Logan RFD	Justice O'Sullivan	Justice Colvin
Justice Yates	Justice Moshinsky	Justice Rangiah		Justice Jackson
Justice Katzmann	Justice Wheelahan	Justice Meagher		Justice Feutrill
Justice Wigney	Justice O'Bryan	Justice Sarah C		
Justice Perry	Justice Snaden	Derrington		
Justice Markovic	Justice Anderson			
Justice Bromwich	Justice McElwaine			
Justice Lee	Justice McEvoy			
Justice Thawley	Justice Hespe			
Justice Stewart	Justice Button			
Justice Abraham	Justice Horan			
Justice Goodman	Justice Neskovic			
Justice Raper	Justice Dowling			
Justice Kennett				
Justice Jackman				
Justice Shariff				

National Coordinating Registrar Michael Buckingham

ACLHR NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

This year saw major legislative reform to the administrative law landscape with the passage of the *Administrative Review Tribunal Act 2024* (Cth), *Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024* (Cth) and *Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024* (Cth).

This legislative package:

- abolishes the Administrative Appeals Tribunal (AAT)
- replaces the AAT with the Administrative Review Tribunal (ART)
- re-establishes the Administrative Review Council
- transitions AAT staff and operations to the ART, and
- makes amendments to 248 Commonwealth Acts to ensure existing legislation and instruments operate for the ART.

Nevertheless, the Court's jurisdiction remains unchanged. Appeals from the ART will lie to the Court on questions of law and the ART may also refer questions of law to the Court.

The ART commences operations on 14 October 2024 and Justice Kyrou, the current President of the AAT, will serve as the ART's inaugural President.

Decisions of interest

Fisher v Commonwealth of Australia [2023] FCAFC 106; (2023) 298 FCR 543

(12 July 2023; Chief Justice Mortimer, Justice Katzmann, Justice Charlesworth, Justice Abraham and Justice Kennett)

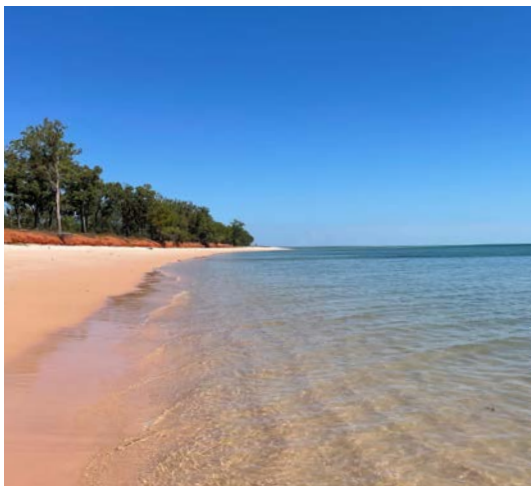
A Full Court constituted by five judges was referred a question in a special case of whether the applicant, who was Aboriginal, enjoyed a right to apply for and receive an age pension to a more limited extent than non-Aboriginal people. The applicant contended that, because Aboriginal men have a short life expectancy compared to non-Aboriginal men and the application of section 10 of the *Racial Discrimination Act 1984* (Cth), he was entitled to be treated as qualifying for the age pension despite the terms of the *Social Security Act 1991* (Cth). The Full Court answered the question 'no'. The applicant sought special leave to appeal to the High Court, which was refused.

Munkara v Santos NA Barossa Pty Ltd (No 3) [2024] FCA 9

(15 January 2024; Justice Charlesworth)

Justice Charlesworth dismissed an application to restrain the respondent from constructing a pipeline between the Barossa gas field and Darwin on a route that came within 7km of the Tiwi Islands. The applicants were Tiwi Islanders. They alleged that the pipeline would significantly impact their tangible and intangible cultural heritage. The pipeline project was regulated by the Offshore Petroleum and Greenhouse Gas Storage (Environment) Regulations 2009 (Cth) (later repealed and substituted).

The respondent submitted an environment plan that was accepted by the Authority administering the Regulations. The applicants alleged the respondent was required to lodge a revised environment plan because of a new and significant environmental risk and would thereby commit a criminal offence if it proceeded with the works. Justice Charlesworth concluded that the risks relied upon by the applicants were not new within the meaning of the Regulations. In addition, the applicants failed to prove that the pipeline presented a risk to their intangible cultural heritage. To the extent that the works presented a risk to tangible cultural heritage in the form of ancient artefacts on or under the sea floor, the risk was not significant within the meaning of the Regulations.



Environment Council of Central Queensland Inc v Minister for the Environment and Water [2024] FCAFC 56

(16 May 2024; Chief Justice Mortimer, Justice Colvin and Justice Horan)

The Full Court delivered judgment in an appeal about how the effects of climate change at a world-wide level do or do not interact with the controlling provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

The factual situation concerned the proposed extension of the life of two coal mines in New South Wales. Before the primary judge, the appellant sought judicial review to challenge the Minister’s rejection of two reconsideration requests made under section 78C of the EPBC Act. The appellant contended there was substantial new information about the impacts on matters

of national environmental significance protected under the EPBC Act (such as the Great Barrier Reef), of greenhouse gas emissions arising from the combustion of coal produced by the extension of the two mines.

The appellant contended the Minister should reconsider and expand the EPBC Act controlling provisions regulating the proposed extension of the two coal mines in light of this new information. The Full Court found the Minister had accepted the existence of a causal link between the global combustion of coal and/or gas and the adverse effects of climate change on matters of national environmental significance. However, the Full Court found that there was no error in the Minister’s ultimate conclusion that the extension of the life of each coal mine was not a ‘substantial cause’ of the overall physical effects of climate change on matters of national environmental significance (such as the Great Barrier Reef), within the meaning of that phrase in section 527E of the EPBC Act.

The Full Court dismissed the appeal. The appellant has sought special leave to appeal from the Full Court’s orders.

Save the Children Australia v Minister for Home Affairs [2024] FCAFC 81

(18 June 2024; Chief Justice Mortimer, Justice Kennett and Justice Horan)

The Full Court dismissed an appeal against the primary judge’s orders refusing to issue a writ of *habeas corpus* directed to the Commonwealth in respect of the detention of Australian women and children held by a non-state actor in North-East Syria.

The Full Court concluded that there was no legal error in the primary judge’s judgment. The primary judge had accepted the appellant’s submissions that a court may issue a writ where a respondent has control over a person’s detention or where the Court is left in doubt about the respondent’s control of a person’s detention and the pressure of the writ could be used to test a respondent’s asserted lack of control. Ultimately, the primary judge found that the appellant had not proven the Commonwealth had control over the detention of the women and children.

The Full Court held that there was no error in the primary judge having no doubt about this conclusion.

Migration

About this NPA

Australian migration law concerns the regulation of non-citizens entering and remaining in Australia. The two key sources of Australian migration law are the *Migration Act 1958* (Cth), and the *Migration Regulations 1994* (Cth). Citizenship issues are governed by the *Australian Citizenship Act 2007* (Cth).

Original jurisdiction

Most first instance migration applications must be heard in the FCFCOA (Division 2). For example, the FCFCOA (Division 2) has jurisdiction to review decisions made by the AAT Migration and Refugee Division. Some migration proceedings can be started in the Federal Court's original jurisdiction. Under section 476A(1) of the Migration Act, the Federal Court has original jurisdiction in relation to a 'migration decision' in certain situations, for example decisions to refuse or cancel a visa on character grounds and decisions relating to the removal of non-citizens who are sentenced for 12 months or more for a criminal offence. These decisions are generally made by the AAT General Division, or by the Minister personally.

A 'migration decision' under the Migration Act includes the granting, giving, suspending, cancelling, revoking or refusing to give a certificate, direction, approval, consent or permission, including a visa.

Appellate jurisdiction

The Federal Court will generally have appellate jurisdiction to hear and determine:

- an appeal from a final decision of the FCFCOA (Division 2)
- an application for leave to appeal from an interlocutory decision of the FCFCOA (Division 2), and
- an application for an extension of time to appeal from a decision of the FCFCOA (Division 2).

Migration liaison judges Justice Perry; Justice Kennett

Migration judges All judges

National Coordinating Registrar Simon Haag

Migration NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

Legislative amendments

Several legislative amendments affected the Court's migration jurisdiction in 2023–24. This included:

- *Migration Amendment (Bridging Visa Conditions) Act 2023*
- *Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Act 2023*, and the
- *Migration Amendment (Bridging Visa Conditions) Regulations 2023*.

This suite of legislation:

- amended the *Migration Act 1958* and the *Migration Regulations 1994* to:
 - enable the Minister to grant a bridging visa to a person without application
 - allow for the imposition of visa conditions on any bridging visa granted to non-citizens for whom there is no real prospect of removal from Australia becoming practicable in the reasonably foreseeable future and who are therefore not capable of being subject to immigration detention under subsections 189(1) and 196(1) of the *Migration Act* following the High Court's orders of 8 November 2023 in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*, and
- amended the *Criminal Code (Cth)* to introduce criminal sanctions for breaches of visa conditions.

In 2023–24, the Court received a number of applications challenging the legality of these provisions.

Engagement with the profession

Throughout February and March 2024, Chief Justice Mortimer and National Judicial Registrar Haag met with representatives of the legal profession in Adelaide, Brisbane, Melbourne, Perth and Sydney to discuss the provision of pro bono legal assistance to litigants in the migration practice area.

From 13–15 March 2024, Court representatives attended the Law Council of Australia Immigration Law Conference in Melbourne. The conference brings together solicitors, barristers, AAT members, and academics working in migration law. Justice Kennett, Justice Horan and National Judicial

Registrar Haag conducted a session on the future of migration litigation in the Federal Court. Chief Judge Alstergren and Deputy Chief Judge Mercuri delivered addresses to the conference in relation to migration work in the FCFCOA.



Decisions of interest

***Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] FCAFC 123; (2023) 299 FCR 464**

(7 August 2023; Justice Charlesworth, Justice O'Sullivan and Justice Raper)

Harsinco Pty Ltd lodged an application for approval of a nominated position under the Regional Sponsored Migration Scheme, to be occupied by Mr Singh in its restaurant in Goolwa, South Australia. Mr Singh applied for a sponsored visa on the basis of Harsinco's nomination application. Harsinco subsequently closed its Goolwa restaurant and transferred Mr Singh's position to its McLaren Vale location.

Harsinco's nomination application was refused, and, as Mr Singh's visa application was predicated on the successful approval of the nomination, Mr Singh's visa application was also refused. Both Harsinco and Mr Singh unsuccessfully sought merits review of these decisions with the Administrative Appeals Tribunal. The Tribunal found that by reason of Harsinco's closure of its Goolwa restaurant, the nominated position had ceased to exist and was no longer needed.

Both Harsinco and Mr Singh sought judicial review of the Tribunal decisions in the former Federal Circuit Court of Australia (FCCA). The primary judge dismissed Harsinco's nomination application, finding that the position which was the subject of the nomination was geographically specific to Goolwa not McLaren Vale. The primary judge consequently



dismissed Mr Singh's application, the parties having agreed that the outcome was dependent on the success of Harsinco's application for review.

Although Harsinco did not elect to appeal, Mr Singh appealed to the Federal Court, primarily challenging the FCCA decision regarding Harsinco's nomination application. Consequently, the Full Court was required to consider whether Mr Singh had standing to appeal, and/or to collaterally challenge, the FCCA decision regarding the nomination application.

Justice O'Sullivan (with Justice Raper agreeing without deciding on this point) found that only Harsinco had standing to challenge the nomination decision under section 486C of the *Migration Act 1958* (Cth). His Honour found that the contingency of judicial review of the visa decision on the outcome of judicial review of the nomination decision, did not render Mr Singh a 'party to the review' of the nomination decision under section 479 of the *Migration Act*. This was because in the visa criteria, the existence of an approved nomination was a jurisdictional fact. Justice O' Sullivan found that as a consequence, Mr Singh should not be allowed to mount a collateral challenge to the FCCA decision regarding the nomination application.

Justice Charlesworth considered Mr Singh to have standing under section 486C of the *Migration Act* as a person who is 'a party to a review' in a proceeding that 'raises an issue in connection with visas'. Her Honour found that in the review to which Mr Singh was a party, the question of whether the nomination decision was legally operative was not irrelevant to determining whether Mr Singh satisfied the criteria for the visa. Her Honour found that while it was expedient for the Tribunal and primary judge to assume the validity of the nomination application outcome, nothing in the *Migration Act* or *Migration Regulations 1994* prevented Mr Singh from raising on appeal whether the primary judge committed

jurisdictional error by proceeding on the assumption that the judicial review of the nomination application was correctly decided.

The Full Court otherwise dismissed the appeal on the basis that the term 'position' was confined in the description provided on the nomination application form, including its specific location. This was because the nominated positions must be specified with some degree of particularity to enable the local authority to certify that there was a genuine need to employ a person to work in the position which could not be filled by an Australian citizen or permanent resident living in the same local area.

***SLGS v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] FCAFC 104**

(7 July 2023; Justice Rares, Justice Jackson and Justice Snaden)

The appellant arrived from Sudan on a Refugee Visa which was subsequently cancelled following a number of criminal convictions for violence offences. The appellant then applied for a Protection Visa, which was refused. The Administrative Appeals Tribunal affirmed the refusal decision on the basis that although the appellant invoked Australia's protection obligations, he represented 'a danger to the Australian community' which enlivened the disqualifying provisions in section 36(1C) of the *Migration Act 1958* (Cth).

Before the primary judge, the applicant contended, first, that 'danger' must mean a present and serious risk of harm; and that 'the Australian community' must mean the Australian community as a whole, rather than merely one or more members or a segment of that Australian community. The primary judge's view was that the applicant's construction was overly narrow and failed to appreciate the potential impact of offending on the community, including where a person may pose a danger to the community by harming individuals within it.

The Full Court dismissed the appeal, finding that 'danger' included any potential harm which would be more than trivial and beyond ordinary personal interactions; and that 'the Australian community' incorporated both the community as a whole and/or any person or persons who are part of it. The Full Court found that it was open to the Tribunal to assess 'danger to the Australian community' in the way that it had.

Admiralty & Maritime

About this NPA

The Admiralty and Maritime (A&M) NPA incorporates proceedings that relate to admiralty or maritime disputes including in rem proceedings, in personam proceedings, marine insurance, cargo claims, and other proceedings including proceedings related to the *Navigation Act 2012* (Cth) and the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (Cth).

National A&M Coordinating Judges



Justice Sarah C
Derrington



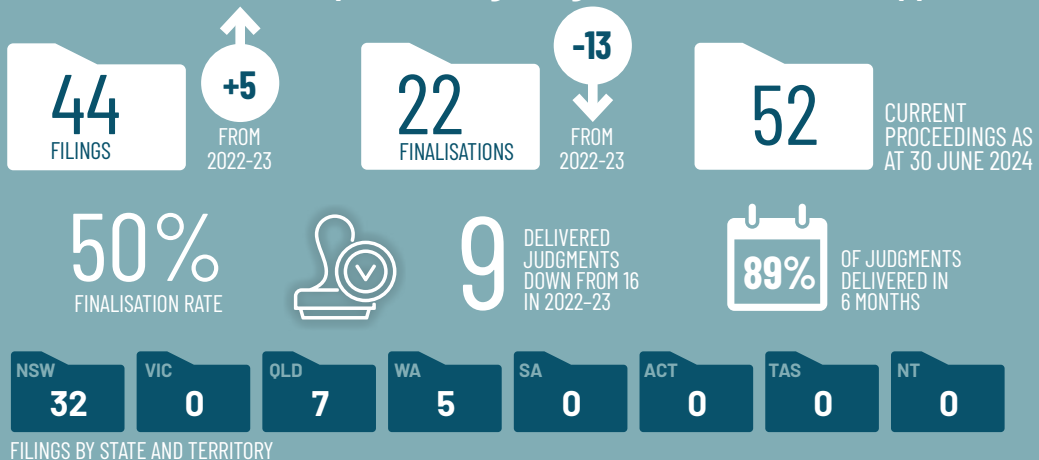
Justice Stewart

Admiralty and Maritime NPA judges

NSW	VIC / TAS	QLD	SA / NT	WA
Justice Markovic Justice Burley Justice Stewart Justice Halley	Justice Moshinsky Justice O'Callaghan Justice McEvoy	Justice Derrington Justice Sarah C Derrington	Justice O'Sullivan	Justice Feutrill

National Coordinating Registrars Paul Farrell supported by Jacinta Ellis and Russell Trott

A&M NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

The Admiralty and Maritime NPA has experienced a significant volume of filings and dispensed with a high proportion of settled and discontinued proceedings in the Court's original and appellate jurisdiction.

2023 Admiralty Marshals and Judges' Workshop

Between 30 October and 1 November 2023, the 2023 Admiralty Marshals and Judges' Workshops were hosted in Brisbane, with 11 judges and 17 registrars and court staff in attendance, as well as a Supreme Court Admiralty Judge. The workshops provided educative opportunities for judges and registrars to exchange and discuss ideas, practices and approaches to issues within the Admiralty and Maritime NPA.

Admiralty Users Group

The Admiralty Users Group meeting was held on 6 October 2023 as part of the Maritime Law Association of Australia and New Zealand 48th Annual Conference in Perth. Justices Sarah C Derrington and Stewart conducted the session with members of the profession and introduced Registrars Russell Trott and Jacinta Ellis. There was consultation in relation to issues raised by the profession including the effect of caveats against arrest and the best process for judicial sale.

Decisions of interest

Delta Corp Ship Management DMCCO v The Ship 'Caledonian Sky' [2023] FCA 1058

(4 September 2023; Justice Stewart)



Justice Stewart considered an application by the manager of the *Caledonian Sky* for release of the vessel from arrest where caveats against release were previously filed. Some caveators sought

to delay release on the basis that they wished to ensure that the vessel had not sailed from the jurisdiction before their arrest warrant could be effected. The vessel was ordered to be released as the caveators did not present a proper basis for opposing immediate release.

