



# THE WORK OF THE COURT IN 2017–18

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# THE WORK OF THE COURT IN 2017–18

**This part of the report details the Federal Court of Australia’s (FCA) performance and workload during the year, as well as its management of cases and performance against its stated workload goals. Aspects of the work undertaken by the Court to improve access to the Court for its users, including changes to its practice and procedure, are discussed. Information about the Court’s work with overseas courts is also covered.**

## MANAGEMENT OF CASES AND DECIDING DISPUTES

The following examines the Court’s jurisdiction, management of cases, workload and use of assisted dispute resolution.

### The Court’s jurisdiction

The Court’s jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary and indictable criminal matters. It also has jurisdiction to hear and determine any matter arising under the Constitution through the operation of s 39B of the *Judiciary Act 1903*.

Central to the Court’s civil jurisdiction is s 39B (1A)(c) of the Judiciary Act. This jurisdiction includes cases created by federal statute and extends to matters in which a federal issue is properly raised as part of a claim or of a defence and to matters where the subject matter in dispute owes its existence to a federal statute.

The Court has jurisdiction under the Judiciary Act to hear applications for judicial review of decisions by officers of the Commonwealth. Many cases also arise under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) which provides for judicial review of most administrative decisions made under Commonwealth enactments on grounds relating to the legality, rather than the merits, of the decision.

The Court also hears appeals on questions of law from the Administrative Appeals Tribunal. This jurisdiction falls under the Administrative and Constitutional Law and Human Rights National Practice Area (NPA) which also includes complaints about unlawful discrimination no longer being dealt with by the Australian Human Rights Commission and matters concerning the Australian Constitution. Figure A5.9.1 in Appendix 5 (Workload statistics) on page 148 shows the matters filed in this practice area over the last five years.

The Court hears taxation matters on appeal from the Administrative Appeals Tribunal. It also exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation. Figure A5.9.7 on page 151 shows the taxation matters filed over the last five years.

The Court shares first instance jurisdiction with the Supreme Courts of the states and territories in the complex area of intellectual property (copyright, patents, trademarks, designs and circuit layouts). All appeals in these cases, including appeals from the Supreme Courts, are to a Full Federal Court. Figure A5.9.5 on page 150 shows the intellectual property matters filed over the last five years.

Another significant part of the Court's jurisdiction derives from the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications and to be responsible for their mediation, to hear and determine 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. The Court also hears

appeals from the National Native Title Tribunal and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 33. Figure A5.9.6 on page 151 shows native title matters filed over the last five years.

A further important area of jurisdiction for the Court derives from the *Admiralty Act 1988*. The Court has concurrent jurisdiction with the Supreme Courts of the states and territories to hear maritime claims under this Act. Ships coming into Australian waters may be arrested for the purpose of providing security for money claimed from ship owners and operators. If security is not provided, a judge may order the sale of the ship to provide funds to pay the claims. During the reporting year, the Court's Admiralty Marshals made six arrests. See Figure A5.9.2 on page 149 for the number of Admiralty and Maritime Law matters filed in the past five years.

The Court has jurisdiction under the *Fair Work Act 2009*, *Fair Work (Registered Organisations) Act 2009* and related industrial legislation (including matters to be determined under the *Workplace Relations Act 1996* in accordance with the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*. Workplace relations and fair work matters filed over the last five years are shown in Figure A5.9.4 on page 150.

The Court's jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* covers a diverse range of matters, from the appointment of provisional liquidators and the winding up of companies, to applications for orders in relation to fundraising, corporate management and misconduct by company officers. The jurisdiction is exercised concurrently with the Supreme Courts of the states and territories.

The Court exercises jurisdiction under the *Bankruptcy Act 1966*. It has power to make sequestration (bankruptcy) orders against persons who have committed acts of bankruptcy and to grant bankruptcy discharges and annulments. The Court's jurisdiction includes matters arising from the administration of bankrupt estates.

Cases arising under Part IV (restrictive trade practices) and Schedule 2 (the Australian Consumer Law) of the *Competition and Consumer Act 2010* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealings or false advertising. These areas fall under the Commercial and Corporations NPA. Figure A5.9.3 on page 149 provides statistics on this practice area.

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

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Circuit Court of Australia (FCC) in non-family law matters and from other courts exercising certain federal jurisdiction.

In recent years, a significant component of its appellate work has involved appeals from the FCC concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in Part 3 on page 32.

The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's appellate jurisdiction is discussed on page 31.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction in addition to the jurisdiction vested under the Constitution through s 39B of the Judiciary Act are listed on the Court's website at [www.fedcourt.gov.au](http://www.fedcourt.gov.au).

## CHANGES TO THE COURT'S JURISDICTION IN 2017–18

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

- *Australian Astronomical Observatory (Transition) Act 2018*
- *Building Energy Efficiency Disclosure Act 2010*
- *Coal Mining Industry (Long Service Leave) Administration Act 1992*
- *Coal Mining Industry (Long Service Leave) Payroll Levy Collection Act 1992*
- *Great Barrier Reef Marine Park Amendment (Authority Governance and Other Matters) Act 2018*
- *Horse Disease Response Levy Collection Act 2011*
- *Marriage Law Survey (Additional Safeguards) Act 2017*
- *National Redress Scheme for Institutional Child Sexual Abuse Act 2018*
- *Petroleum and Other Fuels Reporting Act 2017*
- *Product Emissions Standards Act 2017*
- *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*
- *Security of Critical Infrastructure Act 2018*, and
- *Weapons of Mass Destruction (Prevention of Proliferation) Act 1995*.

### Amendments to the Federal Court of Australia Act

During the reporting year, some minor amendments to the Federal Court Act, made by the *Courts Administration Legislation Amendment Act 2016* (Amendment Act), took effect from 1 January 2018.

## Fee regulation

While there were no changes to most filing and other fees in the reporting year, the Federal Parliament enacted the Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018, which takes effect from 1 July 2018. That amendment regulation amends the Federal Court and Federal Circuit Court Regulation 2012 (the fees regulation).

The effect of the amendment is to, from 1 July 2018, increase most prescribed filing and court fees by the biennial adjustment, which was due from that date under s 2.20 of the regulations, as well as by a further 3.9 per cent. Furthermore, the frequency of the indexation of court fees under s 2.20 of the regulation will no longer take place biennially. From 1 July 2019, most prescribed filing and court fees will increase annually, so that fees keep pace with inflation.

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

Otherwise, the operation of the regulation remained unchanged during the reporting period.

## Federal Court Rules

The judges are responsible for making the Rules of Court under the Federal Court Act. The Rules provide the procedural framework within which matters are commenced and conducted in the Court. The Rules of Court are made as Commonwealth Statutory Legislative Instruments.

The Rules are kept under review. New and amending rules are made to ensure that the Court's procedures are current and 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.

There were no changes to the Federal Court Rules during the reporting year.

## Other rules

In some specialised areas of the FCA's jurisdiction, the judges have made rules which 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 FCA under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001*, as well as proceedings under the *Cross-Border Insolvency Act 2008* which involve a corporate debtor.

During the reporting year, the Federal Court (Corporations) Rules 2000 were amended by the Federal Court (Corporations) Amendment (Insolvency Law Reform) Rules 2017 so that the Federal Court (Corporations) Rules 2000 reflected the changes to insolvency administration effected by the reforms implemented by the *Insolvency Law Reform Act 2016*.

The Federal Court (Bankruptcy) Rules 2016 govern proceedings in the FCA under the *Bankruptcy Act 1966*, as well as proceedings under the *Cross-Border Insolvency Act 2008* involving a debtor who is an individual.

