PART 3
THE WORK OF THE COURT IN 2010–11

ON COUNTRY LOGISTICS

EFFECTIVE CONNECTION

CONFERENCE OF EXPERTS IN REM

THE WORK OF THE COURT IN 2010–11

INTRODUCTION

The Federal Court has one key outcome identified for its work, which is, through its jurisdiction, to apply and uphold the rule of law to deliver remedies and enforce rights and, in so doing, contribute to the social and economic development and wellbeing of all Australians.

This Part reports on the Court's performance against this objective. In particular, it reports extensively on the Court's workload during the year, as well as its management of cases and performance against its stated workload goals. The Part also reports on aspects of the work undertaken by the Court to improve access to the Court for its users, including changes to its practices and procedures. 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.

Central to the Court's civil jurisdiction is s 39B(1A)(c) of the *Judiciary Act 1903*. 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.

Cases arising under Part IV (restrictive trade practices) and Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010* (formerly the *Trade Practices Act 1974*) 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 dealing or false advertising. See Figure 6.8 on page 94 for comparative statistics regarding consumer law matters. Since late 2009 the Court has also had jurisdiction in relation to indictable offences for serious cartel conduct.

From 1 January 2011 significant changes were made to trade practices law in Australia including renaming the Trade Practices Act as the Competition and Consumer Act and the introduction of the Australian Consumer Law (ACL) to replace Part V of the former Trade Practices Act as well as State and Territory consumer laws. The ACL is now located in Schedule 2 of the Competition and Consumer Act.

The Court also 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.

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 6.13 on page 99 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 6.14 on page 100 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, 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 (NNTT) and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 31. Figure 6.11 on page 97 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 nineteen arrests. See Figure 6.10 on page 96 for a comparison of Admiralty Act matters filed in the past five years.

The Court's jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* covers a diversity of matters ranging 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. See Figure 6.7 on page 93 for a comparison of corporations matters filed in the last five years.

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. See Figure 6.6 on page 92 for a comparison of bankruptcy matters filed in the last 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 6.12 on page 98.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court, and from the Federal Magistrates Court in non-family law matters. In recent years a significant component of its appellate work has involved appeals from the Federal Magistrates Court concerning decisions under the *Migration Act 1958*. The Court's migration jurisdiction is discussed later in this Part on page 30. 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 28. Figure 6.15 on page 101 shows the appeals filed in the Court since 2006–07.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction are listed in Appendix 5 on page 123.

Changes to the Court's jurisdiction in 2010–11

The Court's jurisdiction during the year was enlarged or otherwise affected by several statutes including:

- *National Broadband Network Companies Act 2011*
- *National Vocational Education and Training Regulator Act 2011*
- *Paid Parental Leave Act 2010*

Amendments to the Federal Court of Australia Act

During the reporting year the Federal Court of Australia Act was amended by two statutes.

The *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011* made a minor amendment to subsection 32P (2) of the Federal Court of Australia Act (inserting the word 'federal' before 'judicial proceeding'). This was required as a result of amendments made to the *Crimes Act 1914* and to ensure that the section refers to the new definition of 'federal judicial proceeding' in that Act.

The *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* made amendments consequential upon the changes to the trade practices regime which took effect from 1 January 2011. These amendments replace the references to the Trade Practices Act with the appropriate references to the Competition and Consumer Act.

As mentioned in the 2009–10 Annual Report, the *Trans-Tasman Proceedings Act 2010* and the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010*, will implement the *'Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement'* signed on 24 July 2008. The Transitional Act will amend the Federal Court of Australia Act by omitting Part IIIA (which deals with the conduct of Trans-Tasman proceedings brought under the Competition and Consumer Act) once the substantive provisions of the Trans-Tasman Proceedings Act take effect. The Trans-Tasman Proceedings Act and the Transitional Act have, however, not yet commenced.

Amendments to the Federal Court of Australia Regulations

During the reporting year the Federal Court of Australia Regulations 2004 were amended on two occasions.

The amendments to the Regulations mentioned in the 2009–10 Annual Report, increasing the quantum of the filing and other fees set out in Schedule 1 of the Regulations, inserting a new fee for commencing a proceeding under the *Bankruptcy Act 1966* and introducing a system of tiered hearing fees whereby the daily fee increases depending on the length of the trial, took effect from 1 July 2010.