Poralu Marine Australia Pty Ltd v MV Dijkgracht [2023] FCAFC 147; (2023) 413 ALR 47; (2023) 300 FCR 290

(8 September 2023; Justice Rares, Justice SC Derrington and Justice Feutrill)

These proceedings involved actions *in rem* and *in personam* for breach of a contract of carriage causing cargo damage. Whether contract of carriage with the charterer subject to Australian version of the Hague-Visby Rules, or the Hague-Visby Rules as enacted in the country of shipment or Hague Rules. The Appeal was allowed in part with regard to applicable terms and the Hague-Visby Rules found to apply. The appellant established the carrier's liability limited to the measure most favourable to it, i.e. as governed by the Hague-Visby Rules as enacted in the country of shipment. Also, the Himalaya clause in the contract of carriage operated to make that limitation available to the shipowner.

Dan-Bunkering (Singapore) Pte Ltd v The Ship 'Yangtze Fortune' (No 3) [2024] FCA 219

(12 March 2024; Justice Stewart)

This judgment related to an application by an unpaid bunker supplier to a demise charterer for leave to claim out of time upon the fund constituted by the proceeds of judicial sale of the *Yangtze Fortune*. Justice Stewart considered when the demise charter was terminated and whether the claim could be brought even after the judicial sale. The application was dismissed because the claim would fail due to the claimant being over nine months out of time for filing its claim and because they had deliberately chosen that delayed course.

Burrows v The Ship ‘Merlion’ [2024] FCA 220

(13 March 2024; Justice SC Derrington)



Justice Sarah C Derrington made orders and gave reasons for judgment in relation to an application to strike out pleaded claims on the basis of which *the Merlion* was arrested. Her Honour dismissed the application. Claims found to be proprietary maritime claims were not established to lack reasonable prospects of success. Other claims struck out or summarily dismissed.

Gordon v The Vessel ‘Southern Star’ [2024] FCA 674

(20 June 2024; Justice Stewart)



Justice Stewart made orders permitting the *Southern Star* to trade while under arrest, subject to conditions. Justice Stewart’s reasons for the orders were substantial likelihood that long-term security would be shortly agreed, the vessel was immediately required for previously arrangement employment, the claim was low quantum, and vessels owned by the relevant person were adequate for short-term security.



Karpik v Carnival plc (The Ruby Princess) (Initial Trial) [2023] FCA 1280

(25 October 2023; Justice Stewart)

Mrs Karpik commenced a representative proceeding pursuant to Part IVA of the FCA Act on behalf of group members who travelled as passengers, or are the close family members or executors and administrators of persons who travelled as passengers, on board the *Ruby Princess* cruise ship during its voyage from Sydney to Sydney via New Zealand departing on 8 March 2020.

It was alleged that the outbreak of Coronavirus on the ship resulted from a failure to take appropriate measures to ensure that passengers were safe and protected from contracting the virus on the ship. Mrs Karpik claimed that the failure to detect or warn about coronavirus, and implement prevention and management methods during the voyage, or otherwise cancel the cruise, constituted breaches of the cruise owner and operator’s common law duty of care to its passengers. It was also claimed that the cruise owner and operator breached a number of provisions of the Australian Consumer Law (ACL), including sections 18 (Misleading or deceptive conduct), 60 (Guarantee as to due care and skill) and 61 (Guarantees as to fitness for a particular purpose etc.) of the ACL. Justice Stewart found that breach, causation and loss were established on each of the causes of action, but, other than out of pocket expenses, no personal injury or distress and disappointment damages were awarded due to insufficient severity of injury and a full refund having been obtained.



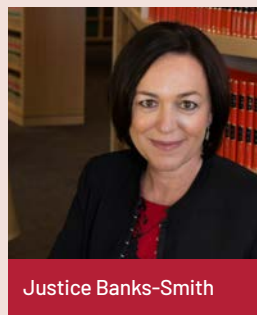
Commercial & Corporations

About this NPA

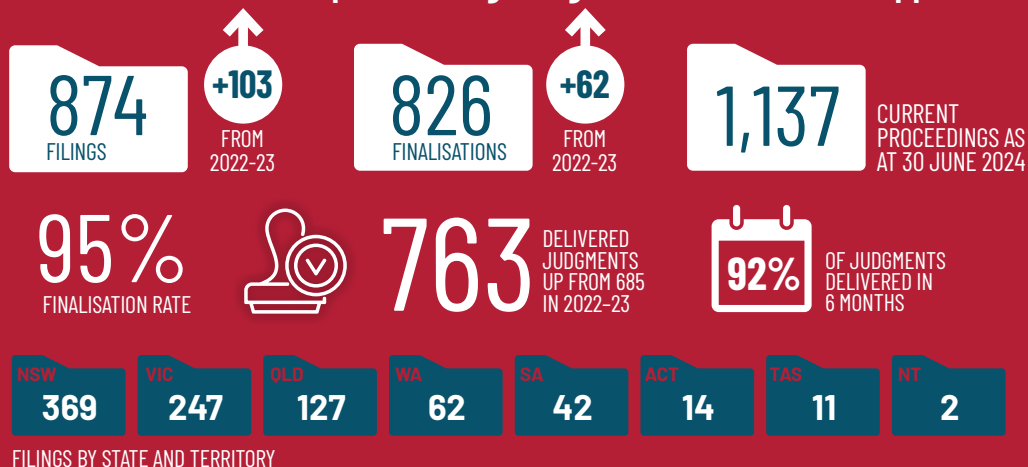
The Commercial and Corporations National Practice Area (NPA) covers commercial and corporations disputes within federal jurisdiction. This NPA consists of six National Practice Sub-areas (NPSAs), with judges aligned to the different sub-areas based on their specialised judicial skills:

- Commercial Arbitration (CA)
- Commercial Contracts, Banking, Finance and Insurance sub-area (CCBFI)
- Corporations and Corporate Insolvency (CORPS)
- Economic Regulator, Competition and Access (ERCA)
- General and Personal Insolvency (GPI)
- Regulator and Consumer Protection (RCP)

National C&C Coordinating Judges



C&C NPA Workload snapshot: Judge Original Jurisdiction and Appellate



C&C NPA Coordinating Judges

	NSW & ACT	VIC & TAS	QLD	SA & NT	WA
C&C: CA	Justice Yates Justice Stewart Justice Jackman	Justice Beach Justice Moshinsky Justice O'Callaghan Justice Anderson Justice Button Justice Neskovicin	Justice Derrington Justice S Derrington Justice Downes	Justice O'Sullivan	Justice Banks-Smith Justice Jackson Justice Feutrill
C&C: CCBFI	Justice Nicholas Justice Yates Justice Markovic Justice Lee Justice Thawley Justice Stewart Justice Halley Justice Cheeseman Justice Goodman Justice Jackman Justice Shariff	Justice Beach Justice Moshinsky Justice O'Callaghan Justice Wheelahan (E&IR) Justice O'Bryan Justice Snaden (E&IR) Justice Anderson Justice Rofe Justice McElwaine Justice McEvoy Justice Button Justice Neskovicin Justice Dowling (E&IR)	Justice Derrington Justice S Derrington Justice Downes	Justice Charlesworth Justice O'Sullivan	Justice Banks-Smith Justice Colvin Justice Jackson Justice Feutrill
C&C: CORPS	Justice Yates Justice Markovic Justice Lee Justice Stewart Justice Halley Justice Cheeseman Justice Goodman Justice Jackman <i>Additional Judges</i> Justice Perram Justice Wigney Justice Burley Justice Thawley Justice Kennett Justice Shariff	Justice Beach Justice Moshinsky Justice O'Callaghan Justice O'Bryan Justice Anderson Justice McElwaine Justice McEvoy Justice Button Justice Neskovicin <i>Additional Judge</i> Justice Murphy (Class Actions / ASIC)	Justice Derrington Justice S Derrington Justice Downes <i>Additional Judges</i> Justice Collier Justice Meagher	Justice Charlesworth Justice O'Sullivan	Justice Banks-Smith Justice Colvin Justice Jackson Justice Feutrill
C&C: GPI	Justice Perram Justice Nicholas Justice Yates Justice Katzmann Justice Wigney Justice Perry Justice Markovic Justice Lee Justice Thawley Justice Stewart Justice Halley Justice Cheeseman Justice Goodman Justice Raper Justice Jackman	Justice Beach Justice Moshinsky Justice O'Callaghan Justice O'Bryan Justice Snaden Justice Anderson Justice Rofe Justice McElwaine Justice McEvoy Justice Hespe Justice Button Justice Horan Justice Neskovicin Justice Dowling	Justice Collier Justice Logan Justice Rangiah Justice Derrington Justice Downes Justice Meagher	Justice Charlesworth Justice O'Sullivan	Justice Banks-Smith Justice Colvin Justice Jackson Justice Feutrill
C&C: ERCA	Justice Perram Justice Yates Justice Wigney Justice Bromwich Justice Lee Justice Halley Justice Cheeseman Justice Jackman	Justice Beach Justice Moshinsky Justice O'Callaghan Justice O'Bryan Justice Anderson Justice Button Justice Neskovicin	Justice Logan Justice Derrington Justice S Derrington Justice Downes	Justice O'Sullivan	Justice Banks-Smith Justice Colvin Justice Jackson Justice Feutrill
C&C: RCP	Justice Nicholas Justice Yates Justice Katzmann Justice Wigney Justice Perry Justice Markovic Justice Bromwich Justice Lee Justice Thawley Justice Stewart Justice Abraham Justice Halley Justice Cheeseman Justice Goodman Justice Raper Justice Kennett Justice Shariff	Justice Murphy Justice Beach Justice Moshinsky Justice O'Callaghan Justice Wheelahan Justice O'Bryan Justice Snaden Justice Anderson Justice Rofe Justice McElwaine Justice Hespe Justice Button Justice Horan Justice Neskovicin	Justice Collier Justice Logan Justice Rangiah Justice Derrington Justice S Derrington Justice Downes Justice Meagher	Justice Charlesworth Justice O'Sullivan	Justice Banks-Smith Justice Colvin Justice Jackson Justice Feutrill

National Coordinating Registrars Tim Luxton and Jacinta Ellis

ABOUT THE COMMERCIAL AND CORPORATIONS NPA SUB-AREAS (NPSAS)

Commercial Arbitration NPSA

The Commercial Arbitration NPSA is the only sub-area in the Commercial and Corporations NPA to have its own dedicated practice note: Commercial Arbitration Practice Note (CA-1).

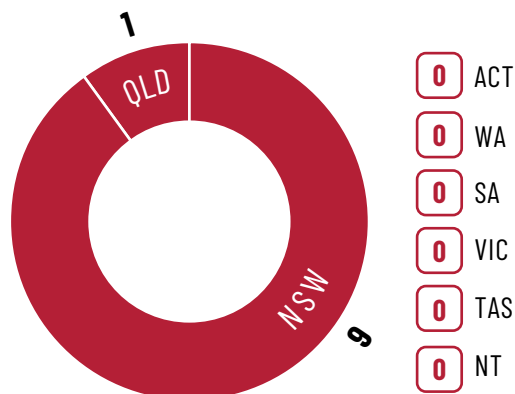
The Commercial Arbitration NPSA includes applications in the Court that concern commercial arbitration, being:

- international commercial arbitration under the *International Arbitration Act 1974* (Cth)
- domestic commercial arbitration under the State and Territory *Commercial Arbitration Acts* where applicable, and
- the exercise by the Court of its powers under sections 53A, 53AA, 53AB and 54 of the FCA Act.

Proceedings arising under the *International Arbitration Act 1974* (Cth) include:

- applications to stay a Federal Court proceeding that is capable of settlement by arbitration pursuant to an arbitration agreement between the parties
- the enforcement of a foreign award under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- applications under article 6 of the UNCITRAL Model Law on International Commercial Arbitration (Model Law) for orders concerning:
 - the appointment and termination of an arbitrator
 - a challenge against an arbitrator for lack of impartiality, independence or the necessary qualifications
 - whether an arbitral tribunal has jurisdiction to deal with the issues before the tribunal assisting an arbitral tribunal to take evidence the setting aside of an arbitral award the enforcement of an award under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Figure 3.10: CA NPSA judge original jurisdiction and appellate filings



Proceedings concerning international commercial arbitration will generally be managed within the Commercial Arbitration sub-area of the Commercial and Corporations NPA, however, depending on the character of the case, such proceedings may be managed within the Admiralty and Maritime NPA.

Commercial Arbitration List

Commercial arbitration proceedings are overseen and managed by the Commercial Arbitration List Judges to ensure they are dealt with expeditiously and consistently by the Court nationally: Justice Stewart and Justice Feutrill (WA proceedings).

A dedicated group of judges with special expertise in international commercial arbitration are allocated Commercial Arbitration proceedings.

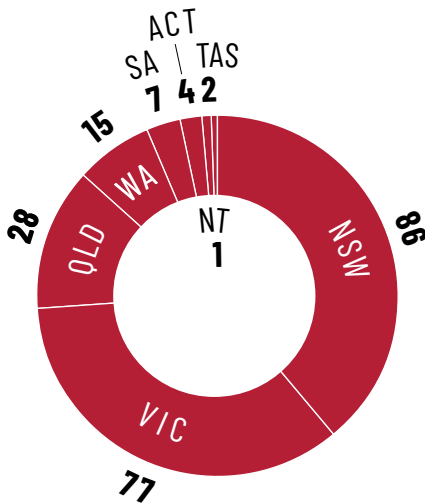
Commercial Contracts, Banking, Finance and Insurance NPSA

This NPSA includes proceedings relating to:

- commercial contracts
- insurance
- banking
- finance, and
- commercial transactional disputes.

The national Insurance List was established within this sub-area which is managed by the Insurance List Judges, Justice Derrington and Justice Jackman. The aims and operation of the Insurance List are explained in the Commercial and Corporations Practice Note.

Figure 3.11: CCBFI NPSA judge original jurisdiction and appellate filings



Corporations and Corporate Insolvency NPSA

The Corporations and Corporate Insolvency NPSA includes corporations matters and corporate insolvency proceedings which are capable of being heard in the Corporations List.

The expression ‘corporations matters’ in this sub-area includes:

- the appointment or conduct of liquidators
- schemes of arrangement
- shareholder oppression actions

- ASIC, such as the approval of director appointments, winding-up of companies, fundraising matters, corporate management and misconduct by company officers, and
- corporations matters referred to a judge by a judicial registrar.

Corporate insolvency matters in this sub-area include matters such as:

- voidable transactions
- extending of convening periods, and
- cross-border insolvency.

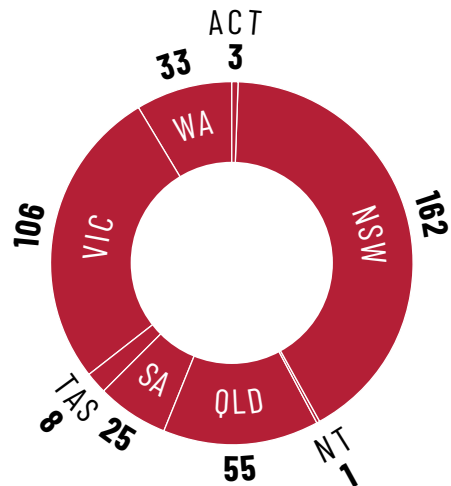
Schemes of arrangement

In order to address recent differences in scheme practice and recognise that consistency in Australian courts’ approach is beneficial to all parties involved in schemes of arrangement, the Court adopted the Practice Note – Harmonisation in schemes of arrangement’ as developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand and adopted by the Federal Court of Australia. The Court adopted this by way of the Schemes of Arrangement Practice Note (GPN-SOA) which was published on 13 October 2023.

Corporations Lists

The Court operates both Judge and Registrar Corporations Lists. Information about the operation of the Corporations Lists is detailed in Schedule 1 of the Commercial and Corporations Practice Note. Corporations List matters are generally heard within one to two weeks from the date of filing.

Figure 3.12: CORPS NPSA judge original jurisdiction and appellate filings



Judge Corporations List

Each registry has dedicated judges who manage the Judge Corporations Lists:

NSW	Justice Markovic Justice Cheeseman Justice Jackman
VIC & TAS	Justice Beach Justice O'Callaghan Justice Anderson Justice McElwaine Justice Neskovic
QLD	Justice Derrington Justice S Derrington Justice Downes
WA	Justice Banks-Smith Justice Jackson
SA	Justice Charlesworth

Registrar Corporations List

Registrars of the Federal Court have delegated jurisdiction to hear and determine a range of corporations matters including:

- winding-up applications
- applications to set aside a statutory demand
- applications pursuant to section 90-15 of the *Insolvency Practice Schedule (Corporations)*
- applications pursuant to section 447A of the *Corporations Act 2001*(Cth)
- reinstatement applications
- applications for termination of winding-up orders
- applications to fix remuneration, and
- public examinations.

A guide to the operation of Registrar Corporations Lists can be found at: <https://www.fedcourt.gov.au/law-and-practice/guides/corporations-guides/guide>

Economic Regulator, Competition and Access NPSA

The Economic Regulator, Competition and Access NPSA includes:

- Proceedings concerning anti-competitive conduct, including:
 - civil cartel proceedings
 - mergers
 - misuse of market power
 - exclusive dealing
- competition actions by the Australian Competition and Consumer Commission, and
- infrastructure access and regulatory pricing proceedings.

Actions in this NPSA are often commenced by economic regulators, such as the:

- ASIC – Australia's corporate, markets and financial services regulator, and
- Australian Competition and Consumer Commission – Australia's competition regulator.

Figure 3.13: ERCA NPSA judge original jurisdiction and appellate filings



General and Personal Insolvency NPSA

The General and Personal Insolvency NPSA includes proceedings related to general and personal insolvency under the *Bankruptcy Act 1966* (Cth), such as:

- applications by trustees in the management of bankrupt estates (e.g. voidable transactions)
- applications by bankrupts contesting decisions of a trustee
- applications for annulment of bankruptcy, and
- bankruptcy proceedings referred to a judge by a judicial registrar.

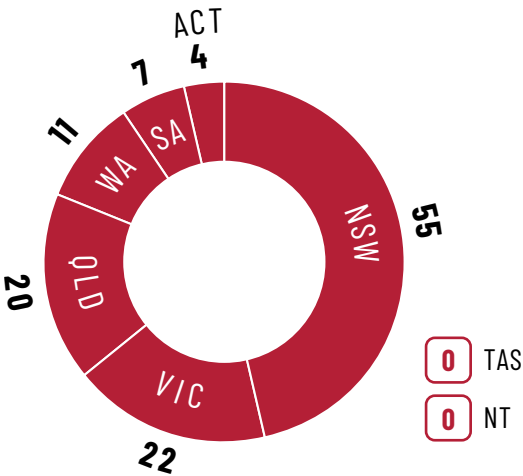
Bankruptcy proceedings before a judicial registrar

A significant proportion of bankruptcy proceedings are case managed and determined by Judicial Registrars of the Court. This includes:

- creditors' petitions
- applications to set aside bankruptcy notices, and
- examinations pursuant to section 81 of the Bankruptcy Act.