During the reporting year, the Federal Court (Bankruptcy) Rules 2016 were amended by the Federal Court (Bankruptcy) Amendment (Insolvency and Other Measures) Rules 2017 so that the Federal Court (Bankruptcy) Rules 2016 too reflected the changes to insolvency administration effected by the *Insolvency Law Reform Act 2016* reforms.

The Federal Court (Criminal Proceedings) Rules 2016 govern all criminal proceedings in the Federal Court, including summary criminal proceedings, indictable primary proceedings and criminal appeal proceedings.

There were no changes to the Federal Court (Criminal Proceedings) Rules 2016 in the reporting year.

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

## Approved forms

Approved forms are available on the Court's website. Any document that is filed in a proceeding in the Court must be in accordance with any approved form. The Chief Justice may approve a form for the purposes of the Federal Court Rules 2011, the Federal Court (Bankruptcy) Rules 2016 and the Federal Court (Criminal Proceedings) Rules 2016.

No new forms were approved by the Chief Justice for the purposes of the Federal Court Rules 2011, the Federal Court (Bankruptcy) Rules 2016 and the Federal Court (Criminal Proceedings) Rules 2016 during the reporting year.

## Practice notes

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

Practice notes supplement the procedures set out in the Rules of Court and are issued by the Chief Justice upon the advice of the judges of the Court under rules 2.11, 2.12 and 2.21 of the Federal Court Rules, rule 1.07 of the Federal Court (Bankruptcy) Rules, rule 1.14, 1.15 and 4.20 of the Federal Court (Criminal Proceedings) Rules and the Court's inherent power to control its own processes. All practice notes are available on the Court's website.

In general, practice notes are issued to:

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

A key component of the National Court Framework reforms has been the review of all of the Court's practice documents to ensure nationally consistent and simplified practice. Under the National Court Framework, the Court's practice documents have

been consolidated and refined from 60 practice notes and administrative notices to 27 national practice notes.

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

- *Central Practice Note*: This is the core practice note for court users and addresses the guiding National Court Framework case management principles applicable to all National Practice Areas (NPAs).
- *NPA Practice Notes*: Interlocking with the Central Practice Note, these practice notes raise NPA-specific case management principles and are an essential guide to practice in an NPA.
- *General Practice Notes*: These apply to all or many cases across NPAs, or otherwise address important administrative matters. A number of General Practice Notes set out particular arrangements or information concerning a variety of key areas, such as class actions, expert evidence, survey evidence, costs, subpoenas and accessing court documents.
- *Appeals Practice Note*: The Court has made considerable changes to the management of appeals and related applications and has commenced work on developing the key features of a comprehensive Appeals Practice Note. The Court will continue that work, including undertaking external consultation and, in the interim, Appeals Practice Note APP 2 (Content of Appeal Books and Preparation for Hearing) continues to apply.

Since the issuing of the Court's national practice notes, the 12-month review period applicable to the General Practice Notes concluded in October 2017. The Court, through its National Practice Committee, has considered the feedback received; it has reissued the Interest on Judgments Practice Note and is in the process of preparing minor amendments to a number of other practice notes. The Court is also continuing to develop its practice and procedure in the area of digital practices and the Other Federal Jurisdiction NPA. The Court has also advised court users that it continues to welcome feedback in respect of its policy and practice, including practice notes.

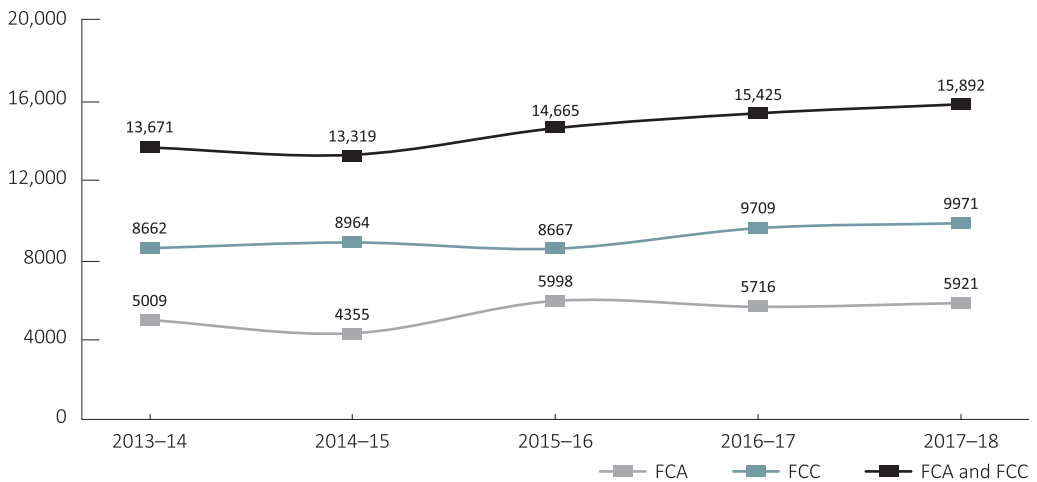
## Guides

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

## WORKLOAD OF THE FCA AND FCC

The Court has concurrent jurisdiction with the FCC in a number of areas of general federal law including bankruptcy, human rights, workplace relations and migration matters. The registries of the FCA provide registry services for the FCC in its general federal law jurisdiction.

**Figure 3.1: Filings to 30 June 2018 – Federal Court of Australia (FCA) and Federal Circuit Court of Australia (FCC)**





In 2017–18, a total of 15,892 matters were filed in the two courts. Any growth in filings has an impact on the Federal Court’s registries, as they process the documents filed for both courts. The registries also provide the administrative support for each matter to be heard and determined by the relevant court. The Court was able to accommodate this increase easily due to the technology and systems it has set up, most notably electronic court files for all files and lodgment, to aid efficient case processing.

### **Case flow management of the Court’s jurisdiction**

The Court has adopted as one of its key case flow management principles the establishment of time goals for the disposition of cases and the delivery of reserved judgments. The time goals are supported by the careful management of cases through the Court’s Individual Docket System and the implementation of practice and procedure designed to assist with the efficient disposition of cases according to law. This is further enhanced by the reforms of the National Court Framework.

Under the Individual Docket System, a matter will usually stay with the same judge from commencement until disposition. This means a judge has greater familiarity with each case and leads to the more efficient management of the proceeding.

### **Disposition of matters other than native title**

In 1999–2000, the Court set a goal of 18 months from commencement as the period within which it should dispose of at least 85 per cent of its cases (excluding native title cases). The time goal was set having regard to the growing number of long, complex and difficult cases, the impact of native title cases on the Court’s workload and a decrease in the number of less complex matters. It is reviewed regularly by the Court in relation to workload and available resources. The Court’s ability to continue to meet its disposition targets is dependent upon the timely replacement of judges.

Notwithstanding the time goal, the Court expects that most cases will be disposed of well within the 18-month period, with only particularly large and/or difficult cases requiring more time. Indeed, many cases are urgent and need to be disposed of quickly after commencement. The Court’s practice and procedure facilitates early disposition when necessary.

During the five-year period from 1 July 2013 to 30 June 2018, 93.3 per cent of cases (excluding native title matters) were completed in less than 18 months, 88 per cent in less than 12 months and 76 per cent in less than six months (see Figure A5.4 on page 143). Figure A5.5 on page 143 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years.

### **Delivery of judgments**

In the reporting period, the Court handed down 2028 judgments for 1743 court files. Of these, 719 judgments were delivered in appeals (both single judge and Full Court) and 1152 in first instance cases. These figures include both written judgments and judgments delivered orally on the day of the hearing, immediately after the completion of evidence and submissions. This was a slight increase from the number of judgments delivered in 2016–17.

The nature of the Court’s workload means that a substantial proportion of the matters coming before the Court will go to trial and the decision of the trial judge will be reserved at the conclusion of the trial.