On 15 October 2010 the Regulations were amended to replace some fee exemptions and waivers with a minimum $100 fee. These changes took effect from 1 November 2010. People in certain specified categories (for example those who are receiving legal aid) became eligible to pay the minimum fee to initiate an action and then did not need to pay any further fees in that proceeding (except for photocopying). Previously people in these categories were exempt from payment of fees. In addition, where a Registrar or authorised officer is satisfied that payment of a full fee for the filing

of a document or for any service by a person or corporation would cause financial hardship, a minimum fee for that filing or service became payable. Eligibility to pay the minimum fee on such grounds must be considered afresh each time payment of a full fee in the proceeding is required. Previously people or corporations who could demonstrate financial hardship were entitled to a waiver of all fees in the proceeding.

On 25 March 2011 the Regulations were amended to put beyond doubt that a person eligible to pay a minimum fee may be allowed to seek deferral of the payment of that fee. Deferral is available in a range of circumstances such as urgency, where the person liable to pay is represented by a lawyer who is acting pro bono, or if it would be oppressive or unreasonable for payment to be required within the usual timeframes. There has been a substantial increase in administrative work associated with the new fee arrangements, particularly work related to following up deferred fees.

Federal Court Rules and Practice Notes

The judges are responsible for making the Rules of Court under the Federal Court of Australia 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 Rules.

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. They also provide the framework for new jurisdiction conferred upon the Court. A review of the Rules is often undertaken as a consequence of changes to the Court's practice and procedure described elsewhere in this report. Proposed amendments are discussed with the Law Council of Australia and other relevant organisations as considered appropriate.

During the reporting year, a number of amendments were made to the Rules. These included amendments to:

- Order 78 consequential upon amendments to the *Native Title Act 1993* relating to mediation.
- Orders 62 and 80 and Form 15B to replace the term 'legal practitioner' with the term 'lawyer'. This was overlooked in earlier amendments made to the Rules consequential upon amendments to s 4 of the Federal Court of Australia Act in 2009 substituting the term 'lawyer' for 'legal practitioner'.
- Schedule 2 to adjust the quantum of prescribed costs in line with recommendations made by the Joint Costs Advisory Committee in its Third Report on Legal Practitioners' Costs.

Throughout the year work continued on the Court's Rules Revision project under the direction of the Rules Revision Committee. The project is developing a modern set of court rules written in plain English and gender neutral language. Further information about this project can be found in Part 2 on page 14.

The Court's Rules Committee agreed that there should be no further amendments to the current Rules other than those that may be necessary due to legislative changes or that are otherwise of an urgent nature. Any other issues with the current Rules will be addressed in the revised Rules expected to be promulgated on 1 August 2011.

Changes consequential upon the introduction of the following legislation that arose during this period were referred to the Rules Revision Project:

- *Freedom of Information Amendment (Reform) Act 2010* which commenced on 1 November 2010.
- *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* which received Royal Assent on 13 July 2010 with most provisions commencing on 1 January 2011.
- *Civil Dispute Resolution Act 2011* which received Royal Assent on 12 April 2011.

In 2009 and 2010 the Court carried out a review of the process used for determining costs incurred by parties to legal proceedings, as well as the structure of the scale of costs used in that process. Following the review the judges decided that changes to the Rules arising from the costs review should be introduced from 1 August 2011 with the revised Rules.

The changes require that the costs incurred by a party in a proceeding, which have been ordered to be paid by another party, are to be assessed on a 'fair and reasonable' basis. The revised Rules will also introduce a new scale of costs allowable for work done and services performed structured to reflect modern-day methods of delivering legal services.

There were no amendments to either the Federal Court (Corporations) Rules 2000 or the Federal Court (Bankruptcy) Rules 2005.

Practice Notes supplement the procedures set out in the Rules of Court. During the reporting year the Chief Justice issued the following new or revised practice notes:

- A revised Practice Note APP 1 – List of Appeals to the Court.
- A revised Practice Note CM 1 – List of authorities, citations of cases and legislation for proceedings generally.
- A new Practice Note APP 2 – Content of appeal books and preparation for hearing.
- A new Practice Note CORP 3 – Scheme of Arrangements.

The NSW District Registrar issued Administrative Notice NSW 4 – Related Proceedings.

Practice Notes and Administrative Notices are available through District Registries and on the Court's website. They are also available in loose-leaf legal services.