Each registry holds regular bankruptcy lists before registrars.

Figure 3.14: GPI NPSA judge original jurisdiction and appellate filings

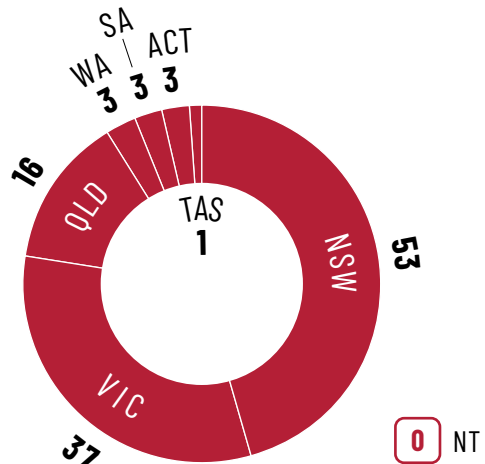


Regulator and Consumer Protection NPSA

The Regulator and Consumer Protection NPSA includes:

- consumer-related proceedings such as:
 - misleading and deceptive conduct
 - unconscionable conduct
 - unfair commercial practices
 - product liability proceedings, and
 - false advertising.
- Australian Consumer Law actions by the Australian Competition and Consumer Commission.

Figure 3.15: RCP NPSA judge original jurisdiction and appellate filings



Report from National Coordinating Judges

Consultation / Engagement with the legal profession

In the reporting period the Commercial and Corporations NPA judges have engaged extensively with the legal profession as follows:

- From 11 to 13 August 2023, Justice Banks-Smith was the Head Coach for the 2023 Piddington Society Young Lawyers Advocacy Weekend.
- On 16 August 2023, Justice Lee was a guest panel member at the joint University of Sydney and University of Queensland seminar series Regulating corporate wrongdoing: leading research, practice and policy: *'AI risks in the financial sector: consequences for companies and directors'*.
- On 5 October 2023, Justice Lee gave the keynote address at the Events Direct Conference: *'The Role of Referees in Class Actions and Complex Litigation'*.
- On 27 October 2023, Justice Lee gave the keynote address at the Association of Litigation Funders of Australia Class Action Conference: *'Litigation Funding, Class Actions and the Australian Landscape'*.
- From 29 October 2023 to 3 November 2023, Justice Lee attended and presented at the International Bar Association Annual Conference Paris 2023 Judges' Forum: *'Global class actions - coming soon to a court near you'*.
- On 21 November 2023, Justice Murphy presented the Federal Court Class Actions Seminar (with Federal Court judges).
- From 20 to 23 January 2024, Justice Lee attended and presented at the 2024 Supreme, Federal and New Zealand Senior Courts Conference Melbourne: *'The Current Defamation Law Landscape'*.
- On 19 February 2024, Justice Jackman delivered a paper to the Commercial Bar Association of Victoria, Insurance and Professional Negligence Section: *'Limits on the duty of utmost good faith'*.
- On 22 February 2024, Justice Banks-Smith chaired and attended the Unravelling Corporate Fraud Conference at the University of Western Australia Law School.
- On 22 February 2024, Justice Jackson presented at the Unravelling Corporate Fraud Conference at the University of Western Australia Law School: Discussed Professor Elise Bant's model of 'systems intentionality', exploring the state of mind of a corporation.
- On 21 March 2024, Justice Lee presented at Sparke Helmore's Judges' Series of Lectures: *'Class Actions in Australia: Access to justice or why the common law frowned on champerty and maintenance?'*.
- On 27 March 2024, Justice Stewart addressed the New South Wales Bar Association International Practice Series on practical considerations in the recognition, enforcement and execution of arbitral awards. Justice Stewart spoke to the practice in the Federal Court alongside Justice Michael Ball of the New South Wales Supreme Court who spoke to the practice in that court.
- From 20 to 21 April 2024, Justice Lee attended and presented at the 5th Full Meeting of the Standing International Forum of Commercial Courts Doha, Qatar: *'Litigation Funding and Arbitration Funding by third parties'*.
- From 21 to 23 April 2024, Justice Murphy participated in a panel debate on AI in international civil dispute resolution at the Standing International Forum of Commercial Courts.
- On 16 May 2024, Justice Banks-Smith was a panellist for the Lavan Legal Restructuring Group Seminar for Insolvency Lawyers and Accountants.
- On 23 May 2024, Justice Lee presented at the Veterans' Review Board Biennial Conference: *'Justice Delayed, Justice Denied. How to be fair, just and avoid delay'*.
- From 22 to 25 May 2024, Justice Murphy presented a seminar on contractual clauses in settlements at the London Perfect Law Conference.
- On 1 June 2024, Justice Halley gave the keynote address at the 2024 Competition Law Conference: *'Second Guessing the Gate Keeper: Alternative approaches to merits and judicial review of merger clearance determinations by competition authorities'*.
- On 19 June 2024, Justice Murphy presented in a session with the Supreme Court of the Philippines as part of their Class Actions Initiative.
- From 19 to 21 June 2024, Justice Lee attended and presented at the 2024 FCFCOA Judicial Plenary Panel Session: *'Avoiding appealable errors across the Courts' jurisdictions'*.
- On 21 June 2024, Justice Jackman delivered a paper to the Commercial Law Association of Australia: *'Is Cryptocurrency Property?'*.

Decisions of interest

***Australian Securities and Investments Commission v Commonwealth Bank of Australia* [2023] FCAFC 135**

(17 August 2023; Justice Moshinsky, Justice O’Byrne and Justice Jackman)

This appeal concerned the meaning of ‘*conflicted remuneration*’ and ‘*benefit*’ under section 963A of the *Corporations Act 2001* (Cth). The primary judge found that the ASIC had failed to prove that the Commonwealth Bank of Australia (CBA) and its wholly owned subsidiary, Colonial First State Investments Limited (CFSIL) had breached conflicted remuneration laws in relation to the sale of a superannuation product, Essential Super, to CBA customers. The primary judge concluded that payments made under the distribution agreement were not conflicted remuneration and CBA did not derive a ‘*benefit*’ from the agreement as Essential Super was the sole superannuation product developed and distributed by CBA, within its group of companies, and any revenue sharing constituted transfer payments within the group. The Full Court dismissed ASIC’s appeal but agreed with a number of its submissions. Relevantly, the Full Court clarified that a revenue sharing arrangement in the distribution of a financial product was a relevant ‘*benefit*’ within the meaning of the conflicted remuneration provisions and that ‘*conflicted remuneration*’ was not limited to payments between ‘*arm’s length*’ entities and may still apply to companies that form a group or are related entities.

***Elliott-Carde v McDonald’s Australia Ltd* [2023] FCAFC 162**

(12 October 2023; Justice Beach, Justice Lee and Justice Colvin)

The Full Court found that the settlement distribution powers in section 33V(2) of the FCA Act allowed the Court to make settlement-stage common fund orders. The Full Court found that the decision of the High Court of Australia in *BMW Australia Ltd v Brewster* [2019] HCA 45 did not extend to the making of settlement approval or distribution orders regarding third parties at the end of the proceedings. In separate reasons, but with only subtle differences which did not detract from the broad agreement as to the application of s 33V(2), the Full Court found that the Court’s power to make orders under section 33ZF(1) which are ‘*appropriate or necessary to ensure that justice is done in the proceeding*’ involves a different inquiry than the inquiry under section 33V(2), and that orders with respect to the distribution of any money paid under

a settlement or paid into Court may be made if it is just to do so. The Full Court determined that the discretion under section 33V(2) should not be read down by reference to implications or limitations not found in its express words.

***Galactic Seven Eleven Litigation Holdings LLC v Davaria Pty Ltd* [2024] FCAFC 54**

(2 May 2024; Justice Murphy, Justice Lee and Justice Colvin)

The Full Court confirmed that the Court has the power to make a common fund order (CFO) when approving settlement in a class action. The primary judge made orders approving a \$98 million settlement, but refused to make a CFO which gave 25 per cent of that settlement to the litigation funder. In doing so, the primary judge determined that the Court did not have power under section 33V to make a CFO and, even if it did, it was not appropriate to exercise the discretion to make a CFO in those circumstances. Instead, the Court made a funding equalisation order. The Full Court held that the primary judge erred in finding that the Court did not have power under section 33V(2) to make a CFO. The Full Court determined it was just to make a CFO in favour of the applicants representing 25 per cent of the gross settlement sum.

***Ford Motor Company of Australia Pty Ltd v Capic* [2023] FCAFC 179**

(14 November 2023; Justice Yates, Justice Beach, Justice Downes)

The Full Court found that certain vehicles imported into Australia by the appellant were defective and not of acceptable quality within the meaning of section 54 of the *Australian Consumer Law* (ACL). The primary judge found that certain vehicles that were fitted with the defective PowerShift transmission, which suffered from component and architectural deficiencies, breached the guarantee of acceptable quality under the ACL. The class members also established claims for reduction in value of the vehicles as at the date of purchase and additional damages for excess GST, stamp duty and financing costs incurred from buying a defective car at a price that did not factor in the defect. The Full Court dismissed the appeal concerning the findings that the transmission was defective and found the cars did breach the acceptable quality guarantee. As to the assessment of damages, the Full Court largely applied the reasoning of the Full Court in *Toyota Motor Corporation Australia Limited v Williams* [2023] FCAFC 50, finding that, whilst damages are

usually assessed from the date of purchase, in this case events subsequent to purchase were capable of bearing on the proper assessment of reduction in value for the purposes of section 272(1)(a) of the ACL. In addition, the Full Court found that pre-judgment interest ought to have been awarded on the damages awards for excess amounts of GST, stamp duty and financing costs.

***Singtel Optus Pty Ltd v Robertson* [2024]
FCAFC 58**

(27 May 2024; Justice Murphy, Justice Anderson and Justice Neskovicin)

The Full Court found that when making a finding as to whether a document prepared by a third party attracts legal professional privilege, it must be established that the dominant purpose of a report is to receive legal advice. At first instance, the primary judge dismissed Optus' claim of legal professional privilege over a forensic investigation report that it had commissioned from Deloitte on the basis that it had not established that the report was prepared for the dominant purpose of legal advice. The Full Court refused Optus' appeal, finding that the forensic investigation report prepared by Deloitte was not privileged. In its reasons, the Full Court emphasised that it will not be enough to simply establish that a report has a legal purpose. Rather, where there is evidence that suggests that a report has a non-legal purpose, it must be established that the legal purpose is the dominant one in order to attract privilege. Assessing the purpose for which a document is created is a fact-based endeavour which is determined objectively and requires the Court to have regard to all of the circumstances in determining whether a report is prepared for the dominant purpose of legal advice so as to attract legal professional privilege.

***Australian Securities and Investments Commission v Taylor* [2023] FCAFC 189**

(6 December 2023; Chief Justice Mortimer, Justice O'Bryan and Justice Abraham)

The Full Court dismissed ASIC's appeal, finding that it was not entitled to pursue disciplinary proceedings before the Companies Auditors Disciplinary Board against the respondent, a former director of Grant Thornton and auditor of iSignthis, in circumstances where a concurrent criminal proceeding brought by the Commonwealth Director of Public Prosecutions, concerning the same subject matter, had been instituted against him.

***Lantrak Holdings Pty Ltd v Yammine* [2023]
FCAFC 156**

(26 September 2023; Justice Lee, Justice Button and Justice Jackman)

The Full Court considered a number of issues with respect to the giving of evidence at trial by witnesses, including the correct approach to evidence concerning alleged misleading or deceptive conduct, when proceedings may be permanently stayed as an abuse of process, and the requirements for demonstrating that procedural fairness was not afforded at trial. The Full Court considered the decision of the primary judge which required evidence in chief to be given *viva voce* in circumstances where the witness had grown up in difficult circumstances and was '*inarticulate, nervous and poorly educated*'. The Full Court observed that it was important to ensure that such a witness does not encounter any disadvantage in the giving of evidence. Justice Lee also accepted that there may be interlocutory hearings where the Court may make a direction the effect of which is to prevent a party from cross-examining the deponent.

The Full Court clarified that an order staying an action as an abuse of process on the basis that the application disclosed no reasonable cause of action is an interlocutory order. Moreover, the Full Court determined that an order permanently staying a proceeding as an abuse of process on the basis of *res judicata* or Anshun estoppel is, however, regarded as final.

***J Hutchinson Pty Ltd v Australian Competition and Consumer Commission* [2024] FCAFC 18**

(29 February 2024; Justice Wigney, Justice Bromwich and Justice Anderson)

The Full Court clarified how an anti-competitive ‘*arrangement or understanding*’ is to be interpreted and applied pursuant to section 45E of the *Competition and Consumer Act 2010* (Cth). The primary judge found that there was an arrangement or understanding between the appellants, J Hutchinson Pty Ltd, a construction company, and the Construction, Forestry and Maritime Employees Union (CFMEU), pursuant to which J Hutchinson would cease to acquire waterproofing services from Waterproofing Industries (WPI), a company whose workers were not covered by an Enterprise Bargaining Agreement with the CFMEU. The case involved a threat made by a CFMEU delegate to a J Hutchinson project manager that the CFMEU would ‘*sit the job down if WPI come on site*’; J Hutchinson later terminated its contract with WPI. The primary judge found that the facts supported an inference that the CFMEU and J Hutchinson had entered into an arrangement or arrived at an understanding, noting in particular the parallel and acquiescent conduct of both parties. The Full Court allowed the appeal and dismissed the respondent’s case, finding that it was not open to the primary judge, on the facts, to infer the existence of the arrangement or understanding alleged by the respondent. Their Honours emphasised that parallel or acquiescent conduct alone will be insufficient to establish the existence of an arrangement or understanding.

***Ridge Estate Pty Ltd v Fairfield Pastoral Holdings Pty Ltd* [2024] FCAFC 17**

(23 February 2024; Justice Banks-Smith, Justice O’Sullivan and Justice Feutrill)

Amongst other matters, the Full Court considered whether the removal of a trustee by deed could amount to a fraudulent conveyance (in this case section 86 of the *Law of Property Act 1936* (SA)). At first instance, the primary judge determined multiple causes of action arising out of the breakdown of a business relationship, finding that a deed of appointment and removal of trustee comprised a conveyance made with the intent to defraud creditors. The Full Court varied one order made at first instance, but otherwise dismissed the appeal. It accepted that a trustee with a right of indemnity who has an entitlement to payment out of trust assets may be considered a creditor for the purpose of section 86 of the Act. It also accepted that even if a replaced trustee is eventually paid or may eventually be paid, including by court proceedings, if there has been an intention to hinder or delay the trustee in the assertion of its right of indemnity it may have been defrauded within the meaning of section 86. Special leave has been refused.

Employment & Industrial Relations

About this NPA

The Employment and Industrial Relations (E&IR) NPA comprises civil and criminal proceedings arising under the Fair Work jurisdiction and related legislation including: workplace-related applications, writs of mandamus or prohibition, injunctions, declarations, prosecutions, and proceedings transferred or appealed from the Federal Circuit and Family Court of Australia, other courts or the Fair Work Commission.

National E&IR Coordinating Judges



Justice Rangiah



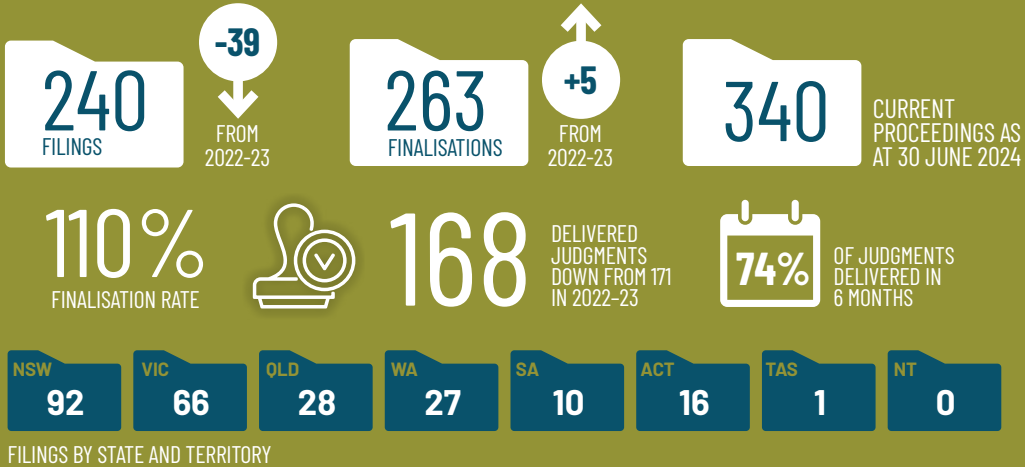
Justice Snaden

Employment and Industrial Relations NPA judges

NSW	VIC / TAS	QLD	SA / NT	WA
Justice Perram	Justice O'Callaghan	Justice Collier	Justice Charlesworth	Justice Banks-Smith
Justice Katzmann	Justice Wheelahan	Justice Logan RFD	Justice O'Sullivan	Justice Colvin
Justice Wigney	Justice Snaden	Justice Rangiah		Justice Jackson
Justice Bromwich	Justice Anderson	Justice Meagher		Justice Feutrill
Justice Lee	Justice McElwaine	Justice Sarah C		
Justice Abraham	Justice McEvoy	Derrington		
Justice Halley	Justice Horan			
Justice Goodman	Justice Dowling			
Justice Raper	<i>Additional Judge:</i>			
Justice Kennett	Justice Murphy			
Justice Shariff				

National Coordinating Registrar Amelia Edwards

E&IR NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

Legislative amendments

Wide-ranging amendments have been made to the *Fair Work Act 2009* (Cth) (FW Act) under the *Closing Loopholes Act 2023* (Cth) and *Closing Loopholes (No 2) Act 2024* (Cth). Amendments particularly relevant to the Federal Court include:

- the 'new' definitions of 'employee' and 'employer' (to undo the tests in *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations v Jamsek* [2022] HCA 2) and a new definition of 'casual employee'
- the criminalisation of wage theft (from 1 January 2025) with penalties of up to 10 years' imprisonment or 5,000 penalty units (\$1.65 million) for individuals and up to 25,000 penalty units (\$8.25 million) for body corporates (or for individuals and body corporates - three times the underpayment amount)
- changes to the test for a serious contravention such that a 'serious contravention' occurs when a person knowingly contravenes the provision and was reckless as to whether the contravention would occur)
- significant increases to the civil penalties by at least five times for certain contraventions of the FW Act (largely contraventions relating to underpayments) such that a body corporate is exposed to a maximum penalty of 15,000 penalty units (\$4.95 million) for a serious contravention of a civil remedy provision (and an individual is exposed to a maximum penalty of 3,000 penalty units (\$990,000) for such a contravention)
- amendments to the sham contracting provisions, such that an employer must have a 'reasonable belief' that a contract was a contract for services
- a new safety net contractual entitlement for labour hire employees, such that where a regulated labour hire arrangement is in place, a labour hire employee is entitled to be paid the same as an employee employed by a regulated employer under a host employment instrument
- new workplace rights, including in relation to workplace delegates' rights and entitlements, the 'right to disconnect', being subject to family and domestic violence', and the 'employee choice' provisions relevant to casual employment
- expansion of the general protections regime to cover adverse action between digital labour platform operators and employee-like workers in various circumstances, and
- new anti-avoidance provisions impacting on the arrangements between employers and regulated hosts (subject to regulated labour hire arrangements (or 'same job same pay' orders) and employers' conduct regarding casual employees (i.e. dismissing employees to engage them as casuals and knowingly making false statements to employees with the intention of persuading them to become a casual).