The judgment is delivered at a later date and is often referred to as a ‘reserved judgment’. The nature of the Court’s appellate work also means a substantial proportion of appeals require reserved judgments.

Appendix 7 includes a summary of decisions of interest delivered during the reporting year and illustrates the Court’s varied jurisdiction.

## Workload of the Court in its original jurisdiction

### Incoming work

In the reporting year, 5921 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.1 on page 138.

### Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

- *Judiciary Act 1903, s 44*
- Cross-vesting Scheme Acts
- *Corporations Act 2001*, and
- *Federal Circuit Court of Australia Act 1999*.

During the reporting year, 124 matters were remitted or transferred to the Court:

- four from the High Court
- 26 from the FCC
- 34 from the Supreme Courts, and
- 60 from other courts.

Matters may be transferred from the Court under:

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

During 2017–18, no matters were transferred from the Court.

### Matters completed

Figure A5.2 on page 142 shows a comparison of the number of matters commenced in the Court's original jurisdiction and the number completed. The number of matters completed during the reporting year was 5603.

### Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 3483 (see Table A5.1).

### Age of pending workload

The comparative age of matters pending in the Court's original jurisdiction (against all major causes of action, other than native title matters) at 30 June 2018 is set out in Table 3.1.

Native title matters are not included in Table 3.1 because of their complexity, the role of the National Native Title Tribunal and the need to acknowledge regional priorities.

**Table 3.1: Age of current matters (excluding appeals and related actions and native title matters)**

Cause of action	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub total
Administrative law	53	23	5	4	3	88
Admiralty	15	6	5	4	2	32
Bankruptcy	99	36	14	9	24	182
Competition law	2	0	2	3	4	11
Trade practices	55	33	39	18	46	191
Corporations	644	84	49	43	83	903
Human rights	25	10	10	3	5	53
Workplace relations	1	2	0	2	0	5
Intellectual property	69	43	26	11	46	195
Migration	96	24	18	6	1	145
Miscellaneous	90	59	22	11	31	213
Taxation	47	27	4	3	28	109
Fair work	125	52	22	12	23	234
<b>Total</b>	<b>1321</b>	<b>399</b>	<b>216</b>	<b>129</b>	<b>296</b>	<b>2361</b>
Percentage of total	56%	16.9%	9.1%	5.5%	12.5%	100%
<b>Running total</b>	<b>1321</b>	<b>1720</b>	<b>1936</b>	<b>2065</b>	<b>2361</b>	
Running percentage	56%	72.9%	82%	87.5%	100%	

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

	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Sub total
Native title action	42	38	16	15	183	294
Percentage of total	14.3%	12.9%	5.4%	5.1%	62.2%	100%
<b>Running total</b>	<b>42</b>	<b>80</b>	<b>96</b>	<b>111</b>	<b>294</b>	
Running percentage	14.4%	27.2%	32.7%	37.8%	100%	

The number of native title matters over 18 months old decreased. The number of native title matters between 12–18 months and 18–24 months old increased. Further information about the Court's native title workload can be found on page 33.

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

## The Court's appellate jurisdiction

The appellate workload of the Court constitutes a significant part of its overall workload. While most appellate matters arise from decisions of single judges of the Court or the FCC, some are in relation to decisions by state and territory courts exercising certain federal jurisdiction. Appellate matters may also include matters filed in the original jurisdiction of the Court but referred to a Full Court for hearing.

The number of appellate proceedings commenced in the Court is dependent on many factors including the number of first instance matters disposed of in a reporting year, the nature of matters filed in the Court and whether the jurisdiction of the Court is enhanced or reduced by legislative changes or decisions of the High Court of Australia on the constitutionality of legislation. Subject to ss 25(1), (1AA) and (5) of the Federal Court Act, appeals from the FCC, and courts of summary jurisdiction exercising federal jurisdiction, may be heard by a Full Court of the FCA or by a single judge in certain circumstances. All other appeals must be heard by a Full Court, which is usually constituted by three, and sometimes five, judges.

The Court publishes details of the four scheduled Full Court and appellate sitting periods to be held in February, May, August and November of each year. Each sitting period is up to four weeks in duration. Appellate matters will generally be listed in the next available Full Court and appellate sitting in the capital city where the matter was heard at first instance.

In the reporting year, Full Court and appellate matters were scheduled for hearing in all eight capital cities. When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court outside of the four scheduled sitting periods. In 2017–18, the Court specially fixed 26 Full Court or appellate matters, involving 18 sets of proceedings, for hearing outside of the four scheduled sitting periods. Hearing these matters involved a total of 25 sitting days or part thereof compared with 23 special hearing fixtures involving 28 sitting days in 2016–17.

## The appellate workload

During the reporting year, 1514 appellate proceedings were filed in the Court. They include 1335 appeals and related actions (1262 filed in the appellate jurisdiction and 73 matters filed in the original jurisdiction), 17 cross appeals and 162 interlocutory applications such as applications for security for costs in relation to an appeal, a stay, an injunction, expedition or various other applications.

The FCC is a significant source of appellate work accounting for over 76 per cent (1023 of the 1335) of the appeals and related actions filed in 2017–18. The majority of these proceedings continue to be heard and determined by single judges exercising the Court's appellate jurisdiction.

Further information on the source of appeals and related actions is set out in Table A5.3 in Appendix 5 (Workload statistics). The number of migration appeals and related actions filed in 2017–18 increased by over 30 per cent, from 764 in 2016–17 to 1019 for the current reporting year. This contributed to an overall increase of more than 20 per cent in the Court's appellate workload overall in 2017–18.

In the reporting year, 1229 appeals and related actions were finalised. Of these, 553 matters were filed and finalised in the reporting year. At 30 June 2018, there were 875 appeals (comprising 827 filed in the appellate jurisdiction and 48 matters filed in the original jurisdiction) currently before the Court.

The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2018 is set out in Table 3.3.

Of the appellate and related matters pending at present, 75 per cent are less than six months old and almost 90 per cent are less than 12 months old. At 30 June 2018, there were only 91 matters that were over 12 months old, 86 filed in the appellate jurisdiction (see Table 3.3) and five matters filed in the original jurisdiction. It is also noted that a large number of migration appeals and applications have been held in abeyance pending the outcomes of decisions of the Full Court of the FCA and the High Court.

**Table 3.3: Age of current appeals, cross appeals and interlocutory appellate applications at 30 June 2018**

	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Appeals and related actions	625	116	43	28	15	827
% of total	75.6%	14%	5.2%	3.4%	1.8%	100%
<b>Running total</b>	<b>625</b>	<b>741</b>	<b>784</b>	<b>812</b>	<b>827</b>	
Running %	75.6%	89.6%	94.8%	98.2%	100%	

### Managing migration appeals

In 2017–18, 44 migration appeals were filed in the Court’s appellate jurisdiction related to judgments of single judges of the Court exercising the Court’s original jurisdiction. A further 973 migration matters were filed in relation to judgments of the FCC and two from another source.

Table 3.4 shows the number of appellate proceedings involving the Migration Act as a proportion of the Court’s overall appellate workload since 2013–14.

Over the last four years, approximately 70 per cent of the Court’s appellate workload concerned decisions made under the *Migration Act 1958*. Since the last reporting year, the number of migration appellate filings has increased by over 30 per cent, resulting in a proportion of approximately 80 per cent of all appellate proceedings filed involving decisions under the Migration Act.

The Court continues to apply a number of procedures to streamline the preparation and conduct of these appeals and applications and to facilitate the expeditious management of the migration workload.

The Court reviews all migration matters to identify cases raising similar issues and where there is a history of previous litigation. This process allows for similar cases to be managed together resulting in more timely and efficient disposal of matters. Then, all migration-related appellate proceedings (whether to be heard by a single judge or by a Full Court) are listed for hearing in the next scheduled Full Court and appellate sitting period. Fixing migration-related appellate proceedings for hearing in the four scheduled sitting periods has provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same sitting period. Where any migration-related appellate proceeding requires an expedited hearing, the matter is allocated to a single judge or referred to a specially convened Full Court.

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

Appeals and related actions	2013–14	2014–15	2015–16	2016–17	2017–18
Migration jurisdiction	370	648	653	764	1019
%	50.8%	71.2%	65.8%	73.0%	80.7%
<b>Total appeals and related actions</b>	<b>728</b>	<b>910</b>	<b>993</b>	<b>1046</b>	<b>1262</b>

## The Court's native title jurisdiction

### Statistics and trends

In 2017–18, the Court resolved a total of 71 native title applications (commenced under s 61 of the *Native Title Act 1993*), consisting of 50 native title applications, 20 non-claimant applications and one compensation application.

Of the finalised applications, 34 were resolved by consent of the parties, two were finalised following litigation and a further 35 applications were either discontinued or dismissed.

Seventy-six new applications were filed under s 61 of the Native Title Act during the reporting period. Of these new matters, 44 are native title determination applications and 32 are non-claimant applications. No further compensation or variation applications have been filed over the past reporting year as potential applicants await the findings of the High Court in the appeal from the Full Federal Court decision in *Alan Griffiths and Lorraine Jones on behalf of the Ngaliwuru and Nungali Peoples v Northern Territory of Australia* [2016] FCA 900 (Griffiths). The High Court hearing has been set down for September 2018.

At the end of the reporting year, there were 289 native title applications, comprising 229 determination applications, 54 non-claimant applications, six compensation applications and one variation application.

There were a number of additional applications managed by the native title practice area not brought under s 61 of the Native Title Act and a further number of native title appeals. In total, there were 103 native title matters disposed of during the reporting year, with 100 new matters filed and a pending caseload at the end of the reporting year of 309 matters. It is evident that these other matters are beginning to constitute a significant component of the native title work of the Court and that while resolution rates have increased over the past three years, so have the number of new matters.

Some other trends are:

- the increase in non-claimant applications,<sup>1</sup> and
- slight increase in matters of more than two years duration.<sup>2</sup>

The Court introduced a new allocation system during the reporting year and is currently reviewing the currency and relevance of the Priority List in consultation with regular parties to native title matters. There are currently 40 consent determinations and 13 native title claim hearings forecast for the 2018–19 financial year, with the bulk of those projected matters in Western Australia.

The Court continues to focus on directed case management by specialist registrars and judges and on mediation of whole or part matters, predominantly conducted by registrars. The objective of both processes is to identify the genuine issues in dispute between the parties and the most effective means of resolving those disputes. This process accords with the overarching purpose of the Native Title Act and ss 37M and 37N of the *Federal Court of Australia Act 1976* to facilitate the just resolution of disputes according to the law as quickly, inexpensively and effectively as possible. While full native title trials are reducing, there remain a significant number of litigated separate questions and interlocutory proceedings.

- 1 In the 2016–17 financial year, 14 non-claimant applications were filed as opposed to 32 in the current reporting year. These applications are predominantly filed in Queensland and New South Wales, many of which arise due to the requirements of the *Aboriginal Land Rights Act 1983* (NSW) and the desire of pastoralists to convert leases to freehold in Queensland enabled by recently enacted legislation.
- 2 In the 2016–17 financial year, 54.9% of native title applications were more than two years old and 62.2% were more than two years old in the current reporting year despite targeted case management aimed at resolving older matters. This is perhaps reflective of many of the existing matters being over areas of significant inter-Indigenous dispute, including Part B applications, concerning issues that could not be resolved at the time the Part A application was determined by consent.

Mediation may be conducted on-country, with large groups to deal with intra and inter-Indigenous disputes, between claimant and non-claimant applicants and between applicant and regional agencies of a state as some examples. The complexity of disputes is increasing in nature and the intensity of current court facilitation is demonstrated by the increase of listings from 120 mediations and 554 case management hearings in 2016–17 to 148 mediations and 789 case management hearings in 2017–18.

### **Significant litigation**

There were a number of significant matters decided during the reporting year.

#### ***Agius v State of South Australia (No.6) [2018] FCA 358***

This determination, by Justice Mortimer, is a significant consent determination as it is the only positive determination of native title over an Australian capital city (Adelaide).

#### ***Pearson on behalf of the Tjauwara Unmuru Native Title Holders v State of South Australia (Tjauwara Unmuru Native Title Compensation Claim) [2017] FCA 1561***

This matter was a consent determination for a compensation application over extinguished areas within a determined area. The compensation figure was kept confidential.

#### ***Manado (on behalf of the Bindunbur Native Title Claim Group) v State of Western Australia [2017] FCA 1367***

Justice North provided a judgment determining which of two competing groups hold native title over an area including James Price Point, which is now subject of appeal.

#### ***Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia [2017] FCA 803; Warrie (formerly TJ) (on behalf of the Yindjibarndi People) v State of Western Australia (No 2) [2017] FCA 1299***

Whether or not the native title included the right of exclusive possession, occupation and use and the application of s 47B of the Native Title Act were the primary issues in dispute in the hearing of the Yindjibarndi #1 claim. The determination reflecting the judge's findings that exclusive possession native title had been established (contrary to a previous determination that only found for non-exclusive native title) has been appealed by Fortescue Metals Group Ltd (FMG) (but not the State of Western Australia). The appeal is listed in the August 2018 sittings, and will be heard by a five judge bench, including on the basis it is anticipated to include a challenge to the Full Court's previous decisions in *Banjima v WA (2015) 231 CLR 456* and *Griffiths v Northern Territory (2007) 165 FCR 391*.

#### ***Gordon (on behalf of the Kariyarra Native Title Claim Group) v State of Western Australia [2018] FCA 430***

This judgment concerned a separate question put to hearing as to the persons holding the communal rights comprising the native title claimed by the applicants for three claims lodged on behalf of the Kariyarra people. Justice North found that all of the persons included in the claim group description, including the Indigenous respondents, held the communal rights comprising the native title claimed by the applicants. Those six respondents lodged an application for extension of time and leave to appeal against His Honour's decision.

#### ***Finlay on behalf of the Kuruma Marthudunera Peoples v State of Western Australia [2018] FCA 548***

This was ultimately a consent determination that native title exists over most of Part B of the Kuruma Marthudunera claim as the parties were able to reach a compromise and settle the proceedings following the hearing of lay evidence and without completing the remainder of the trial.

### ***Western Bundjalung People v Attorney General of New South Wales [2017] FCA 992***

The consent determination over an area surrounding Tabulum followed a lengthy period of negotiation including of the first Indigenous Land Use Agreement (ILUA) negotiated in New South Wales as part of the settlement in support of a positive native title determination. The decision is also notable for its consideration of the proper role of the first respondent contained in the reasons of Justice Jagot.

### ***Yaegl People #2 v Attorney General of New South Wales [2017] FCA 993***

This was another aged New South Wales matter in which a determination of native title was made over an area at Yamba, including the first New South Wales determination over an offshore area. The determined offshore area included a reef area, which is a sacred site for the Yaegl People known as the *Dirrungun*.

### ***QUD244/16 Gebadi & Ors v Woosup & Ors – heard in July 2017 by Greenwood J. Gebadi v Woosup (No 2) [2017] FCA 1467***

The two people comprising the applicant were found to have breached fiduciary duties owed to the claim group by entering into a mining agreement without authority and in relation to Mr Woosup, by taking the financial benefits from that agreement for himself personally. Mr Woosup was ordered to repay the monies to the group and on failure to do so was arrested and charged with fraud in June 2018.