Amendments have also been made to the:

- *Sex Discrimination Act 1984* (Cth) such that the Australian Human Rights Commission has the power to commence proceedings in the FCA to enforce the positive duty imposed on employers to eliminate, as far as possible, sexual harassment, sex discrimination and other sexist behaviour

- *Work Health and Safety Act 2011* (Cth) such that industrial manslaughter is now an offence, with penalties of up to 25 years' imprisonment for individuals or fines of up to \$18 million in relation to body corporates
- *Safety, Rehabilitation and Compensation Act 1988* (Cth) such that there is now a rebuttable presumption that post-traumatic stress disorder suffered by certain employees was contributed to, to a significant degree, by their employment, and
- *Independent Contractors Act 2006* (Cth) such that applications under that legislation may only be made by an independent contractor if they earn above the 'contractor high income threshold' set out in the FW Act.

Notice to the profession

Toward the end of the 2023–24 financial year, the Court took steps to implement a national General Protections List, designed to extend nationally a similar list that has operated in Victoria since 2019. The purpose of the list (which will commence on a trial basis in September 2024) is to:

- promote consistency and efficiency in the case management of general protections proceedings
- ensure that general protections proceedings are heard in the appropriate court, having regard to any points of principle and the quantum of claims
- ensure that the resources of the Court in relation to mediation are targeted towards the most appropriate proceedings, and
- ensure early and appropriate case management and timetabling of any interlocutory or procedural matters before the proceeding is allocated to a Docket Judge.

Engagement with the profession

In June 2024, Justice Snaden attended a meeting of the Law Council of Australia's Industrial Law Committee and gave a presentation about the work of the Court. Meanwhile, the Court continues to liaise with the profession through the Employment and Industrial Relations NPA User Group, which met in May 2024.

Additionally, the Court held its annual employment law seminar—Current Issues in the Practice of Employment and Industrial Law—on 13 September 2023. Justice Rangiah gave a presentation focused upon the work of the practice area, and other presenters gave short presentations on topics of interest from the Court's premises in Melbourne and Adelaide (broadcast to other locations by video conferencing facilities).

Decisions of interest

Watson v Greenwoods & Herbert Smith Freehills Pty Ltd [2023] FCAFC 132; (2023) 413 ALR 227

(30 August 2023; Justice Moshinsky, Justice Abraham and Justice Raper)

The Full Court in its original jurisdiction clarified the extent of the limited retrospective application of corporate and tax whistleblower regimes.

The applicant, Mr Watson, provided taxation advisory services to Lendlease Corporation Ltd while working as a partner of Greenwoods & Herbert Smith Freehills Pty Ltd (GHSF). Mr Watson claimed that, from 2013, he made protected whistleblower disclosures under part 9.4AAA of the *Corporations Act 2001* (Cth) to senior employees at Lendlease and partners of GHSF in relation to the accuracy of Lendlease's financial statements and its compliance with Australian tax law. Mr Watson claimed to have been subjected to detrimental conduct between 2014 and 2016 on account of his having made those disclosures, including being removed from the Lendlease account, the denial of paid sick leave, reduced remuneration and the termination of his employment with GHSF. Mr Watson sought compensation from GHSF resulting from the detrimental conduct that he alleged that he had suffered.

Justices Moshinsky, Abraham and Raper considered whether the amendments made to each of the *Corporations Act 2001* (Cth) and the *Taxation Administration Act 1953* (Cth), which enhanced whistleblower protections, applied to the detrimental conduct that GHSF was alleged to have engaged in prior to their commencement. Their Honours determined that the amended Act did not apply retrospectively.

Helensburgh Coal Pty Ltd v Bartley [2024] FCAFC 45; (2024) 302 FCR 589

(5 April 2024; Justice Katzmann, Justice Snaden and Justice Raper)

The Full Court considered whether the Fair Work Commission (FWC) had correctly considered whether particular dismissals were cases of 'genuine redundancy' under section 389(1) and the so-called 'unfair dismissal' regime within the *Fair Work Act 2009* (Cth).

Helensburgh Coal entered into two services agreements with different companies in 2018 and 2019 for the supply of independent contractors to supplement its permanent employees at its mining sites. In 2020, Helensburgh Coal made a number of its employees redundant following an economic downturn during the COVID-19 era. Helensburgh Coal maintained its services agreement contracts and the independent contractors were not affected.

Following the retrenchments, 22 of its former employees filed an application for unfair dismissal remedies in the FWC claiming that the dismissals were not a case of 'genuine redundancy' and that Helensburgh Coal Pty Ltd should have reassigned the tasks of the independent contractors back to its employees, rather than making them redundant. At issue was whether redeployment to those contracted roles would have been 'reasonable in all the circumstances' at the point in time when the former employees were made redundant.

The Full Court dismissed the judicial review application, concluding that the FWC had not misunderstood the nature of its jurisdiction, nor what was or was not a 'genuine redundancy' in the circumstances. The Full Court held that, in the circumstances, the FWC was permitted to reason that the employer should have redeployed the affected employees to those positions that were occupied by the independent contractors.

***Construction, Forestry, Maritime, Mining and Energy Union v Fair Work Ombudsman (Cross River Rail Appeal)* [2024] FCAFC 1; (2024) 301 FCR 650**

(29 January 2024; Justice Halley, Justice Goodman and Justice McElwaine)

This was an appeal brought by the Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU) and its employee Mr Dean Lesley Rielly concerning the exercise of a right to enter a worksite at the Brisbane Cross River Rail Construction Project (worksite).

Mr Rielly arrived at the worksite on 1 July 2021 and produced a notice to the employer issued under section 119 of the *Work Health and Safety Act 2011* (Qld). Thereafter, he sought to exercise a right of entry in accordance with Part 3-4 of the *Fair Work Act 2009* (Cth).

The primary judge found that Mr Rielly refused to comply with the employer's reasonable entry requirements at the worksite, specifically by refusing to sign a visitor register and complete an induction. Mr Rielly also failed to comply with reasonable requests not to enter the worksite whilst unaccompanied, to read and obey all safety signs, to not enter a restricted area and to only confine himself to areas suitable for visitors.

The primary judge concluded that he had contravened section 499 of the *Fair Work Act 2009* (Cth), in that he had exercised his right of entry without complying with applicable occupational health and safety requirements. The primary judge imposed a penalty of \$5,500 on Mr Rielly and \$37,500 on the CFMMEU.

On appeal, the Full Court held that Mr Rielly had not exercised his rights unaccompanied, but otherwise upheld the findings of the primary judge.

***Construction, Forestry, Maritime, Mining and Energy Union v Fair Work Ombudsman (The 250 East Terrace Case)* [2023] FCAFC 161; (2023) 299 FCR 334**

(9 October 2023; Justice Charlesworth, Justice Snaden and Justice Raper)

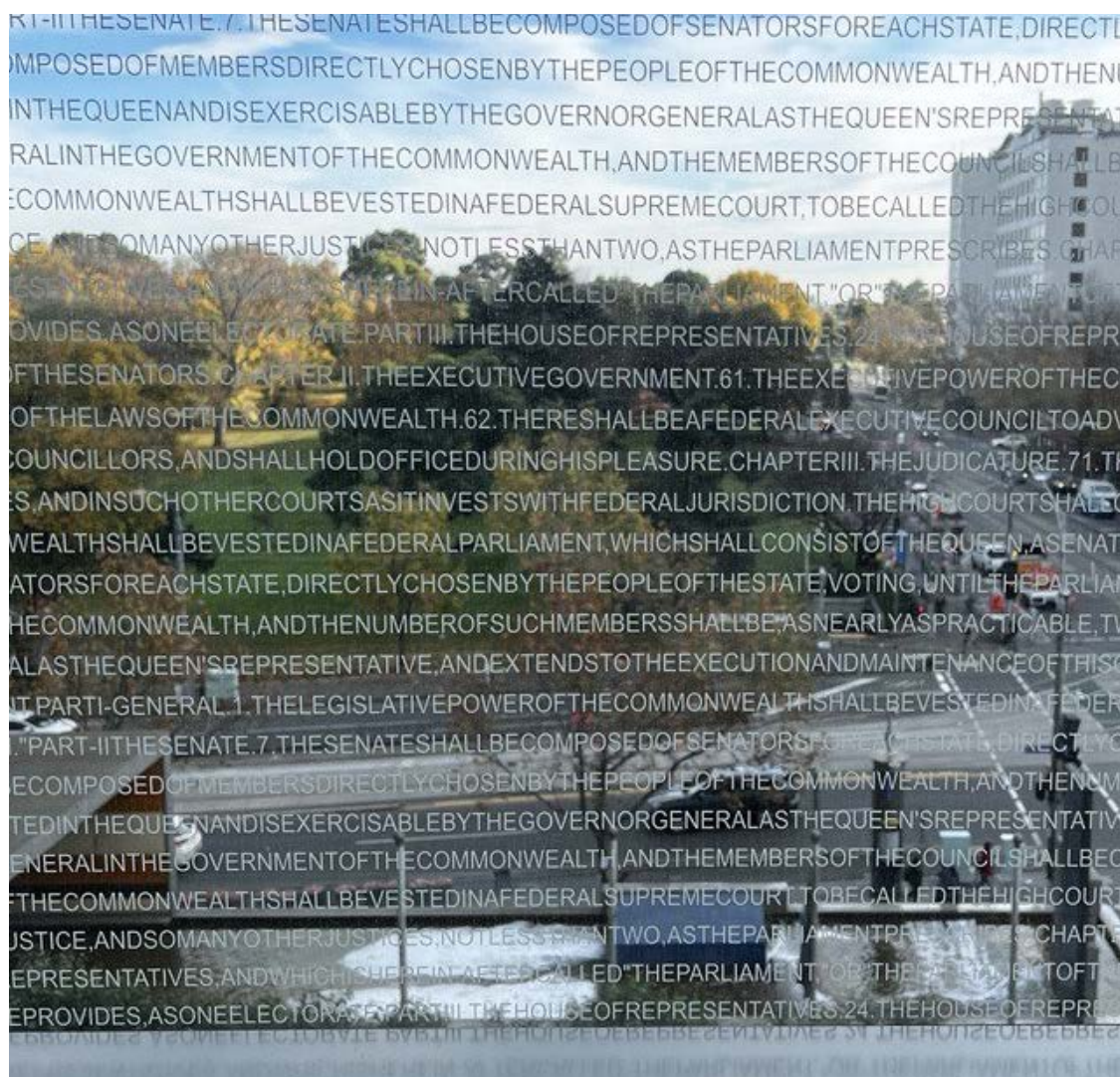
This was an appeal brought by the CFMMEU, the Acting State Secretary of its South Australian Divisional Branch, Andrew Sutherland, a construction contractor known as Core-Form and one of its directors, Mr Andrew Sneath, a Director of Core-Form, a body corporate engaged to perform concreting works at 250 East Terrace, Adelaide (worksite).

The proceeding concerned events that transpired on 16 October 2019 at the worksite. On that day, a crowd including Mr Sneath and Mr Sutherland gathered at the front entrance of the worksite to protest in relation to a dispute that had arisen with the construction principal. Mr Sutherland was wearing union-branded clothing and was in possession of a red union flag. Members of the crowd held up signs with phrases including, 'PAY UR BILLS, STOP RIPPING OFF SUBBIES' and 'JOB DONE, WHERE'S THE MONEY'. Some of the protesters used a megaphone to lead other protesters in various chants, including: 'Pay your bills! Pay your bills! Pay your bills! Pay your bills, Joe!'; 'Sell your Porsche'; 'Sell the car'; and 'What do we want? Bills paid! When do we want it? Now!'. During the course of the protest, there was a brief period during which access to and from the worksite was obstructed.

The primary judge imposed pecuniary penalties of \$189,000 and \$38,000 against the CFMMEU and Mr Sutherland respectively and also imposed a pecuniary penalty on Core-Form and Mr Sneath in the sums of \$132,000 and \$25,000, respectively. The Full Court considered whether the primary judge had failed to distinguish between organising an unlawful picket and engaging in an unlawful picket in assessing the level of seriousness of the conduct engaged in, and whether the picket was unlawfully pre-meditated.

The appellants contended that the pecuniary penalty orders were made in error and contended that the Full Court should exercise its discretion to substantially lower the penalties made against them.

The Full Court dismissed the appeal with costs and found that the pecuniary penalties imposed upon the appellants were, though high, not at a level that traversed beyond what was reasonable; and that the primary judge was entitled to characterise Core-Form's and Mr Sneath's conduct as objectively serious in the context of the picket. In so concluding, the Full Court was concerned to reaffirm the primacy of deterrence as a consideration informing appropriate penalties, and the significance of a wrongdoer's history of statutory contravention as a determinant of what deterrence might require.



Federal Crime & Related Proceedings

About this NPA

The Federal Crime and Related Proceedings NPA comprises summary prosecutions, prosecutions on indictment, criminal appeals, bail applications and empaneling juries for criminal cartel trials, and civil proceedings related to confiscating assets under the *Proceeds of Crime Act 2002* (Cth) where the Federal Court is conferred with a criminal jurisdiction.

National FCRP Coordinating Judges



Justice Bromwich



Justice Abraham

Federal Crime and Related Proceedings NPA judges

ALL STATES AND TERRITORIES

Justice Rangiah
Justice Wigney
Justice Bromwich

Justice Lee
Justice Colvin
Justice Thawley

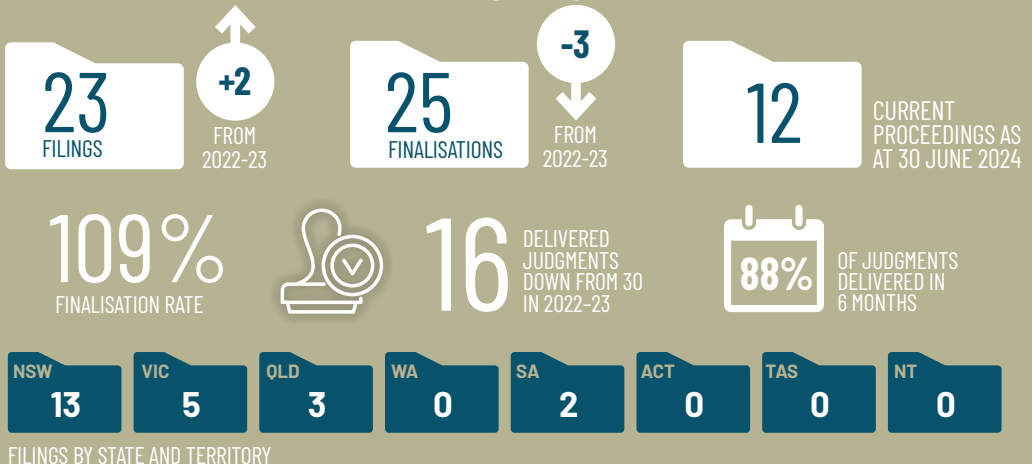
Justice Anderson
Justice Abraham
Justice Downes

Justice O'Sullivan
Justice Kennett
Justice Horan

Justice Shariff
Additional Judge:
Justice Hespe

National Coordinating Registrars Jodie Burns and Alicia Ditton

FCRP NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

Since 2009, the Court has had jurisdiction in relation to indictable offences for serious cartel conduct, together with summary prosecutions and criminal appeals for a narrow range of offences.

On 11 June 2024, Royal Assent was given to the *Attorney-General's Portfolio Miscellaneous Measures Act 2024* which provided a pivotal milestone in the Court's history, conferring jurisdiction on the Court to hear and determine a range of summary and indictable offences relating to conduct within the regulatory remit under the ASIC Act, the *Corporations Act 2001*(Cth), the *National Consumer Credit Protection Act 2009*(Cth)(NCCP Act) and the *Superannuation Industry (Supervision) Act 1993*(Cth).

The Court has also been conferred jurisdiction to hear and determine a selection of indictable offences in the *Criminal Code* (Cth)(Criminal Code), including money laundering and accounting record offences. To support the expanded jurisdiction, the FCA Act has been amended to enable the Sheriff of the Court to request a state or territory jury official to prepare and provide a jury panel for use by the Court in a jury trial.

The Court now has wide-ranging jurisdiction for federal 'white-collar' criminal offences and is equipped for future jury trials with purpose-built

jury courtrooms, including a new courtroom in the New South Wales Registry (pictured) with an e-trial setup allowing evidence to be electronically presented to jurors.