### ***QUD120/17 Conlon & Ors v QGC Pty Ltd & Ors Pty Ltd – heard December 2017 by Rares J. Conlon v QGC Pty Ltd (No 2) [2017] FCA 1641***

This proceeding involved consideration of whether a registered ILUA had been validly varied by an amendment deed dated 16 February 2015 that was signed by only nine of the 14 persons who comprised the native title party named in the ILUA and had not been authorised in accordance with s 251A of the Native Title Act. Justice Rares found that the deed was not effective to vary the ILUA and had no contractual force or effect. Subsequently, an application was filed by QGC to pay the proceeds payable under the ILUA into court for the Court to determine the appropriate beneficiaries.

### **Cultural recognition and professional development**

A number of native title practice area judges and registrars attended the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) Native Title conference in Broome during the commemoration week in June, including Mabo Day. Justice Barker presented a paper titled *Not so ‘fragile’ a thing: The evolving character of native title, 1993 to 2018*.

To celebrate NAIDOC week, a number of different morning teas and group art projects were conducted in the Court and National Native Title Tribunal registries and a biographical series about female Indigenous leaders was featured on the intranet in recognition of the 2018 NAIDOC week theme.

### **Assisted dispute resolution**

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

In recognition of the Court’s unique model of mediation and commitment to a quality professional development program, the Court became a Recognised Mediator Accreditation Body in September 2015 and implemented the Federal Court Mediator Accreditation Scheme (FCMAS). The FCMAS incorporates the National Mediator Accreditation Standards and the majority of court-ordered mediations are conducted by registrars who are trained and accredited by the Court under the FCMAS. In the native title jurisdiction, while native title registrars now conduct most mediations of native title matters, the Court maintains a list on its website of appropriately qualified professionals if there is a need to engage an external mediator or co-facilitate mediation.

Since the 2010–11 reporting period, the Court has provided comprehensive statistical information about referrals to ADR and the outcomes of ADR processes held during the relevant reporting period. In doing so, the Court is best able to assess the performance of its ADR program across years and to provide academics and policy makers with data upon which they may base their work.



Mediation referrals are summarised in Table 3.5. As in previous years, the data should be considered in light of various factors. Firstly, referrals to mediation or other types of ADR may occur in a different reporting period to the conduct of that mediation or ADR process. Secondly, not all referrals to mediation or the conduct of mediation occur in the same reporting period as a matter was filed. This means that comparisons of mediation referrals or mediations conducted as a proportion of the number of matters filed in the Court during the reporting period are indicative only. Thirdly, the data presented on referrals to ADR during the reporting period does not include information about ADR processes that may have been engaged in by

parties before the matter is filed in the Court, or where a private mediator is used during the course of the litigation. Similarly, the statistics provided in Table 3.5 do not include instances where judges of the Court order experts to confer with each other to identify areas where their opinions are in agreement and disagreement without the supervision of a Registrar.

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

**Table 3.5: Mediation referrals in 2017–18 by National Practice Area (NPA) and registry**

NPA	NSW	VIC	QLD	WA	SA	NT	TAS	ACT	Total
Administrative and constitutional law and human rights	12	13	6	2	3	2	0	1	39
Admiralty and maritime	4	1	0	1	0	0	0	0	6
Commercial and corporations	54	71	17	28	11	0	4	3	188
Employment and industrial relations	30	74	15	8	8	1	5	7	148
Federal crime and related proceedings	0	8	0	0	0	0	0	0	8
Intellectual property	35	28	6	2	4	0	0	1	76
Migration	0	0	0	1	0	0	0	0	1
Native title	10	2	2	12	4	0	0	0	30
Other federal jurisdiction	20	2	3	1	0	0	0	0	26
Taxation	0	0	2	3	0	0	0	0	5
<b>Total</b>	<b>165</b>	<b>199</b>	<b>51</b>	<b>58</b>	<b>30</b>	<b>3</b>	<b>9</b>	<b>12</b>	<b>527</b>

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

## Management of cases and deciding disputes by tribunals

The Court provides operational support to the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal. This support includes the provision of registry services to accept and process documents, collect fees, list matters for hearings, and otherwise assist the management and determination of proceedings. The Court also provides the infrastructure for tribunal hearings including hearing rooms, furniture, equipment and transcript services.

A summary of the functions of each tribunal and the work undertaken by it during the reporting year is set out in Appendix 6 (Work of tribunals).

## IMPROVING ACCESS TO THE COURT AND CONTRIBUTING TO THE AUSTRALIAN LEGAL SYSTEM

### Introduction

The following section reports on the Court's work during the year to improve the operation and accessibility of the Court, including reforms to its practice and procedure. This section also reports on the Court's work during the year to contribute more broadly to enhancing the quality and accessibility of the Australian justice system, including the participation of judges in bodies such as the Australian Law Reform Commission and the Australian Institute of Judicial Administration, and in other law reform, community and educational activities.

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

### Practice and procedure reforms

The National Practice Committee is responsible for developing and refining policy and significant principles regarding the Court's practice and procedure. It is comprised of the Chief Justice,

national NPA coordinating judges and the national appeals coordinating judges, and is supported by a number of registrars of the Court.

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

- considering feedback received in respect of practice notes, including the General Practice Notes (that were issued on the basis of a '12-month review period')
- developing the updated Interest on Judgments Practice Note (GPN-INT) with respect to interest up to judgment arising under s 547 of the *Fair Work Act 2009* (Cth). The updated Interest on Judgments Practice Note was issued on 18 September 2017
- amending a number of practice notes based on feedback received
- commencing the development of new practice notes in the areas of appeals and the Other Federal Jurisdiction NPA, and
- management responsibilities and support for each NPA, including considering the development of national arrangements for liaison with the profession.

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

### Liaison with the Law Council of Australia

Members of the National Practice Committee meet with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure, as required. There were no formal meetings of the available members of the two committees during the reporting year.

Representatives of the Court met, in person and by telephone, with the convenor and other representatives of the Law Council's Federal Court Liaison Committee on a number of occasions during the reporting year to discuss updates to the Case Management Handbook and electronic hearings.

## Assistance for self-represented litigants

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

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

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

to be held with clients. The service is also assisted by volunteer lawyers from participating law firms.

Each of the organisations delivering this service provides the Court with quarterly and annual reports setting out statistics and case studies of SRLs they have been able to assist. The organisations also provide the Court with information on the NPAs that SRLs sought assistance on and examples of the issues where help was provided.

Tables 3.6, 3.7 and 3.8 provide broad statistics about the number of SRLs appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of SRLs is not a mandatory field in the Court's case management system, statistics shown in the tables are indicative only. In the reporting year, 677 people who commenced proceedings in the Court were identified as self-represented. The majority were appellants in migration appeals.

**Table 3.6: Actions commenced by self-represented litigants (SRLs) during 2017–18 by registry**

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
SRLs	3	434	3	69	21	0	68	79	677
% of total	0%	64%	0%	10%	3%	0%	10%	12%	100%

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

**Table 3.7: Proceedings commenced by self-represented litigants in 2017–18 by cause of action**

Cause of action	Total actions	% of total
Administrative law	34	5%
Admiralty	0	0%
Appeals and related actions	480	74%
Bankruptcy	13	2%
Bills of costs	0	0%
Competition law	0	0%
Consumer protection	5	1%
Corporations	7	1%
Cross claim	0	0%

Cause of action	Total actions	% of total
Fair work	16	2%
Human rights	9	1%
Industrial	0	0%
Intellectual property	2	0%
Migration	56	9%
Miscellaneous	14	2%
Native title	14	2%
Taxation	2	0%
<b>Total</b>	<b>652</b>	<b>100%</b>

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

**Table 3.8: Appeals commenced by self-represented litigants in 2017–18 by cause of action**

Cause of action	Total actions	% of total
Administrative law	4	1%
Admiralty	0	0%
Bankruptcy	8	2%
Competition law	0	0%
Consumer protection	6	1%
Corporations	2	0%
Fair work	6	1%
Human rights	4	1%
Industrial	1	0%
Intellectual property	2	0%
Migration	441	92%
Miscellaneous	2	0%
Native title	4	1%
Taxation	0	0%
<b>Total</b>	<b>480</b>	<b>100%</b>

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

## Interpreters

The Court is aware of the difficulties faced by litigants who have little or no understanding of the English language. The Court will not allow a party or the administration of justice to be disadvantaged by a person's inability to secure the services of an interpreter. It has therefore put in place a system to provide professional interpreter services to people who need those services but cannot afford to pay for them.

In general, the Court's policy is to provide these services for litigants who are self-represented and who do not have the financial means to purchase the services, and for litigants who are represented but are entitled to an exemption from payment of court fees, under the FCA and FCC fees regulation (see below).

## Court fees and exemption

Fees are charged under the FCA and FCC fees regulation 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 \$70.60)
- appeals from a single judge to a Full Court in human rights and some fair work applications
- an application by a person to set aside a subpoena
- an application under s 23 of the *International Arbitration Act 1974* for the issue of a subpoena requiring the attendance before or production of documents to an arbitrator (or both)

- an application for an extension of time
- a proceeding in relation to a case stated or a question reserved for the consideration or opinion of the Court
- a proceeding in relation to a criminal matter, and
- setting-down fees for an interlocutory application.

A person is entitled to apply for a general exemption from paying court fees in a proceeding if that person:

- has been granted Legal Aid
- has been granted assistance by a registered body to bring proceedings in the Federal Court under Part 11 of the *Native Title Act 1993* or has been granted funding to perform some functions of a representative body under s 203FE of that Act
- is the holder of a health care card, a pensioner concession card, a Commonwealth seniors health card or another card certifying entitlement to Commonwealth health concessions
- is serving a sentence of imprisonment or is otherwise detained in a public institution
- is younger than 18 years
- is receiving youth allowance, Austudy or ABSTUDY benefits.

Such a person can also receive, without paying a fee, the first copy of any document in the court file or a copy required for the preparation of appeal papers.

A corporation that had been granted Legal Aid or funding under the *Native Title Act 1993* has the same entitlements.

A person (but not a corporation) is exempt from paying a court fee that otherwise is payable if a Registrar or an authorised officer is satisfied that payment of that fee at that time would cause the person financial hardship. In deciding this, the Registrar or authorised officer must consider the person's income, day-to-day living expenses, liabilities and assets. Even if an earlier fee has been exempted, eligibility for this exemption must be considered afresh on each occasion a fee is payable in any proceeding.

More comprehensive information about filing and other fees that are payable, how these are calculated (including definitions used, e.g. 'not-for-profit association', 'public authority', 'publicly listed company' and 'small business') and the operation of the exemption from paying the fee is available on the Court's website. Details of the fee exemptions during the reporting year are set out in Appendix 1 (Financial statements).

## Freedom of Information

### Information Publication Scheme

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

The availability of some documents under the FOI Act will be affected by s 5 of that Act, which states that the Act does not apply to any request for access to a document of the Court unless the document relates to matters of an administrative nature. Documents filed in Court proceedings are not of an administrative nature; however, they may be accessible by way of the Federal Court Rules.

### Access to judgments

When a decision of the Court is delivered, a copy is made available to the parties and published on the FCA website and a number of online free-access legal information websites for access by the media and the public. Judgments of public interest are published by the Court within an hour of delivery and other judgments within a few days. The Court also provides copies of judgments to legal publishers and other subscribers. Online free-access legal information websites providing access to Federal Court judgments include AustLII and JADE.

## Information for the media and televised judgments

The Director, Public Information deals with media enquiries from around the country and internationally. Most of these relate to specific cases and, to a lesser degree, issues the Court is routinely called upon for comment.

Dealings with the media overwhelmingly relate to requests for judgments and information on how to access files. This requires close liaison with, and the support of, registries and judges' chambers.

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

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

In the reporting year, these files were created for the following matters:

- AUSTRAC v Commonwealth Bank, and
- Geoffrey Rush v Nationwide News.

Televised judgments were arranged for:

- Guy v Crown, and
- Wotton v State of Queensland.

## Community relations

The Court engages in a wide range of activities with the legal profession, including regular user group meetings. The aim of user groups is to provide a forum for court representatives and the legal profession to discuss existing and emerging issues, provide feedback to the Court and act as a reference group. Seminars and workshops on issues of practice and procedure in particular areas of the Court's jurisdiction are also regularly held.

In 2017–18, members of the Court were involved in seminars relating to intellectual property, admiralty, arbitration, commercial law, tax, insolvency and class actions.

### Working with the Bar

The New South Wales registry hosted the New South Wales silks ceremony on 20 October 2017. The Victorian registry hosted a silks ceremony in November 2017, with over 80 guests attending. The Victorian registry also hosted the Victorian Bar Advocacy assessments and courses throughout the year.

Registries across the country hosted advocacy sessions as well as a number of bar moot courts and moot competitions and assisted with readers' courses during the year.

### User groups

User groups have been formed along NPA lines to discuss issues related to the operation of the Court, its practice and procedure, to act as a reference group for discussion of developments and proposals, and as a channel to provide feedback to the Court on particular areas of shared interest.

During the reporting year, user groups met both nationally and locally in a number of practice areas, including class actions, admiralty, corporations, bankruptcy, migration and native title. In addition, the Court established the national Employment and Industrial Relations NPA user group, which has met twice in the reporting period.

## Legal community

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

- **Brisbane** – the Professor Michael Whincop Memorial Lecture, National Seminar for the International Fiscal Association, New Silks Ceremony in December 2017, and Richard Cooper Memorial Lecture.
- **Melbourne** – the Richard Cooper Memorial Lecture, Australian Maritime and Transport Arbitration Commission (AMTAC) address, and Australian and New Zealand Association of Psychiatry, Psychology and Law (ANZAPPL) lecture.
- **Perth** – the registry hosted two intellectual property seminars and a United Nations day lecture.
- **Sydney** – the Richard Cooper Memorial Lecture, Tristan Jepson Memorial Foundation Lecture, Lehane Lecture, Public Information Officers' Conference, Australian Association of Constitutional Law (AACL) lecture, AMTAC address, and Mahla Pearlman Oration.

## Education

The Court engages in a range of strategies to enhance public understanding of its work, and the Court's registries are involved in educational activities with schools and universities and, on occasion, with other organisations that have an interest in the Court's work. The following highlights some of these activities during the year.

The Court hosted many work experience students across multiple registries including New South Wales, Queensland and Victoria. Students are given a program that exposes them to all areas of the Court's operations over the course of one week.

The Court hosted a number of school visits and educational tours across its registries. The Western Australian registry hosted two school visits organised by the Law Society of Western Australia.

The Court's support for and work with universities continued through the year. The New South Wales registry hosted four moot courts for the University of New England. The Queensland registry hosted two university moot competitions and had visits from school groups from Sheldon College and Southern Cross Catholic College. The Victorian registry hosted a number of moot courts for Monash, Melbourne, New England, La Trobe, Victoria and Deakin universities. The Melbourne registry also hosted a careers information session for University of Melbourne law students.

The Tasmanian registry hosted 40 University of Tasmania law students in January 2018, as part of Advocacy summer school. Justice Kerr delivered a lecture about court etiquette and appellate advocacy and District Registrar Browning welcomed the students and gave a lecture on court practice and procedure. The students returned two days later to use the Court facilities for their assessment moots in which they appeared before members of the judiciary and the profession. Also in January 2018, another university group, studying labour law with local barrister Mark Rinaldi, attended the Court and listened to a presentation about dispute resolution practices.