Decisions of interest

***Carr v Attorney-General (Cth)*[2023] FCA 1500; (2023) 300 FCR 562**

(30 November 2023; Justice Abraham)

Justice Abraham made a declaration with respect to the meaning of suicide in sections 474.29A and 474.29B of the Criminal Code and its application to conduct undertaken in accordance with the *Voluntary Assisted Dying Act 2017*(Vic)(VAD Act). Her Honour declared that 'suicide' as used in sections 474.29A and 474.29B of the Criminal Code does apply to the ending of a person's life in accordance with, and by the means authorised by, the VAD Act and Voluntary Assisted Dying Regulations 2018 (Vic).

Her Honour noted that insofar as the VAD Act purports to authorise medical practitioners to provide information about particular methods of suicide, via a carriage service, it purports to authorise them to engage in conduct that the Criminal Code criminalises. Her Honour found there was a direct inconsistency between the VAD Act and the Criminal Code and that the VAD Act is inoperative to the extent of the inconsistency.





***Walker v Members Equity Pty Ltd (formerly Members Equity Bank Ltd)* [2024] FCA 15**

(19 January 2024; Justice Bromwich)

Members Equity Pty Ltd formerly known as Members Equity Bank Ltd (ME Bank) had pleaded guilty to four summary strict liability offences (one offence contrary to sections 12DB(1)(g) and 12GB(1) of the ASIC Act, one offence contrary to sections 64(1) of the NCCP Act and two offences contrary to 65(1) of the NCCP Act). The offences related to ME Bank's communications between 2016 to 2018 to home loan customers that included false or misleading representations about the price of financial services and failures to advise customers of changes to interest rates and minimum repayment amounts when their previous repayment arrangements were due to expire. Justice Bromwich convicted ME Bank on all four charges and ordered the payment of fines totalling \$820,000.

***Commonwealth Director of Public Prosecutions v Bingo Industries Pty Ltd; Commonwealth Director of Public Prosecutions v Tartak* [2024] FCA 121; and *Commonwealth Director of Public Prosecutions v Aussie Skips Bin Services Pty Ltd; Aussie Skips Recycling Pty Ltd; Roussakis* [2024] FCA 122**

(23 February 2024; Justice Wigney)

Bingo Industries Pty Ltd (Bingo) pleaded guilty to two criminal cartel offences (one offence contrary to section 45AF(1) and one offence contrary to section 45AG(1) of the *Competition and Consumer Act 2010* (Cth) and Aussie Skips Bin Services Pty Ltd and Aussie Skips Bins Recycling Pty Ltd (together,

Aussie Skips) pleaded guilty to one count each under section 45AF(1) of the *Competition and Consumer Act 2010* (Cth) in relation to fixing the price of collection services and processing services that the companies provided to their customers.

Justice Wigney convicted both Bingo and Aussie Skips and ordered them to pay a total fine of \$30,000,000 and \$3,500,000 respectively. Mr Tartak (former CEO of Bingo) pleaded guilty to two counts of aiding, abetting, counselling or procuring Bingo's offences. Justice Wigney convicted Mr Tartak and ordered him to pay a total fine of \$100,000; serve a term of imprisonment for 18 months to be served by way of intensive correction in the community (with conditions that he must not commit an offence; submit to supervision by a community corrections officer and perform community service work for 400 hours) and be disqualified from managing corporations for a period of five years.

Mr Roussakis (former CEO of Aussie Skips) pleaded guilty to one count of aiding, abetting, counselling or procuring Aussie Skip's offences. Justice Wigney convicted Mr Roussakis and ordered him to pay a fine of \$75,000; serve a term imprisonment for 18 months to be served by way of intensive correction in the community (with conditions that he must not commit an offence; submit to supervision by a community corrections officer and perform community service work for 300 hours) and be disqualified from managing corporations for a period of five years.

Intellectual Property

About this NPA

The Intellectual Property National Practice Area (NPA) consists of three national practice sub-areas (NPSAs), with judges aligned to each of the different sub-areas based on their specialised judicial skills:

- Copyright and Industrial Design (COPY)
- Patents and Associated Statutes (PATNS)
- Trade Marks (TM).

National IP Coordinating Judges



Justice Nicholas



Justice Yates



Justice Burley

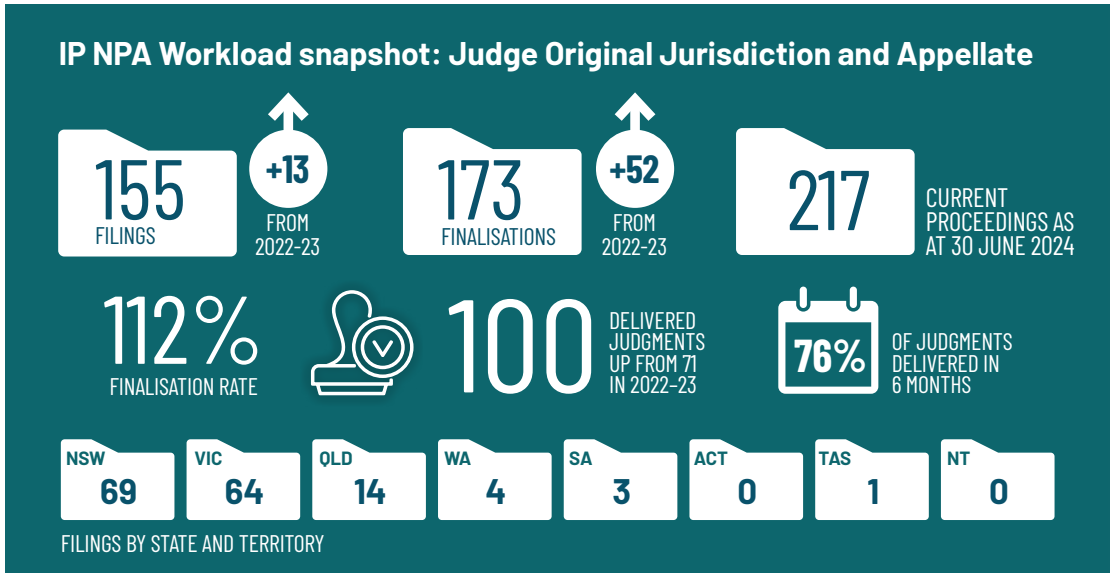


Justice Rofe

IP NPA Coordinating Judges

	NSW & ACT	VIC & TAS	QLD	SA & NT	WA
IP: COPY	Justice Perram Justice Nicholas Justice Yates Justice Katzmann Justice Burley Justice Halley Justice Cheeseman Justice Raper Justice Kennett Justice Jackman Justice Shariff	Justice Beach Justice Wheelahan Justice O'Bryan Justice Anderson Justice Rofe Justice Hespe Justice Button Justice Neskovicin	Justice Derrington Justice Downes Justice Meagher	Justice Charlesworth Justice O'Sullivan	Justice Jackson Justice Feutrill
IP: PATNS	Justice Perram Justice Nicholas Justice Yates Justice Burley Justice Jackman	Justice Beach Justice Moshinsky Justice O'Bryan Justice Rofe	Justice Downes	Justice Charlesworth Justice O'Sullivan	Justice Jackson
IP: TM	Justice Nicholas Justice Yates Justice Katzmann Justice Markovic Justice Bromwich Justice Burley Justice Lee Justice Stewart Justice Halley Justice Cheeseman Justice Goodman Justice Raper Justice Kennett Justice Jackman	Justice Beach Justice Moshinsky Justice O'Callaghan Justice Wheelahan Justice O'Bryan Justice Anderson Justice Rofe Justice Hespe Justice Button Justice Neskovicin Justice Dowling	Justice Rangiah Justice Derrington Justice Downes Justice Meagher	Justice Charlesworth Justice O'Sullivan	Justice Colvin Justice Jackson Justice Feutrill

National Coordinating Registrar Susan O'Connor



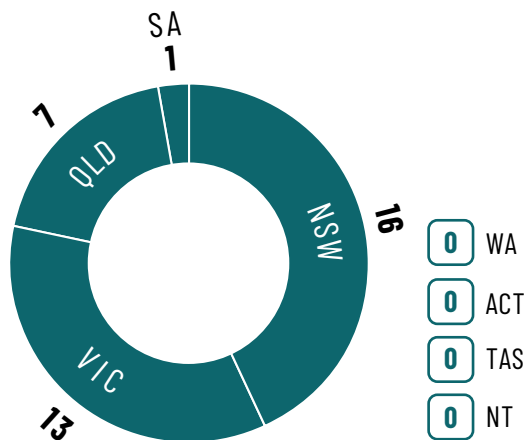
Intellectual Property NPSAs

Copyright and Industrial Design NPSA

This NPSA includes proceedings relating to:

- copyright disputes concerning works such as books, computer programs, architectural drawings, musical and artistic works and other subject matter such as films and sound recordings
- design disputes concerning the distinctive shape, configuration, pattern or ornamentation of products in an industrial or commercial context, and
- other disputes, including circuit layout disputes concerning layout designs for integrated circuits and computer chips.

Figure 3.16: Copyright and industrial design filings by state and territory

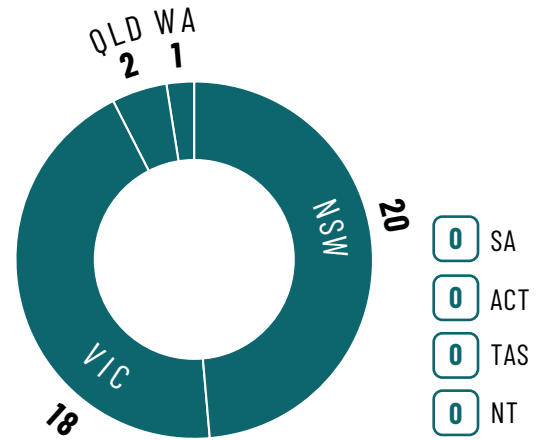


Patents and Associated Statutes NPSA

This NPSA includes proceedings relating to:

- patent disputes concerning the exclusive right to commercially exploit inventions (inventive devices, substances, methods or processes)
- other disputes, including disputes concerning plant breeder's rights in new and distinct varieties of plants, and
- appeals from the Commissioner of Patents.

Figure 3.17: Patents and associated statutes filings by state and territory

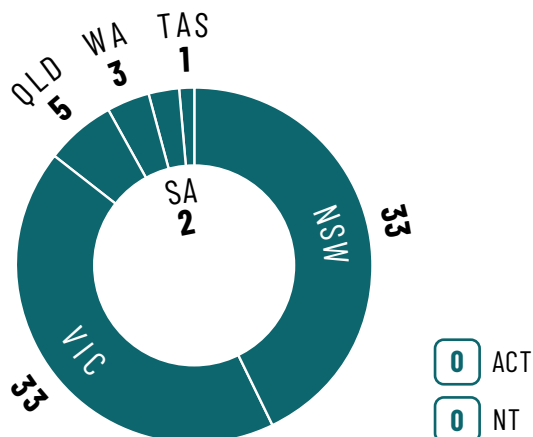


Trade Marks NPSA

This NPSA includes proceedings relating to:

- any trade mark dispute, with respect to validity of a trade mark and/or distinguishing goods and services (including in respect of a letter, number, word, phrase, sound, smell, shape, logo, picture and packaging)
- 'geographical indication' disputes involving a geographical indication or order term signifying a related attribute of goods, and
- an appeal from a decision of the Registrar of Trade Marks.

Figure 3.18: Trade marks filings by state and territory



Report from National Coordinating Judges

The Court has jurisdiction to hear a range of disputes concerning matters such as patents, trade marks, copyright, designs, circuit layouts, plant breeder's rights and appeals from the Commissioner of Patents or Registrar of Trade Marks. There have been no significant legislative amendments relevant to the Intellectual Property NPA, nor any amendments to the Court's jurisdiction in 2023-24.

The Court has continued its engagement with the legal profession, hosting several informative events for practitioners. On 15 May 2024, Justices Burley and Rofe were joined by Senior National Judicial Registrar Legge and Adrian Ryan SC to host a seminar titled 'The Bar & Bench: Efficient management of intellectual property disputes'. The seminar provided practitioners with strategies to streamline disputes in the NPA to enhance the efficient adjudication of matters.



Decisions of interest

Jusand Nominees Pty Ltd v Rattlejack Innovations Pty Ltd [2023] FCAFC 178; (2023) 300 FCR 408

(13 November 2023; Justice Perram, Justice Nicholas and Justice McElwaine)

The Full Court considered the current law on sufficiency and support following the enactment of *Intellectual Property Laws Amendment (Raising the Bar) Act 2012* (Cth). In considering the requirements of support and sufficiency, the Full Court noted that one of the statutory intentions of the Act was to align Australian law on sufficiency and support with that of the United Kingdom and Europe. In interpreting the requirement under Australian law, their Honours carefully examined jurisprudence from the United Kingdom.

For sufficiency, the Court expressed that, with respect to a product claim, a relevant inquiry would commence with the invention as it is claimed, but the inquiry can extend into the invention's essence or core. An assessment of that essence or core is likely to include a consideration of the patent's technical contribution to the art and may involve an assessment of what it is that makes the invention inventive.

Their Honours considered that the sufficiency analysis could, in this case, also apply for the support analysis, as they were 'two sides of the same coin'. The appeal was dismissed, with the Full Court finding that the patent was invalid as the specification of the patent disclosed the invention in a manner which was not clear enough and complete enough for the invention to be performed by a person skilled in the relevant art.

RB (Hygiene Home) Australia Pty Ltd v Henkel Australia Pty Ltd [2024] FCAFC 10; (2024) 302 FCR 285

(16 February 2024; Justice Nicholas, Justice Burley and Justice Hesse)

The Full Court considered what constitutes 'use as a trade mark', particularly with respect to shape trade marks.

The Court disagreed with the primary judge and held that the display of certain shape marks in a two-dimensional format on the packaging of a product constituted use of a shape mark as a trade mark.

Australian Mud Company Pty Ltd v Globaltech Corporation Pty Ltd (No 5) [2024] FCA 58

(20 February 2024; Justice Besanko)

Justice Besanko held that a patentee can make a split election between damages or an account of profits in relation to different instances of patent infringements.

His Honour held that, absent leading authority, the general principle that each infringement is a separate cause of action in respect of which the applicant has a right of election determines this issue. An applicant is entitled to exercise that right in a way that best suits its interests. It is not bound to exercise the election in a way that mitigates loss to the infringer.

Redbubble Ltd v Hells Angels Motorcycle Corporation (Australia) Pty Limited [2024] FCAFC 15; (2024) 303 FCR 100

(23 February 2024; Justice Perram, Justice Nicholas, Justice Burley, Justice Rofe and Justice Downes)

The Full Court clarified the scope of nominal damages, finding that a sum of \$8,250 could not constitute nominal damages in relation to trade mark infringement. The Court clarified that nominal damages are token sums which must be small.

Their Honours also set aside an order in the sum of \$70,000 for additional damages on the basis that the damages were not capable of deterring the appellant from infringing the trade marks, due to lack of current technology that can identify whether a design is identical or similar to another trade mark. In effect, the appellant was unable to restrain users from uploading deceptively similar or identical images to its website.

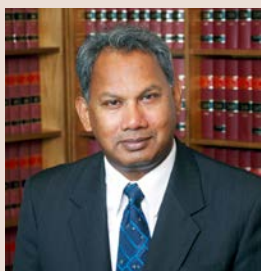
The Court also considered whether an injunction could be appropriately formulated to restrain the appellant from continuing its infringing acts. In particular, it was considered whether general or targeted language was required for the injunction.

Native Title

About this NPA

The Native Title NPA includes applications relating to: native title claims concerning the rights and interests of Aboriginal and Torres Strait Islander peoples to land and waters according to their traditional laws and customs, including determinations, 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; reviews or appeals from decisions of the National Native Title Tribunal; and matters arising under or in relation to any Indigenous Land Use Agreement or other agreement made under the *Native Title Act 1993* (Cth), or concerning a Prescribed Body Corporate (which holds or manages native title under the Act).

National NT Coordinating Judges



Justice Rangiah



Justice Charlesworth



Justice Banks-Smith

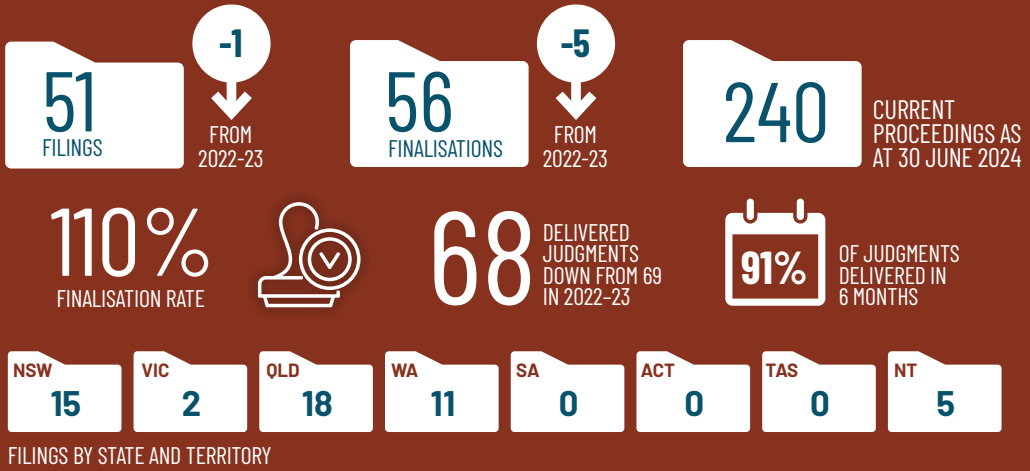
Native Title NPA judges

ALL STATES AND TERRITORIES

Justice Collier	Justice Moshinsky	Justice Banks-Smith	Justice Abraham	Justice Kennett
Justice Murphy	Justice Charlesworth	Justice Colvin	Justice Halley	Justice Horan
Justice Rangiah	Justice Burley	Justice Stewart	Justice Cheeseman	Justice Shariff
Justice Wigney	Justice Sarah C	Justice O'Bryan	Justice McEvoy	
Justice Perry	Derrington	Justice Jackson	Justice Raper	

National Coordinating Registrar Nicola Colbran

NT NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Darumbal Consent Determination

Report from National Coordinating Judges

Significant litigation and outcomes

On 14 August 2023, the Full Court handed down judgment in *Stuart v State of South Australia* [2023] FCAFC 131; (2023) 299 FCR 507; (2023) 412 ALR 407.

The Full Court considered two appeals from orders made on overlapping native title claims brought by the Arabana people and the Walka Wani people. The primary judge dismissed the Arabana claim and made a determination of native title in favour of the Walka Wani people. The Full Court allowed the appeal brought by the State of South Australia and made orders dismissing the Walka Wani originating applications. The proceeding will be heard by the High Court in August 2024 following a grant of special leave in February 2024.

In December 2023, the Full Court dismissed the appeals brought by the Clermont Belyando and Jangga #3 applicants. The appeals were from the judgment *Malone v State of Queensland (The Clermont-Belyando Area Native Title Claim)* (No 5) [2021] FCA 1639; (2021) 397 ALR 397, where the primary judge found that there is no native title in the claim area.

Chief Justice Mortimer delivered nine section 87A native title determinations in the Cape York United #1 proceeding during the reporting period. The determinations delivered on 5 and 6 July 2023 recognise native title rights and interests of the

Taepithiggi, Weipa Peninsula, Central West Wik and Umpila Peoples, while the determinations delivered on 2 November 2023 recognise native title rights and interests of the Wik and Wik Way, Possum, Thaypan, Kuku Warra and Atambaya Peoples.

The McArthur River Project Compensation Claim was heard in Borroloola and Darwin in June and November 2023. This compensation application focuses in particular on the entitlement to compensation for the grant, validation and re-grant of mineral titles and the authorisation of mining activities. Justice Banks-Smith has reserved judgment.

Engagement with the profession

The Native Title Unit has continued to engage with third-party stakeholders, including by hosting a Native Title User Group meeting for Northern Territory practitioners, presenting at and attending conferences, such as the AIATSIS conference, participating in working groups, such as the preservation of evidence working group, and hosting lunchtime education sessions for young lawyers.



Huckitta Consent Determination

Taxation

About this NPA

The Taxation NPA includes proceedings relating to tax appeals pursuant to Part IVC of the *Taxation Administration Act 1953* from decisions made by the Commissioner of Taxation; questions of law and taxation on appeal from the Administrative Appeals Tribunal; and any recovery or other proceeding collateral to a tax dispute.

National TAX Coordinating Judges



Justice Thawley



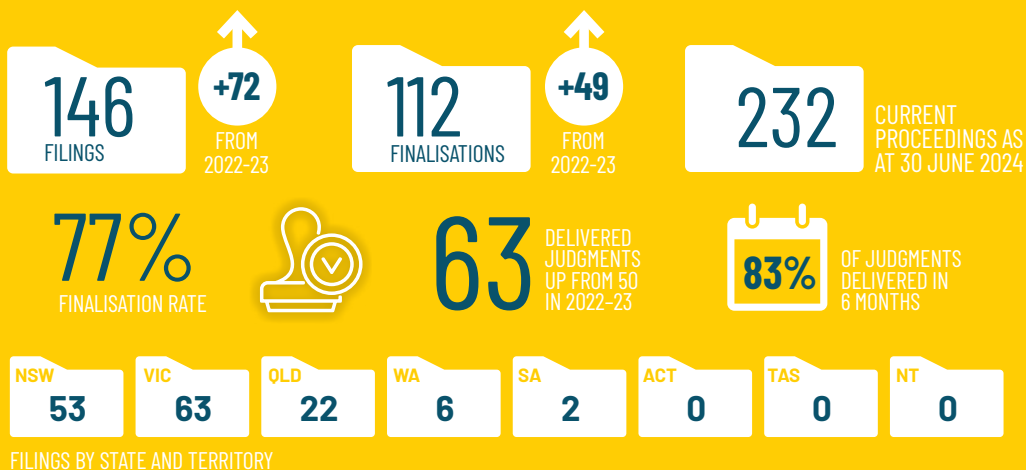
Justice Hespe

Taxation NPA judges

NSW	VIC / TAS	QLD	SA / NT
Justice Perram	Justice Moshinsky	Justice Logan RFD	Justice Charlesworth
Justice Wigney	Justice O'Callaghan	Justice Derrington	Justice O'Sullivan
Justice Perry	Justice Wheelahan	Justice Downes	Western Australia
Justice Bromwich	Justice McElwaine		Justice Colvin
Justice Thawley	Justice McEvoy		Justice Feutrill
Justice Abraham	Justice Hespe		
Justice Goodman	Justice Button		
Justice Kennett	Justice Horan		
Justice Jackman	Justice Neskovicin		

National Coordinating Registrar Robyn Curnow

TAX NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

Legislative amendments

The *Treasury Laws Amendment (Tax Accountability and Fairness) Act 2024* (Cth) received royal assent on 31 May 2024. This Act amends the *Tax Agent Services Act 2009* (Cth) and *Taxation Administration Act 1953* (Cth) to expand the operation of the promoter penalty provisions, including by:

- increasing the time the Commissioner can apply to the Federal Court of Australia for an order that an entity has contravened the promoter penalty laws from four years to six years from the time the alleged conduct was last engaged in
- significantly increasing the maximum penalty that can be imposed on bodies corporate for breaches of the promoter penalty laws from the greater of:
 - a) 25,000 penalty units, or
 - b) twice the consideration received or receivable (directly or indirectly by the entity and associates of the entity in respect of the scheme to the greatest of:
 - i) 50,000 penalty units
 - ii) three times the benefits received or receivable (directly or indirectly) by the entity and associates of the entity in respect of the scheme, or
 - iii) 10% of the aggregated turnover of the entity for the most recent income year ending before the relevant breach occurred (capped at 2.5 million penalty units), and

- extending the civil penalties that can be applied to bodies corporate to Significant Global Entities (SGEs).

Extending the penalty provisions to SGEs is intended to include large partnerships and trusts. It is also intended that bodies corporate that engage in conduct that contravenes the promoter penalty provisions in their capacity as trustee are captured by the provisions.

Engagement with the profession

Justice Horan, Justice Hespe and Justice Moshinsky attended the Victorian Bar Tax Bar Association Annual Dinner in Melbourne on 25 October 2023. Justice Moshinsky delivered the after-dinner speech at this event.

Justice Hespe presented a paper entitled 'Background and History of Administrative Review to Put the Future in the Context of the Past' at a Continuing Professional Development seminar hosted by the Federal Court of Australia and the Whitlam Institute entitled *A New System of Federal Administrative Review* on 15 March 2024. The paper was also published in the Special Issue, *Australian Journal of Administrative Law* (Volume 31/1 2024).

Justice Hespe presented as part of a panel discussion on the topic 'Case preparation and management in complex and international tax disputes' at an event co-hosted by the Federal Court of Australia and the International Fiscal Association (Australian Branch) on 2 May 2024.

Decisions of interest

Simplot Australia Pty Limited v Commissioner of Taxation [2023] FCA 1115

(22 September 2023; Justice Hespe)

Justice Hespe considered whether six frozen food products were foods of a kind specified in the table in clause 1 of Schedule 1 to *A New Tax System (Goods and Services Tax) Act 1999* (Cth). A supply of 'food' is not GST free if it is of a kind specified in this table. Justice Hespe dismissed the application on the basis that:

- the focus of item 4 of Schedule 1 was on how foods were marketed and not on how they were consumed
- each of the frozen food products in issue was food of a kind that was marketed as a prepared meal, and
- the form of packaging was not determinative of whether a food was of a kind marketed as a prepared meal.

Minerva Financial Group Pty Ltd v Commissioner of Taxation [2024] FCAFC 28; (2024) 302 FCR 52

(8 March 2024; Justice Besanko, Justice Colvin and Justice Hespe)

The Full Court considered the application of Part IVA of the *Income Tax Assessment Act 1936* (Cth) (ITAA36) to the non-exercise by a Trustee of a discretion to make distributions to a unit holder in a trust that formed part of a stapled structure. The taxpayer was a member of a group of companies and trusts that carried on a financial services business known as 'Liberty Financial'. Relevant to the appeal, the Commissioner had made a determination under Part IVA to include an amount in the taxpayer's assessable income on the basis that, during the tax years ended 30 June 2012 to 30 June 2015, the taxpayer entered into or carried out a scheme for the dominant purpose of obtaining a tax benefit.

The Full Court unanimously held that Part IVA did not apply to any of the schemes identified by the Commissioner. The Court considered each of the eight factors in section 177D(2) of the ITAA36 and concluded that, viewed holistically, they did not support an objective conclusion that any party entered into or carried out the schemes identified by the Commissioner for the dominant purpose of enabling the taxpayer to obtain a tax benefit.

The Full Court confirmed that none of the factors in section 177D(2) involved a consideration of the subjective purpose or motive of any party to the scheme.

Mylan Australia Holding Pty Ltd v Commissioner of Taxation (No 2) [2024] FCA 253

(20 March 2024; Justice Button)

Justice Button considered the application of the general anti-avoidance rules in Part IVA of the ITAA36 to the funding arrangements associated with an intragroup financing structure which involved a 'debt pushdown' (being the allocation of group debt to the Australian target subsidiary), undertaken as part of a global acquisition. By determinations issued under section 177F of the ITAA36 the Commissioner disallowed the taxpayer's deductions for interest expenses and consequential carry forward losses in respect of the acquisition.

Justice Button held that Part IVA did not apply to the financing arrangements in question, because the taxpayer had demonstrated that, based on a consideration of the factors set out in section 177D, assessed objectively, no party had entered into or carried out the relevant arrangements for the dominant purpose of obtaining such a tax benefit.

PepsiCo, Inc v Commissioner of Taxation [2024] FCAFC 86; (2024) 303 FCR 1

(26 June 2024; Justice Perram, Justice Colvin and Justice Jackman)

The Full Court considered whether a component of payments made by an Australian company (Schweppes Australia Pty Ltd, the Bottler) under exclusive bottling agreements (EBAs) with two US beverage companies were royalties that triggered a withholding tax liability (RWHT), and in the alternative, would have been subject to diverted profits tax.

The Full Court allowed the taxpayers' appeals. The majority dismissed the Commissioner's contention that the relevant provisions of the EBAs included a price component for the Bottler's contractual entitlement to use the relevant intellectual property. While Justice Colvin dissented on this point, he joined the majority in finding that the taxpayers did not derive any income as a result of the payments under the EBAs, with the effect that the RWHT provisions could not apply. Justices Perram and Jackman also found that the taxpayers did not obtain a tax benefit in relation to the scheme because the taxpayer had demonstrated that there was no reasonable alternate postulate that would have resulted in the payments made by the taxpayer being subject to RWHT. Justice Colvin dissented on this issue.

Other Federal Jurisdiction

About this NPA

The Other Federal Jurisdiction NPA is designed to deal with proceedings that do not come within the Court's other NPAs. This NPA has one sub-area, being the Defamation sub-area. Other categories of proceedings which fall within this NPA are election-related disputes, civil aviation claims, telecommunications matters, and general negligence claims. This list is not by any means exhaustive. If the Court has jurisdiction but the matter does not fall within one of the eight NPAs, the matter will be managed within this NPA.

Other Federal Jurisdiction Sub-area

Defamation Sub-area National Coordinating Judges



Justice Lee



Justice Wheelahan

Defamation NPSA judges

ALL STATES AND TERRITORIES

Justice Perram	Justice O'Callaghan	Justice Snaden	Justice O'Sullivan
Justice Katzmann	Justice Lee	Justice Anderson	Justice McElwaine
Justice Rangiah	Justice Derrington	Justice Abraham	Justice McEvoy
Justice Wigney	Justice Sarah C Derrington	Justice Halley	Justice Raper
Justice Bromwich	Justice Colvin	Justice Cheeseman	Justice Button
Justice Charlesworth	Justice Wheelahan	Justice Downes	

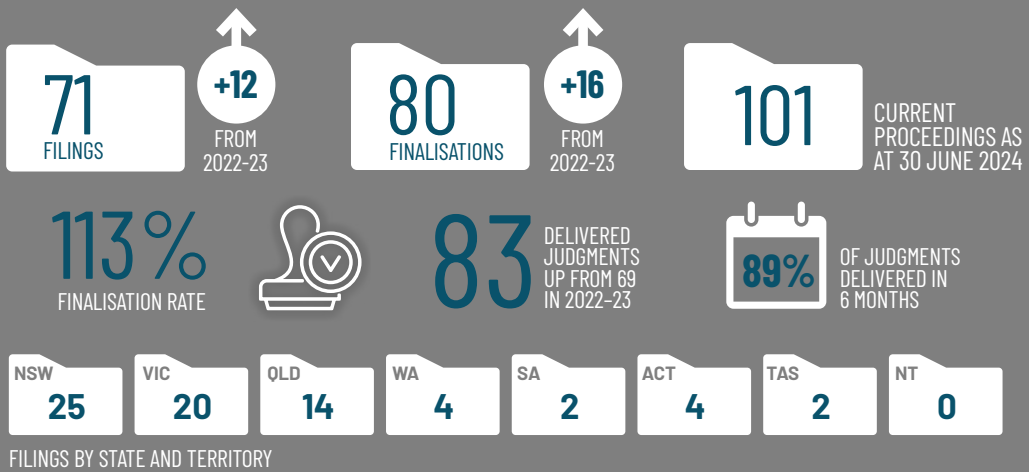
Other Federal Jurisdiction NPA judges (excluding Defamation NPSA)

ALL STATES AND TERRITORIES

All judges

National Coordinating Registrar Paul Farrell

OTHER NPA Workload snapshot: Judge Original Jurisdiction and Appellate



Report from National Coordinating Judges

Defamation proceedings make up an appreciable amount of the Court's caseload. These proceedings often attract the interest of the media and the public at large.

Twenty-four of the Court's judges are assigned to the Defamation NPSA and all of the Court's judges can receive proceedings in this NPA, which are not defamation cases. The National Coordinating Judges for the Defamation sub-area confer regularly with members of the legal profession about the Court's practice and procedure. These communications include User Group meetings, which involve discussion of a range of issues including the workload of the Court and the disposition of proceedings, case management procedure, and policy and practice. The next meeting of the Defamation User Group is due to be held in the second half of 2024.

The Court has published a practice note for the Defamation sub-area. In general terms, practice notes are issued by the Court 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. There were no changes to the Defamation Practice

Note (DEF-1) in the reporting period. Given the broad ambit of the Other Federal Jurisdiction NPA, practice notes for other specific sub-areas will be developed and introduced as necessary.

Access to court hearings and documents

The Court regularly livestreams hearings in proceedings of particular public interest, so that members of the media and the public can observe remotely. This recently occurred in the *Lehrmann v Network Ten Pty Ltd & Anor* proceeding as well as the hearing of the appeal by the Full Court in *Roberts-Smith v Fairfax Media Publications Pty Ltd & Ors*.

The Court also often establishes an online file in proceedings of significant public interest, in which all the accessible documents are published. This removes the requirement for individual applications to the Court's Registry and enables members of the public (and media) to have easy and quick access to case documents. Online files are regularly created in Other Federal Jurisdiction NPA proceedings, particularly in defamation proceedings. Recent examples of this are the *Roberts-Smith* litigation (at first instance and on appeal), the *Deeming v Pesutto* proceeding, and the *Greenwich v Latham* proceeding.

The Court continues to embrace and develop the use of technology in its interactions with parties, practitioners, journalists and the general public.

Assisted dispute resolution

Assisted dispute resolution (ADR) is a critical part of the efficient resolution of litigation in the Court, with proceedings routinely referred to some form of ADR. In addition to providing a forum for the potential settlement of proceedings, mediation is an integral part of the Court's case management process. Most Court-ordered mediations are conducted by registrars who are all trained and accredited mediators.

ADR often has particular importance in defamation proceedings which involve individual litigants, because the settlement of a proceeding usually avoids the need for an expensive and public hearing of personal matters. For this reason, parties often reach an agreed settlement in defamation proceedings. In the 2023-24 reporting period, more than 50 per cent of proceedings filed in the Other Federal Jurisdiction NPA were referred to a registrar of the Court for mediation.

Decisions of interest

***Hanson v Burston* [2023] FCAFC 124; (2023) 413 ALR 299**

(16 August 2023; Justice Wigney, Justice Wheelahan and Justice Abraham)

The Full Court allowed an appeal holding that Senator Pauline Hanson had not actionably defamed Senator Brian Burston. Before the primary judge, Mr Burston alleged that Ms Hanson made three publications containing eight allegedly defamatory imputations. The primary judge found that the publications had conveyed two of these imputations: namely, that Mr Burston sexually abused a female staffer in his parliamentary office (fourth imputation), and that Mr Burston physically assaulted Mr James Ashby in the Great Hall of Parliament House without provocation (sixth imputation). The primary judge held that a defence of substantial truth was not established in respect of either the fourth imputation or the sixth imputation. The Full Court found that although the appellant established that the fourth imputation was carried, the defence of substantial truth was established. The Full Court also found that the sixth imputation was not carried.

***Russell v Australian Broadcasting Corporation (No 3)* [2023] FCA 1223**

(16 October 2023; Justice Lee)

A former commander of special forces 'November Platoon' commenced defamation proceedings against the Australian Broadcasting Corporation and two journalists (Respondents) claiming that they published various imputations concerning conduct of the platoon in Afghanistan.

Justice Lee considered the new public interest defence in section 29A of the *Defamation Act 2005* (NSW) and found that the respondents did not establish this defence. Justice Lee awarded general damages of \$390,000 but refused to award aggravated damages.

***Palmanova Pty Ltd v Commonwealth of Australia* [2023] FCA 1391**

(14 November 2023; Justice Perram)

Palmanova Pty Ltd commenced proceedings against the Commonwealth of Australia after an artefact, made from black basalt, purchased online for USD\$17,340.00 around 2020 from the Artemis Gallery in Colorado (Artefact), had been intercepted upon its entry into Australia by Australian customs officials and retained by them. After its interception the Commonwealth Office for the Arts considered whether it should be seized under the provisions of the *Protection of Movable Cultural Heritage Act 1986* (Cth) (Act).

Palmanova sought orders that the Artefact not be forfeited. The parties accepted that a Bolivian statute of 1906 prohibited export of cultural objects from ruins of Tiwanaku or Lake Titicaca and that the Commonwealth had the legal onus of proving, on the balance of probabilities, that section 14(1) of the Act was enlivened. Justice Perram found that the Artefact was from Tiwanaku and therefore part of the movable cultural heritage of Bolivia and was removed after 1906 when it became illegal to do so. Justice Perram considered whether the Act applied to objects removed from a foreign country prior to the date of commencement of the Act, being 1 July 1987, and rejected the Commonwealth's position that '*has been exported*' in section 14(1)(a) of the Act means '*was exported*' and could include any export which occurred before date of commencement. Justice Perram held it not necessary to choose, on the facts, whether '*has been exported*' in section 14(1)(a) of the Act required an act of exportation to

occur on or after the date of commencement or to be sufficiently connected to an import occurring on or after the date of commencement and found that section 14(1) of the Act did not apply because the Artefact was exported by the 1950s and the act of importation was entirely disconnected from act of exportation.