### **Indigenous Law Students Clerkship Program**

The FCA participated in the inaugural New South Wales Bar Association and Ngara Yura Indigenous Law Students' Clerkship Program, together with the Supreme Court of New South Wales and the New South Wales Bar Association. The program offered three paid clerkship positions to Indigenous law students, who each spent a week with barristers from Forbes Chambers, a week with the Supreme Court and a week with the FCA (including the FCC and the National Native Title Tribunal). The program operates like a vacation clerkship with a law firm in that it aims to provide valuable experience for more senior law students who are considering a career in law.

The program commenced on 5 February 2018. The three Indigenous students (Kate Sinclair, Tyrone Kelly and Ryan Barratt) were all from the University of New South Wales. Ms Sinclair is a Darug woman who has worked recently as a paralegal at Gilbert + Tobin. Mr Kelly is a Yuin man from the La Perouse Aboriginal community. Mr Barratt is a Coastal Darug man and has worked for the New South Wales Department of Planning and Environment as a student legal officer since November 2016.

Each of the clerks was able to observe a range of criminal and civil proceedings in state and federal Courts. They worked closely with individual judges, court officers and chamber staff. The program was a great success. One of the clerks described the experience as being like none other because it provided 'a unique insight into the courts and the life of a barrister'. Another commented on the enjoyment of 'learning about the process of writing judgments and observing the human aspect of the court system'. Another spoke of the advantage of having had an opportunity to attend the Indigenous Family List and of seeing an area of the law that not many students experienced.

Each of the students was presented with a certificate of participation at a ceremony held in the Federal Court on 21 February 2018. The certificates were presented by Chief Justice Allsop, Chief Justice Bathurst and Arthur Moses SC.

The Federal Court will be involved in a similar program next year in conjunction with the New South Wales Bar Association, the Supreme Court of New South Wales and the Judicial Commission of New South Wales.



## Overseas delegations

Registries regularly host visiting delegations from overseas courts who are interested in learning more about the Court's operations.

- **New South Wales** – in May 2018 the New South Wales registry hosted a delegation from Sri Lanka.
- **Victoria** – in April 2018, the Victorian registry hosted a delegation of judges from the Supreme Court of Sri Lanka. Justice Kenny and Registrar Luxton addressed the group.
- **Western Australia** – in December 2017, the Western Australian registry hosted a delegation from the Supreme People's Court of Vietnam.

## Complaints

During the reporting year, complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. For the purpose of collecting data about complaints, several discrete reports made by a complainant about a single issue or a set of related issues were recorded as a single complaint. There were 11 complaints in the reporting year. This figure is up from seven complaints recorded last year. This figure does not include complaints about the merits of a decision by a judge, which may only be dealt with by way of appeal, or complaints about the merits of a decision of a registrar, which may only be dealt with by way of review.

Information about the Court's feedback and complaints processes can be found at [www.fedcourt.gov.au/feedback-and-complaints](http://www.fedcourt.gov.au/feedback-and-complaints).

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

The Court is an active supporter of legal education programs, both in Australia and overseas. During the reporting year, the Chief Justice and many judges:

- presented papers, gave lectures and chaired sessions at judicial and other conferences, judicial administration meetings, continuing legal education courses and university law schools

- participated in Bar reading courses, Law Society meetings and other public meetings, and
- held positions on advisory boards or councils or committees.

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

## National standard on judicial education

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

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

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

During 2017–18 the Court offered the following activities:

- ad hoc seminars, including:
  - *The economics, reality and practice of derivatives; the documentation of derivatives; and law, litigation and derivatives cases* presented by P.R.I.M.E. Finance in October 2017
  - *Insolvency Law Reform Act: key changes; and Safe Harbour and Ipso facto reforms* on 27 November 2017
  - *Is there a duty to avoid risk?* – Migration law seminar presented by Professor James Hathaway on 9 May 2018
  - Seminars in the National Commercial Law Series, run by Monash University in conjunction with the FCA and the Victorian Bar.

- eight education sessions at the judges' meeting in August 2017
- eight education sessions at the judges' meeting in March 2018
- the opportunity for judges to attend the Supreme Court and FCA judges' conference held in Sydney on 22–24 January 2018.

Education sessions offered at the judges meetings in 2017–18 included:

- workshops on the following NPAs:
  - native title
  - taxation
  - admiralty and maritime
  - commercial and corporations
  - administrative and constitutional law and human rights – migration
  - intellectual property, and
  - employment and industrial relations.
- working digitally and electronic court file refresher
- the significance of the divided brain
- the appellate system of the Court
- Chinese perspectives on the operation of the law
- pecuniary penalties
- judicial health and wellbeing
- judgment writing
- the history and philosophy of incorporation
- case management and its purpose, and
- expert event study evidence in shareholder class actions.

In addition, judges undertook other education activities through participation in seminars and conferences. Some of these are included in Appendix 8 (Judges' activities).

In 2017–18, the FCA met the National Standard for Professional Development for Australian Judicial Officers.

## Work with international jurisdictions

The Court's International Programs Unit collaborates with neighbouring judiciaries, predominantly across the Asia Pacific region, to promote governance, access to justice, and the rule of law. In 2017–18, the Court coordinated a number of activities and hosted several international visits.

### Supreme Court of the Union of Myanmar

Further to a memorandum of understanding (MOU) signed between the courts in June 2016, the FCA has collaborated on several activities with the Supreme Court of the Union of Myanmar:

- In August 2017, the Court participated in a judicial colloquium on commercial law held at the Supreme Court of the Union. The colloquium was a collaboration between the Asian Development Bank and the University of New South Wales. Justice White and National Judicial Registrar Nicola Colbran participated in workshops which were attended by judicial officers from both the Supreme Court and District Courts of Myanmar.
- Following the 2016 Leadership and Change Management Workshop, held at the Supreme Court of the Union in Naypyidaw, the FCA's CEO and Principal Registrar delivered a further leadership and change management program for senior judges in December 2017.
- Following the April 2017 workshop on data collection analysis and annual report preparation, the FCA's Solutions Architect (Business Intelligence) delivered a further workshop in December 2017 on data collection analysis and reporting and assisted with the preparation and delivery of annual reports. The workshop was attended by judges and staff from the Information Technology division of the Supreme Court.
- In February 2018, Justice Yates and the CEO and Principal Registrar met with Justice Phyo Mouk of the Supreme Court to discuss the role of FCA judges and the Court's case management system.

## Supreme Court of Indonesia

- In July 2017, a new trilateral MOU was signed between the FCA, Family Court of Australia, and the Supreme Court of the Republic of Indonesia. Speeches were given by the Chief Justices of the three courts during the ceremony. The courts will continue to collaborate on priority areas within the Supreme Court's strategic reform plan.

## National and Supreme Courts of Papua New Guinea

- In November 2017, under the Pacific Judicial Strengthening Initiative (PJSI), a human rights workshop was facilitated for all National Court judges and District Court magistrates. The purpose of the workshop was to highlight the roles, responsibilities and relevance of judges and magistrates to apply human rights across all areas of the Court's work. These were the first court workshops to be held on the subject of human rights in Papua New Guinea.
- The PJSI provided ongoing assistance to the Centre for Judicial Excellence to build its capacity to provide domestic judicial training, and later transitioning to a regional provider.

## Supreme Court of Vanuatu

- In July 2017, the CEO and Principal Registrar was invited by Chief Justice Lunabek of Vanuatu's Supreme Court to provide advice about improving the efficacy of the management of cases within the Supreme Court. The resulting Aide Memoire incorporates several recommendations that are being discussed and implemented.