The Commonwealth of Australia appealed the decision on the grounds that Justice Perram erred in rejecting construction that section 14(1)(a) of the Act could include acts of exportation which occurred before date of commencement and erred in construing section 14(1)(a) of the Act to require acts of exportation to occur after date of commencement or be sufficiently connected to import occurring on or after date of commencement. On 5 July 2024, the Full Court delivered judgment in *Commonwealth of Australia v Palmano Pty Ltd* [2024] FCAFC 90. A majority of the Full Court (Justices Banks-Smith and Abraham, Justice Downes dissenting) allowed the appeal, ordered that Palmano pay the Commonwealth's costs and declared that the Artefact was liable to forfeiture under section 14(1) of the Act and that the Artefact was forfeited.

Lehrmann v Network Ten Pty Ltd [2024] FCA 369

(15 April 2024; Justice Lee)

Mr Bruce Lehrmann commenced defamation proceedings against Network Ten and Ms Lisa Wilkinson claiming televised and online publications contained imputations that included that he raped Ms Brittany Higgins in Parliament House in 2019.

Justice Lee found that Mr Lehrmann was identified in the publication, that the imputations were conveyed and that the defamatory sting of each imputation was that Mr Lehrmann raped Ms Higgins in Parliament House. It was also found that the defence of substantial truth in section 25 of the *Defamation Act 2005* (NSW) was made out. Mr Lehrmann has appealed the decision. Justice Lee awarded costs against Mr Lehrmann, ordering that the costs of Network Ten and Ms Wilkinson be paid on an indemnity basis but otherwise on the ordinary basis in relation to the statutory qualified privilege defence.

Changes to the Court's jurisdiction in 2023–24

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

- *National Occupational Respiratory Disease Registry Act 2023* (Cth) – Federal Court jurisdiction – relevant court in relation to the civil penalty provision and *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (Regulatory Powers Act).
- *New Vehicle Efficiency Standard Act 2024* (Cth) – Federal Court jurisdiction – relevant court in relation to compensation for acquisition of property.
- *New Vehicle Efficiency Standard (Consequential Amendments) Act 2024* (Cth) – an amending Act to the above expanding the Federal Court's jurisdiction under the *Road Vehicle Standards Act 2018* to include the power to make non-punitive orders.
- *Payment Times Reporting Amendment Act 2024* (Cth) – an amending Act expanding Federal Court jurisdiction under the *Payment Times Reporting Act 2020* – relevant court in relation to the civil penalty provision and Regulatory Powers Act.
- *Primary Industries Levies and Charges Collection Act 2024* (Cth) – Federal Court jurisdiction – relevant court in relation to injunctions, monitoring and investigation powers, and civil penalty provisions.
- *Public Health (Tobacco and Other Products) Act 2023* (Cth) – Federal Court jurisdiction – relevant court in relation to enforceable undertakings, injunctions, monitoring and investigation powers, and civil penalty provisions.

The *Attorney-General's Portfolio Miscellaneous Measures Act 2024* made amendments to the following Acts. These Acts already confer jurisdiction on the Federal Court, however the amendments confer criminal jurisdiction on the Federal Court:

- *ASIC Act* – jurisdiction conferred on the Federal Court to hear and determine prosecutions for indictable offences against this Act.
- *Corporations Act 2001* – jurisdiction conferred on the Federal Court to hear and determine prosecutions for indictable offences against this Act.
- *Judiciary Act 1903* – criminal jurisdiction conferred on the Federal Court under section 67G.

- *National Consumer Credit Protection Act 2009* – jurisdiction conferred on Federal Court to hear and determine prosecutions for indictable offences against this Act.
- *Superannuation Industry (Supervision) Act 1993* – confers jurisdiction on the Federal Court to hear and determine prosecutions for indictable offences against provisions of this Act that are administered by ASIC.

The *Attorney-General's Portfolio Miscellaneous Measures Act 2024* also made amendments to the FCA Act to substitute old provisions in relation to juries with new provisions on juries.

Fee regulation

The Federal Court and Federal Circuit and Family Court Regulations 2022 commenced on 1 April 2023 and were subsequently amended by the Fair Work and Other Legislation Amendment (Secure Jobs, Better Pay) Regulations 2023.

The fee for filing applications under section 539 of the *Fair Work Act 2009* (Cth) in certain circumstances is fixed at the same rate as prescribed under subsection 395(2) of that Act. 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 FCA Act. The Rules provide the procedural framework within which proceedings 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.

The *Federal Court Rules 2011* were amended by the *Federal Court Legislation Amendment Rules 2024* which came into effect on 5 June 2024.

The amendments ensure an effective application process in relation to allegations of sexual harassment under the *Fair Work Act 2009* (Cth). They extend, consolidate and clarify the powers that registrars may exercise pursuant to a direction of the Chief Justice or a judge of the Court. Further, they improve existing mechanisms for applications under the *Trans-Tasman Proceedings Act 2010* (Cth), for service outside Australia, and for proceedings under the *Patents Act 1990* (Cth) and the *Trade Marks Act 1995* (Cth). Lastly, the amendments provide for an increase in the costs allowable for work done and services performed consistent with the recommendations of the 16th Report of the Joint Cost Advisory Committee, effectively increasing the costs recoverable by a successful party.

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* (Cth) and the ASIC Act, as well as proceedings under the *Cross-Border Insolvency Act 2008* (Cth) which involve a debtor other than an individual. Schedule 3 of the *Federal Court Legislation Amendment Rules 2024* amended the *Federal Court (Corporations) Rules 2000*.

The *Federal Court (Bankruptcy) Rules 2016* govern proceedings in the Federal Court under the *Bankruptcy Act 1966* (Cth), as well as proceedings under the *Cross-Border Insolvency Act 2008* (Cth) involving a debtor who is an individual. Schedule 2 of the *Federal Court Legislation Amendment Rules 2022* amended the *Federal Court (Bankruptcy) Rules 2016*.

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. Schedule 4 of the *Federal Court Legislation Amendment Rules 2022* repealed Part 10 of the *Federal Court (Criminal Proceedings) Rules 2016*.

The *Admiralty Rules 1988* govern proceedings in the Federal Court under the *Admiralty Act 1988* (Cth). 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 an 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*.

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 and the Court's inherent power to control its own processes. All practice notes are available on the Court's website.

On 13 October 2023, the Court published the Schemes of Arrangement Practice Note (GPN-SOA) which implements the 'Practice Note – Harmonisation in schemes of arrangement' as developed by the Committee for the Harmonisation of Rules of the Council of Chief Justices of Australia and New Zealand and adopted by the Federal Court of Australia. The Practice Note is issued in order to address recent differences in scheme practice and recognises that consistency in Australian courts' approach is beneficial to all parties involved in schemes of arrangement.

Guides

The Federal Court issues national guides. These guides cover a variety of subject areas, such as appeals, migration, human rights, and insolvency. 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.

Notices to the profession

The Chief Justice issues notices to the profession to inform them of various court-related matters. During 2023–24 four notices to the profession were issued:

- 17 November 2023: Consultation – Full Court and Appellate sitting periods for 2025
- 14 February 2024: Consultation – Proposal to dissolve the ACT List
- 22 February 2024: Full Court and Appellate sitting periods for 2025
- 12 March 2024: Dissolution of the ACT List

All Notices to the profession are published on the [Court's website](#).

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

This 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 Australasian 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 2 (*Judges' activities*).

Hearings for detainees

For litigants in immigration detention, the prospect of conducting online hearings by remote access technology can present particular challenges. It is the Court's policy that detainees who are unrepresented will be referred for pro bono legal assistance and the Court continues to work with national and state Bar Associations to facilitate this. Where legal representation is not available, hearings involving detainees may be conducted by remote access technology by link to the relevant detention facility, or in-person if the judge hearing the proceeding or the Court otherwise considers it is in the interests of the administration of justice to do so. In such a case, a judge may order the attendance of the detainee in Court.

eLodgment process in protecting visa proceedings

The Court has implemented a process for the application of pseudonyms to certain protection visa proceedings. Litigants and legal representatives are encouraged to contact the registry to obtain a pseudonym before filing, which can then be used in the eLodgment system.

Liaison with the Law Council of Australia

The Court maintained a liaison with the Law Council of Australia, through the Federal Court/ Law Council of Australia Liaison Committee. This meeting is held twice a year, with liaison on specific issues between representatives of the Law Council of Australia and the Chief Justice, leading judges from relevant NPAs and senior staff occurring between those meetings.

Litigants-in-person

A litigant-in-person (LIP) is a party to a proceeding who is not represented by a legal practitioner and, instead, conducts the proceeding on his or her own behalf. The Court provides a range of services to LIPs that have been developed to ensure that LIPs have access to information and assistance concerning the Court's practice and procedure.

During the reporting year, the Court established an LIP project led by judges and registrars to consider all aspects of proceedings involving LIPs including effective case management practices and resources available to LIPs to ensure greater access to justice. The Court has also continued its registrar-assistance model in which registrars provide support in proceedings involving LIPs. This work is ongoing and continues to be a priority for the Court.

In 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 legal information and advice to LIPs involved in proceedings in federal courts. While the services are independent of the courts, facilities are provided within court buildings to enable meetings to be held with clients.

Tables 3.26, 3.27 and 3.28 provide broad statistics about the number of proceedings commenced by LIPs in 2023–24 (respondents are not recorded). In the reporting year, 430 proceedings were commenced in the Court by litigants identified as a LIP. Forty-eight per cent of the proceedings were appellants in migration proceedings (including appeals).



The Peter Durack Commonwealth Law Courts Building in Perth.

PART 3

Table 3.4: Proceedings commenced by LIPs 2023–24, by registry

LIP proceedings allocated to a Docket Judge	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
LIPs	11	140	0	60	26	4	123	66	430
Percentage of total	3%	32%	0%	14%	6%	1%	29%	15%	100%

Table 3.5: Original jurisdiction proceedings commenced by LIPs 2023–24, by National Practice Area

National Practice Area	Total LIP allocations	Percentage of total
ACLHR	95	37%
MIG	66	26%
A&M	0	0%
CRIME	4	2%
C&C	54	21%
E&IR	22	9%
IP	3	1%
NT	3	1%
OFJ (*)	3	1%
TAX	5	2%
Total	255	100%

(*) OFJ includes defamation

Table 3.6: Appeals commenced by LIPs 2023–24, by National Practice Area

National Practice Area	Total LIP allocations	Percentage of total
ACLHR	10	6%
MIG	144	82%
A&M	0	0%
CRIME	1	1%
C&C	5	3%
E&IR	11	6%
IP	1	1%
NT	-	0%
OFJ (*)	3	2%
TAX	-	0%
Total	175	100%

(*) OFJ includes defamation

Direct financial counselling project in bankruptcy proceedings

For some time, the Court has, in conjunction with the Federal Circuit and Family Court of Australia (Division 2), been able to maintain a program of targeted financial counselling assistance to LIPs in bankruptcy proceedings. With the assistance of Consumer Action in Melbourne (since 2014), Uniting Communities in Adelaide (2018) and Financial Rights Legal Service in Sydney (since 2022) a financial counsellor attends the courtroom in every bankruptcy list.

Financial counsellors are present in the courtroom in bankruptcy lists, and the presiding registrar is able to refer an LIP to the financial counsellor for an immediate confidential discussion so that the LIP better understands his or her options when faced with the prospect and consequences of bankruptcy.

In all three registries, LIPs may also be provided with the details of financial counselling services ahead of the first court return date and referrals can be made by registry staff when assisting an SRL by telephone or over the counter.

In the South Australian registry, some creditors' solicitors have also directly provided the financial counselling contact details to LIPs. This has facilitated the settlement of several matters before the filing of a creditor's petition or before the first return date before the Court.

The financial counselling services in Sydney have been enabled by a generous grant from the Financial Counselling Foundation.

In the previous reporting years, all registries experienced reduced numbers of filings due to changes to the *Bankruptcy Act 1966* (Cth) because of COVID-19. As a result, there were proportionally less referrals to financial counsellors. Filings have since increased in all registries, though not yet to pre-pandemic numbers.

Registrars in Sydney, Melbourne and Adelaide have reported favourably on the financial counselling program, and view it as having significant advantages for LIPs, creditors and the presiding registrars.

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 not legally 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 and Family Court fees regulation (see below).

Court fees and exemptions

Fees are charged under the Federal Court and Federal Circuit and Family Court Regulations 2022 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 \$83.30)
- 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 section 23 of the *International Arbitration Act 1974* (Cth) for the issue of a subpoena requiring the attendance before or production of documents to an arbitrator (or both)

PART 3

- 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
- setting-down fees for an interlocutory application
- a proceeding in relation to a matter remitted to the Federal Court by the High Court under section 44 of the *Judiciary Act 1903* (Cth), and
- a proceeding in relation to a referral to the Court of a question of law by a tribunal or body.

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 representative body to bring proceedings in the Federal Court under Part 11 of the *Native Title Act 1993* (Cth) or has been granted funding to perform some functions of a representative body under section 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.

A person who has a general exemption from paying a fee 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, or other body, that had been granted Legal Aid or funding under the *Native Title Act 1993* (Cth) 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 of the Federal Court of Australia Listed Entity Annual Report (*Financial statements*).

Livestreaming

The Federal Court continues to commit to providing access to justice by livestreaming proceedings via the Court's YouTube channel. In 2023–24, 89 listings were livestreamed, including high public interest cases such as *Ben Roberts-Smith v Fairfax Media Publication*, *Bruce Lehrmann v Network Ten Pty Limited*, *eSafety Commissioner v X Corp* and more.

Additionally, court and judicial events were livestreamed including judicial welcome and farewell ceremonies, seminars and lectures such as *In Conversation: Recovering and Revitalising Indigenous Laws*, *Employment and Industrial Relations Seminar*, *Richard Cooper Memorial Lecture*, *In Conversation* event with Chief Justice Mortimer and Justice Joe Williams, *International Fiscal Association x Federal Court of Australia Seminar*, a MOU signing between the Federal Court and the Philippines Supreme Court and the Silk Bows ceremony.

The Court will continue to livestream events to strengthen ties with the community and the profession.

Table 3.7: Selection of court proceedings and events livestreamed in 2023–24

EVENT	TOTAL VIEWS FOR ENTIRE HEARING
Lehrmann v Network Ten Pty Ltd & Anor (NSD103/2023)	2,779,381
Employment and Industrial Law Seminar 2023	50,758
Al Muderis v Nine Network Australia Pty Ltd & Ors (NSD917/2022)	58,528
Roberts-Smith v Fairfax Media Publication Pty Ltd & Ors (NSD1485/2018)	18,592
Queensland Kings Counsel Ceremony	11,839
Bell & Ors on behalf of the Wakka Wakka People #4 & State of Queensland & Ors (QUD277/2019)	9,936
Victoria Silk Bows Ceremony	8,483
Pabai v Commonwealth (VID622/2021)	6,014
In Conversation: From Treaty to Settlement, to Treaty Settlements	5,730
eSafety Commissioner v X Corp (NSD474/2024)	5,674
Haverkort v Qantas (VID650/2023); Nicholas v Qantas (VID893/2023)	5,152
Applications by ANZ and Suncorp (ACT1/2023)	4,220
Farewell ceremony for Justice Middleton	4,184
Greenwich v Latham (NSD475/2023)	3,927
Ceremonial Welcome sitting for Chief Justice Mortimer	3,793
Transport Workers' Union of Australia v Qantas Airways Ltd (NSD1309/2020)	3,518
Yindjibarndi Ngurra Aboriginal Corporation RNTBC v State of Western Australia & Ors (WAD37/2022)	3,146
Russell v Australian Broadcasting Corporation (NSD745/2022)	2,566
Senator Ralph Babet & Anor v Electoral Commissioner (NSD978/2023)	2,380
Australian Electoral Commission v Kelly (NSD375/2022)	1,980

Media

The Court is supported by Corporate Services staff who handle media inquiries including access to court files and requests for judgments.

In some cases, the Court establishes online files into which material is placed once approved. In the reporting year, the following online files were the subject of intense public interest:

- NSD689, 690, 691/2023: Roberts-Smith Appeals
- NSD103/2023: Lehrmann v Network Ten
- VID1023/2023: Deeming v Pesutto
- NSD372/2023: Faruqi v Hansen, and
- NSD1148/2022: Tickle v Giggle for Girls.

The Lehrmann v Network Ten online file had more 405,908 page views (making it the most popular webpage in 2023–24) and – when judgment was delivered in April 2024 – more than 47,000 people watched the live YouTube broadcast.

During the reporting year the Federal Court established its first media committee, comprised of judges, court staff and media representatives. Among its terms of reference, it was asked to ‘facilitate open and constructive dialogue between various parties with a common interest in and responsibility for open justice.’ A key part of the committee’s work is to canvass ways to use digital platforms such as LinkedIn, YouTube and X to provide the public and profession with an insight

PART 3

into aspects of the Court's work and facilitate open justice. The intention was for the profession and the public to have a greater understanding of the Court's work. At the conclusion of the reporting year, the committee had met on five occasions and established a productive working relationship with the media.

Social media

Corporate Services staff manage the Court's social media accounts:

- LinkedIn
- X
- YouTube

The channels are used to inform the public about the role and work of the Court, including:

- legislation and rule changes
- latest news
- high profile cases and significant decisions
- media releases
- selected job vacancies
- emergency notifications
- online service outages, and
- registry closures.

Social media is also leveraged to maintain contact with our audience and build trust with our community. It is recognised that social media is an essential mechanism to reach the public and prospective followers to effectively present the Court, build trust and maintain the Court's brand, and we will continue to build this into our strategy.

Our approach to the Court's social media channels growth is organic. The Court is focused on creating and sharing engaging and informative content that is relevant to our audience. Our channels are the source of truth about the Court, with content designed to direct followers to the website for further information and reduce the need to contact the Court's Enquiry Centre.

LinkedIn

The Court's LinkedIn profile, <https://www.linkedin.com/company/federal-court-of-australia>, is primarily used to share updates with the legal profession, highlight external engagements, the contribution the Court makes to the legal profession, and advertise select employment vacancies.

During the reporting period, the Court's LinkedIn account gained 21,206 followers, representing a 121 per cent increase in 12 months. At 30 June 2024, the Court's LinkedIn account had 37,155 followers. There were 213 posts published which attracted 1,510,289 impressions, representing a growth of 256.1 per cent. Across these posts there was a total engagement rate of 109,719 (7.3 per cent per impression) and a total of 93,513 post clicks.

The account has seen an increase of 26.8 per cent in engagement per impression and in overall company page views. The majority of our followers view LinkedIn from a mobile device as opposed to a desktop. Therefore our content is geared towards being accessible from this type of device.

The top industry demographic of the Court's LinkedIn followers is largely dominated by law practice, followed by IT and IT consulting, legal services, government administration, non-profit organisations, higher education and the administration of justice. This spread of industries is largely the same as last year.

The top 10 occupations of our followers include: legal, IT, operations, business development, education, administration, customer service specialist, sales, community and social services and researcher.

As at 30 June 2024, our followers were largely located nationally within Australia, predominantly in Sydney (29.1 per cent), Melbourne (23.2 per cent), Brisbane (11 per cent), Perth 6.1 per cent) Adelaide (4.4 per cent) and Canberra (2.4 per cent), with a few profiles indicating they reside overseas.

X

The Court's X profile, [@fedcourtau](https://x.com/fedcourtau) is primarily used to share updates to the profession, legislation and rule changes, court events, livestream notifications, judgments of interest, online file publications, and the Court's contribution to the legal profession.

At 30 June 2024, the Court's X account had 4,480 followers (a growth of 49.4 per cent). During the reporting period, the account gained 1,484 followers and lost 156 followers. The Court is not seeking to actively grow our X following as this channel is used for one-way communication to share information, not to actively engage with the account's audience.

There were 131 posts published, of which the majority contained images/and or graphics. The posts attracted 563,643 impressions and an engagement rate of 7.7 per cent and a total of 18,731 post clicks.

YouTube

The Court's YouTube account is used to livestream court events and share educational material for the public to view online. The Court's YouTube account is <https://www.youtube.com/@FedCourtAus>. YouTube livestreams and videos are cross promoted across the Court's other social channels (LinkedIn and X).

As at 30 June 2024, the Court's YouTube channel had 40,394 subscribers. During the reporting period, 89 court proceedings and many other events were livestreamed and received approximately 13,200,000 impressions and 3,000,000 views.

Community relations

The Court engages in a wide range of activities with the legal profession. Seminars and workshops on issues of practice and procedure in particular areas of the Court's jurisdiction are also regularly held. Registries host advocacy sessions and bar moot courts and moot competitions and assist with readers' courses.

User groups

User groups have been formed along National Practice Area 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, including admiralty, class actions, employment and industrial relations and defamation.

Legal community

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

- **Western Australia** – the annual court welfare service professional development day in May 2024.
- **Victoria** – the Whitlam Institute Continuing Professional Development seminar, an Australian Academy of Law Seminar, and the Deakin Law Competition in March 2024. In April 2024, the registry hosted a Readers' Course and a Readers' Course Appellate Advocacy Moot. In May 2024, the registry hosted an event for the International Fiscal Association, a Monash Moot, a Moot for the University of New England, and a morning tea for Court Network volunteers.
- **South Australia** – four judicial/practitioner meetings throughout the year; a co-location/registrar stakeholder meeting; and in March 2024, a meeting with Chief Justice Mortimer and members of the South Australian legal profession and bar.
- **New South Wales** – an Employment and Industrial Relations seminar in September 2023; the Australian Bar Association Advanced Trial Advocacy Intensive in January 2024; a migration pro-bono meeting in March 2024; and a Class Action users committee meeting in March 2024.
- **Queensland** – a meeting with Chief Justice Mortimer, registry staff and the local profession in March 2024.
- **Australian Capital Territory** – the Biannual Courts and Legal Profession Meeting on 26 July 2023; a Canberra Co-location Stakeholder meeting on 7 August 2023; a meeting and luncheon with Chief Justice Mortimer and the ACT Bar Association and Law Society on 24 August 2023 and 5 March 2024; and a Court operation event for University of Canberra legal studies students in April 2024.

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 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 2 (*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 2023–24, the Court offered the following internal education activities to its judicial officers:

- education sessions were conducted at the judges' meeting held on 29–31 May 2024 (in South Australia), and
- stand-alone sessions were conducted during the year on Federal discrimination law, general protections claims under the *Fair Work Act 2009* (Cth), migration law and admiralty law.

The education sessions offered at the judges' meeting in 2023–24 included:

- Judges' forum – open discussion on practical issues in judicial work
- Running Class Actions – what we can learn from the Stolen Wages Case, and
- The Modern (Work)Place: political dissent, disconnecting, WFH and other pandemic hangovers.

In addition to the above, judges undertook other education activities through participation in external seminars and conferences. Some of these are set out in Appendix 2 (*Judges' activities*).

In the period from 1 July 2023 to 30 June 2024, the Federal Court of Australia met the National Standard for Professional Development for Australian Judicial Officers.

Judgments publication

In the reporting year, 1,851 settled judgments were received and published by the Judgments Publication Office. This figure includes 192 Full Court decisions.

The Judgments Publication Office also received and published a number of decisions from the Supreme Court of Norfolk Island (10), the Competition Tribunal (2), the Copyright Tribunal (2) and the Defence Force Discipline Appeal Tribunal (1).

The Judgments Publication Office provides copies of judgments to a number of free legal information websites including AustLII and JADE, legal publishers, media and other subscribers.

Judgments of public interest are published within an hour of delivery and other judgments within a few days. The exception to this is confidential judgments, which may be suppressed temporarily or permanently.

Email notifications of judgments are sent to subscribers via a subscription service on the Court's website.

Work placements

The Court regularly offers work experience placements for students and other organisations to shadow and observe various areas of the Court's operational and administrative areas, exposing participants to the Court's work environment.

In November 2023, at the invitation of the Federal Court, Mr Ziad Hussein, Principal Law Librarian at the Office of the Attorney-General of Fiji, spent a week with the library staff in the Melbourne registry.

Ziad also had the opportunity to meet with Chief Justice Mortimer and visited the Law Library of Victoria (in the Victorian Supreme Court). He gained professional and practical experience of the library systems, workflows and procedures in the Court's library network, and was able to compare the work done by the Court's library with that undertaken by himself and his own staff in Fiji.



Ziad Hussein and Chief Justice Mortimer

Indigenous clerkships

Each year, the Victorian Bar offers Indigenous law students with an opportunity to apply for a seasonal clerkship in its Indigenous Clerkship Program.

The Indigenous Clerkship Program has been running for 16 years and offers Indigenous students enrolled in a law degree at a recognised Australian university the opportunity to participate in paid work experience at the Victorian Bar, Federal Court of Australia and Supreme Court of Victoria.

In 2024, clerkships have been offered to six Indigenous students, with each clerkship running for four weeks – one week with a barrister, one week

with the Supreme Court of Victoria, one week with the County Court of Victoria and one week with the Federal Court of Australia.

The below chambers participated in the 2024 clerkship program:

- 5–9 February 2024: Justice McEvoy
- 12–16 February 2024: Justice McElwaine
- 19–23 February 2024: Justice O'Bryan
- 26 February–March 2024: Justice Snaden and Justice Button
- 4–8 March 2024: Justice Murphy



Justice O'Bryan and Keeley Hughes

Lives and Times of Judges podcast series

The Federal Court launched its first podcast series in April 2024. Entitled 'Lives and times of Judges' the series explores the lives and career of former judges of the Federal Court.

In a series of conversations with journalist and broadcaster Fiona Gruber, each judge discusses his or her career, the influences and experiences that shaped them and their reflections on the evolution of the Court.

As at 30 June 2024, the Court had published four interviews:

- Robert French AC
- James Allsop AC SC
- Michael Black AC KC
- William Gummow AC KC.

Six more podcasts – of 30-to-40-minute duration – are planned over the next year.

Work with international jurisdictions

The Court continued to collaborate with courts across Asia and the Pacific. Over the past year, the Court has collaborated on a broad range of bilateral and regional activities with courts in 21 countries.

Pacific

In partnership with the Papua New Guinea Centre for Judicial Excellence, the Court conducted several activities under its Pacific Judicial Integrity Program (2022–2025) (the Program). Funded by the Department of Foreign Affairs and Trade, the Program offers training, mentoring and other professional development activities to support judicial and court officers to respectively, preside over and manage fraud and corruption-related cases.

Twelve Pacific Island judiciaries participate in the Program including Fiji, the Federated States of Micronesia, Kiribati, Nauru, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tokelau, Tonga and Vanuatu.

Over the past year, the Program has benefited from the generous assistance of several Australian and Pacific judges and registrars, who used their expertise and experience to design specialist training programs for judges on hearing fraud and corruption-related cases and for registry officers to manage and report on them.

Transposing the in-person course, in July 2023, Judicial Registrars Ditton, Burns and Wilson facilitated a four-part ‘live’ online course for 28 registrars on *Managing and Reporting on Fraud and Corruption Cases*. In October 2023, Justice Sarah C Derrington and two legally qualified psychologists conducted a webinar attended by 16 judges. The webinar discussed the prevalence and mitigation strategies to address *Unconscious Bias in Decision-Making*. The webinar was followed by two more, held in February 2024 and June 2024. February’s webinar, facilitated by Justice Bromwich, covered *Evidentiary Issues* and was attended by 26 of the region’s judges. The June webinar, facilitated by Justice Wimalasena, President of the Court of Appeal, Nauru, covered *Issues and Emerging Challenges in Fraud and Corruption Cases* and was attended by 14 participants.



Justice Sarah C Derrington presents at the Unconscious Bias in Decision Making webinar.



Justice Wigney led the Advanced Judicial and Officers’ Fraud and Corruption Workshop in Port Vila.



Justice Wigney presenting in Port Vila.



Assistant Registrar Crimes Victoria Belo, National Court of Papua New Guinea; Registrar Jodie Burns, Federal Court of Australia; Registrar Shemi Joel, Supreme Court of Vanuatu; Registrar Alicia Ditton and Registrar Joanne Wilson, Federal Court of Australia.

In March 2024, with assistance from Justice Wigney and several Pacific Island judges, the Court piloted an *Advanced Fraud and Corruption Workshop* in Port Vila, Vanuatu. Attended by 23 judges, the workshop addressed some of the more complex issues included in the introductory workshop. This was followed by an online version of the course in May 2024, which was attended over five weeks by 18 judges. In June 2024, a similarly advanced course for registrars was also piloted by Judicial Registrars Ditton, Burns and Wilson for 21 participants in Honiara, Solomon Islands.

Supreme and National Courts of Papua New Guinea

Justices Collier and Logan continued their judicial appointments in Papua New Guinea, sitting in the Supreme Court. This is pursuant to a longstanding arrangement with the Papua New Guinea Judiciary which complements the MOU between the Courts. Justice Collier has also sat in the National Court of Papua New Guinea in first instance civil trials in provincial registries.

In September 2023, Justice Logan RFD assisted in the delivery of a commercial litigation workshop by the Queensland Bar at the Legal Training Institute and co-presented a Continuing Legal Education Seminar for lawyers. Justice Rares

presented several seminars at an Admiralty and Maritime Law Education Workshop which Justice Collier co-facilitated. In October 2023, Chief Justice Mortimer presented the Sir Buri Kidu Lecture Series on the challenges for the courts in environment litigation – reflections on the situation in Australia and Papua New Guinea. Justice Collier continues to work with the PNG Centre for Judicial Excellence in respect of the sourcing of speakers for the Sir Buri Kidu Lectures and participating in panels at those lectures, in the reporting year these were Chief Justice Mortimer, Chief Justice Helen Bowskill of the Supreme Court of Queensland and Deputy President Hartigan of the Queensland Industrial Relations Commission.



Chief Justice Mortimer and Chief Justice Salika.



Chief Justice Mortimer and Justice Burley with staff from the PNG Centre for Judicial Excellence.

Supreme Court of Indonesia

Continuing to share judicial knowledge and experience has further strengthened and reinforced the long-standing cooperation between the Supreme Court of Indonesia and Federal Court which entered its 20th year since the signing of its first MOU. The 20th anniversary MOU was signed in Jakarta on 25 June 2024. The delegation, comprising Justices Collier, Markovic, Bromwich and Burley along with Sia Lagos, visited for a week to conduct various activities including visiting and lecturing at the judicial training school; discussing the promotion of women in judicial leadership; participating in seminars on insolvency and international commercial law; and discussing the implementation of the activities contained in the MOU. In the preceding week Justices Collier, Bromwich, Burley and Halley, along with Senior National Judicial Registrar Farrell, hosted a delegation from the Supreme Court to discuss the MOU including the scope and objectives of its associated activities.

In February 2024, Justice Markovic represented the Court in Jakarta to attend the Supreme Court’s Annual Report Delivery Ceremony. The Court also supported the Supreme Court’s Commercial Judges Certification Training Program by providing the following presentations: Justice Burley - ‘International Treaties concerning Intellectual Property’; and Philosophy and History of the *IPR Protection*; and Justice Markovic ‘Personal and Corporate Insolvency in Australia’.



Delegates at the Indonesian Supreme Court’s Annual Report Delivery Ceremony.



Chief Justice Mortimer signs the MOU between the Federal Court and the Supreme Court of Indonesia.



A delegation from the Supreme Court of Indonesia visited the Court’s Victorian Registry in June 2024.



Justice Collier exchanges gifts with Justice Syamsul Maarif.



The Indonesian visiting delegation comprising the Honourable Justice Gusti Agung Sumantha, S.H., M.H., Justice Syamsul Maarif S.H. LL.M., PhD, Justice Bambang Hery Mulyono, SH. MH and Dr Aria Suyudi, SH., LL.M, with Acting Chief Justice Collier, and Justices Markovic, Burley, Bromwich and Halley and Senior National Judicial Registrar Paul Farrell.

Supreme Court of the Philippines

In May 2024, the Courts signed a first MOU of Understanding on judicial cooperation. Initial areas for collaboration include the development/revision of court rules related to competition, class actions, admiralty and indigenous land rights. The Courts will also collaborate on aspects of court administration. Justice Murphy and Registrar Legge are supporting the Supreme Court's working group on rules governing class actions and Justice Halley and Registrar Farrell are supporting the working group to revise the Supreme Court's rules for competition law cases.

In August 2023, Justice Burley presented remotely to the *Editor's Introduction to the Intellectual Property Benchbook Series* at the National Judicial Colloquium on Intellectual Property in the Philippines hosted by the World Intellectual Property Organization in Manila. Justice Rofe attended the launch in person.



Justice Rofe at the Editor's Introduction to the Intellectual Property Benchbook Series.

Presentations

In addition to the various presentations mentioned above, judges made presentations at events taking place in the United States of America, Korea, the United Kingdom and India.

In July 2023, Justice Rofe presented at the Indo-Pacific Judicial Colloquium on Intellectual Property, Innovation and Technology held in the United States. Her Honour presented on three topics: Challenges in Design and Patent Litigation; Intellectual Property and International Trade Matters – Is there a need for Specialised Courts? and the Use of Experts in Intellectual Property Litigation.



Justice Rofe (far right) at the Indo-Pacific Judicial Colloquium.

In September 2023, Justice O'Bryan presented remotely on competition law at the Organisation for Economic Cooperation and Development (OECD) and Korea Policy Centre Competition Law Seminar for Asia-Pacific Judges in Korea. Also in September, Justice Logan RFD presented a paper on hearings by video link at the Commonwealth Magistrates' and Judges' Association conference in Cardiff, Wales.

In February 2024, at the invitation of the Attorney-General for India, Justice Logan delivered a keynote address about enhancing access to justice at the Commonwealth Attorneys-General and Solicitors-General/Commonwealth Legal Education Association Conference in New Delhi, India.



Justice Logan RFD with Professor (Dr.) S. Sivakumar, President of the Commonwealth Legal Education Association (CLEA) and Conference Chair of the CLEA/Attorneys-General and Solicitors-General Conference in New Delhi in February 2024.

PART 3

Visits

During the year, the Court hosted and sent delegates respectively to and from Nauru, Canada, Samoa, Hong Kong, Brazil, Qatar, Vietnam, and Egypt.

In July 2023, a delegation from the Nauru judiciary visited the Court in Sydney to learn about registry functions. In December, Justice Diner of the Federal Court of Canada visited Sydney and Melbourne to learn about the Court's approach to digital hearings. His Honour was hosted by Justice Wheelahan in Melbourne and Justice Perram in Sydney.



Chief Justice Mortimer and Justice Diner.

In February 2024, Chief Justice Mortimer attended the Pacific Chief Justices' Leadership Forum in Samoa and in March 2024, Justice McEvoy attended the 8th Judicial Seminar on Commercial Litigation in Hong Kong.

In April 2024, Justices Perram and Downes represented the Court at the 35th anniversary of the National High Court of Brazil while Justices Murphy and Lee attended the 5th Full Meeting of the Standing International Forum of Commercial Courts (SIFoCC) in Qatar. The Full Meetings are designed to inspire common approaches to problems of an international and national character where such commonality is desirable. Topics this year focused on artificial intelligence, corporate legal responsibility in the context of climate change, and developing the relationship between litigation, arbitration and mediation.

The Deputy Chief Justice of the Supreme People's Court of Vietnam led a judicial delegation of six to visit the Court in Melbourne in April 2024. Hosted by Justices Burley and Rofe, discussions included the application of artificial intelligence and digital evidence.



Gift exchange with the Vietnamese delegation.



Delegates from the Pacific Chief Justices' Leadership Forum.

In May 2024, the President of the Alexandria Criminal Court in Egypt, Justice Amir Ramzy led a delegation to visit the Court in Sydney. Justices Harrison and Lee hosted the delegation providing an overview of the Court's work and a tour of its facilities.



Justice Ramzy and Justice Lee.



Delegates exchanged insights on leveraging technology for court proceedings to enhance efficiency in dispensing justice whilst upholding the courts' dignity in the era of remote hearings post-COVID.