## Regional collaborations

The PJSI aims to build fairer societies by supporting the courts in 14 Pacific Island countries to develop more accessible, just, efficient and responsive justice services. The PJSI is funded by the New Zealand Ministry of Foreign Affairs and Trade and comprises various projects across five thematic areas – namely that change is driven locally (leadership); clients understand and are confident to exercise rights (access to justice); officers are delivering excellent service (professionalism); courts are delivering fair results (substantive justice); and cases are disposed of efficiently (procedural justice).

## Leadership

- In September 2017 a Judicial Leadership Workshop was facilitated in Tonga by Deputy Principal Registrar John Mathieson and PJSI Technical Director Dr Livingston Armytage. The workshop focused on judicial leadership in the South Pacific, the impact of drivers of change facing the courts, and leadership approaches and tools in guiding courts successfully through challenges and change.
- In April 2018, the third Chief Justices' Leadership Forum and fourth PJSI Executive Committee Meeting were held in New Zealand. Chief Justices and/or their representatives from 13 Pacific Island countries considered the PJSI's progress and plans.

## Access to justice

- In February 2018, a regional workshop 'Promoting Substantive Justice' was held in Port Vila. The workshop aimed to build the capacity of participating Pacific Island countries to improve the quality of substantive justice.
- In March 2018, a visit to the Marshall Islands aimed to improve access to justice and enable rights through community outreach and engagement. Following well-attended community consultations, a workshop was held in Majuro for judicial and clerical officers and members of the public.

## Professionalism

- In August 2017, an orientation course was delivered in the Marshall Islands. Tasked with ensuring judicial and court officers operate professionally, and with the competence to provide quality procedural and substantive justice, a faculty of nine judicial and clerical officers, including Country Court of Victoria Judge Jane Patrick, led the training for 26 participants.
- In November 2017, a regional Judicial Officer orientation course was conducted in the Solomon Islands. The aim of the course was to induct 28 lay court actors, mainly adjudicators, in the fundamentals of judicial knowledge, skills and attitudes in order to perform their roles competently. An intensive two-day training-of-trainers workshop was held to build the competence and confidence of the regional faculty members to plan, deliver and manage judicial training on an ongoing local basis.
- Following collaboration with the University of the South Pacific, a new Certificate of Justice was launched in 2018. The course is a one-year, four-unit certificate designed for lay adjudicators and court administrators. The certificate provides participants with foundational legal training where they are unable to commit to the Bachelor of Laws, or do not meet its entry requirements.
- In May 2018, an orientation course was conducted in Samoa with the Lands and Titles Court, with 24 participants actively engaged in discussions to:
  - share and develop professional experience to further promote understanding of the judicial role and conduct on and off the bench
  - develop effective techniques of courtroom control
  - understand the principles and practices of procedural fairness in criminal and civil proceedings
  - explain the special interests of parties coming to court including juveniles, victims of crimes including sexual and gender-based violence, people with disabilities and those with language barriers, and
  - strengthen judicial identity and develop a regional professional resource network.

- In June 2018 an orientation course was held in the Solomon Islands, facilitated by the Solomon Islands Chief Justice, Dr Livingston Armytage from the PJSI, Justice Mortimer from the FCA, and Magistrate Greg Benn of the Western Australian Magistrates Court. The course built the capacity of local judges to act as trainers and covered a wide range of topics including case and courtroom management, judicial ethics, procedural fairness, dealing with vulnerable parties and witnesses, civil and criminal procedure issues and judicial wellbeing.

## Substantive justice

- In November 2017, a Human Rights Toolkit and a Gender and Family Violence Toolkit were launched. The Human Rights Toolkit provides insight into how human rights principles are relevant and applied across all aspects of courts' work. The Gender and Family Violence Toolkit provides guidance enabling courts to measurably improve the accessibility and responsiveness of their services to the victims of violence against women.
- Also in November 2017, a visit to Nauru familiarised court actors with the gendered nature of domestic violence and the underlying causes, as well as key concepts in recently introduced legislation.
- In June 2018, a visit to Kiribati aimed to increase the knowledge and skills of court actors to understand the relevance of human rights activities and encourage the application of human rights standards in their respective roles within the courts.

## Procedural justice

- In August 2017, a visit to Palau reviewed progress with respect to collecting and reporting on case data enabling public accountability and transparency. All Pacific Island countries continue to be supported to collect data against the Cook Island indicators, along with data disaggregated by gender, family violence and youth-related court.
- In April 2018, an Efficiency Toolkit was endorsed by the region's judicial leaders and will soon be piloted.
- Also in April 2018, the region's judicial leaders endorsed an information and communications technology (ICT) road map and a court performance planning and measurement strategy paper. The road map includes recommendations about the process for courts to become more technology-focused and capable. Ongoing remote support in planning, monitoring, evaluation and reporting on court performance is being provided to a number of partner courts.

## Australian Competition and Consumer Commission

In April 2018, an MOU was signed between the FCA and the Australian Competition and Consumer Commission. The MOU provides the framework for the FCA to contribute to increasing legal certainty, promoting efficiency and fostering consistency and predictability among Association of Southeast Asian Nations (ASEAN) member states. Pursuant to the MOU, the FCA has contributed technical analysis and guidance to better identify, interpret and evaluate legal and economic concepts in making and reviewing decisions under competition laws. The analysis and guidance was provided by Justice Middleton and National Judicial Registrar Catherine Forbes.

## Visitors to the Court

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

**Bangladesh:** In July 2017, the FCA in Sydney hosted a delegation of judges from Bangladesh. The CEO and Principal Registrar provided an overview of the Court's jurisdiction and structure, case management, electronic filing and the recent review of court management. The delegation later observed various family law hearings in the FCC. Judge Cameron then held discussions with the delegation on case management, listings and court administration.

**Papua New Guinea:** In September 2017, the Court in Sydney hosted a five-person delegation from Papua New Guinea's National and Supreme Courts to discuss the technical requirements to establish an eFiling system and the application, rules, process and procedures of eFiling in a court case management environment. In May 2018, the Queensland FCA library hosted a four-member delegation from the National and Supreme Courts of Papua New Guinea. The purpose of the visit was to provide advice, support and training to the delegation about library management and associated systems.

**Vietnam:** In December 2017, the FCA in Perth hosted a delegation of nine judges from the Supreme Peoples' Court of Vietnam and other provincial courts of Vietnam. The delegation was welcomed by National Judicial Registrar Russell Trott, and Director of Court Services Nick Pannell. The delegation inspected the Court's mediation suite and discussed mediation practice and procedure. The delegation also toured the Court building and observed three case management hearings in court, presided by Justice McKerracher, including a native title matter. The visit concluded with the delegates meeting Justice Siopis and Justice McKerracher and other FCA staff.

**Myanmar:** In February 2018, Justice Yates and the CEO and Principal Registrar met with Justice Phyo Mouk of the Supreme Court of the Union of Myanmar to learn more about the role of judges in the Australian Federal Court System, and, in particular, the Court's system of case management.

**Japan:** In February 2018, Justice Kenny and Acting District Registrar Luxton hosted a visit to the Court by Judge Yuri Takemura, Yokohama District Court, Tokyo.

**Korea:** In February 2018, Justice Kenny and Acting District Registrar Luxton hosted a visit to the Court by Judge Yun-Kyung Bae, Suwon District Court.

**Sri Lanka:** In April 2018, Justice Kenny and Acting District Registrar Luxton hosted a delegation of visiting judges from the Sri Lankan Court of Appeal. In May 2018, Chief Justice Allsop delivered a lecture on maritime arbitration to delegates from the Sri Lankan Attorney General's Department during their visit to the Court, as part of an International Commercial Arbitration Program.

**Thailand:** In May 2018, Justice Jagot welcomed a delegation of 30 members from the Thai judiciary. In June 2018, Justice Yates hosted a second delegation of 31 judges. The visit to the Court included discussions on consumer law, case management, court procedure and electronic filing.