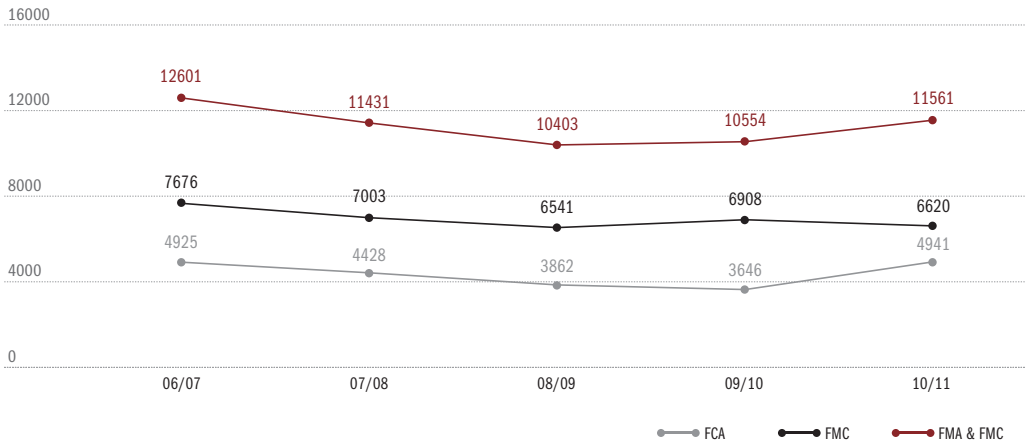
Workload of the Federal Court and Federal Magistrates Court

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

Figure 3.1 below shows a continued increase in the combined filings of the two courts since 2009–10. As noted in Part 2 and evident from figure 3.1, the combined workload increased substantially in the last financial year.

In 2010–11, a total of 11 561 matters were filed in the two courts. In 1999–2000 there were 6276 filings in the two courts. The overall growth in the number of filings since 2000 has had a considerable impact on the Federal Court's registries, which process the documents filed for both courts and provide the administrative support for each matter to be heard and determined by the relevant Court.

Figure 3.1 – Filings to 30 June 2011
Federal Court of Australia (FCA) and Federal Magistrates Court (FMC)



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 practices and procedures designed to assist with the efficient disposition of cases according to law.

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 eighteen months from commencement as the period within which it should dispose of at least eighty-five 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 eighteen 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 2006 to 30 June 2011, ninety per cent of cases (excluding native title matters) were completed in less than eighteen months, eighty-five per cent in less than twelve months and seventy-one per cent in less than six months (see Figure 6.4 on page 90). Figure 6.5 on page 91 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2010–11, ninety per cent of cases were completed within eighteen months.

Delivery of judgments

In the reporting period, 1740 judgments were delivered. Of these, 531 judgments were delivered in appeals (both single judge and full court) and 1209 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.

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 8 on page 103 includes a summary of decisions of interest delivered during the year and illustrates the Court's varied jurisdiction.

The workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 4303 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table 6.2 on page 89.

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*
- *Federal Magistrates Act 1999*

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

- *eight from the High Court*
- *thirteen from the Federal Magistrates Court*
- *four from the Supreme Courts*
- *thirty-four 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*
- *Administrative Appeals Tribunal Act 1975*

During 2010–11, twenty-two matters were transferred from the Court:

- *sixteen to the Federal Magistrates Court*
- *three to the Supreme Courts*
- *three to other Courts*

Matters completed

Table 6.2 on page 89 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 4036 against 2782 in the previous reporting year. The significant increase in the number of matters completed during the year correlates to the increase in filings.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2732 (see Table 6.2), compared with 2465 in 2009–10.

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 2011 is set out in Table 3.1 below.

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)

	UNDER 6 MONTHS	6-12 MONTHS	12-18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	SUB-TOTAL
Cause of Action						
Administrative Law	58	44	18	6	7	133
Admiralty	10	12	7	4	10	43
Bankruptcy	45	13	4	7	3	72
Competition Law	1	7	7	8	9	32
Consumer Law	82	108	32	26	47	295
Corporations	782	112	40	31	46	1011
Human Rights	26	13	9	6	5	59
Workplace Relations	3	5	3	2	13	26
Intellectual Property	66	52	19	14	39	190
Migration	12	2	1	0	0	15
Miscellaneous	23	25	4	7	8	67
Taxation	94	78	21	39	6	238
Fair Work	64	18	13	5	0	100
Total	**1266**	**489**	**178**	**155**	**193**	**2281**
% of Total	55.5%	21.4%	7.8%	6.8%	8.5%	100.0%
Running Total	**1266**	**1755**	**1933**	**2088**	**2281**	
Running %	55.5%	76.9%	84.7%	91.5%	100.0%	

The Court experienced a twenty-eight per cent reduction in the number of matters over eighteen months old in 2010–11. Table 3.1 shows that at 30 June 2011 there were 348 first instance matters over 18 months old compared with 483 in 2010 (not including native title matters). Corporations, Consumer Law (misleading and deceptive conduct) and Intellectual Property make up a high proportion of the matters over twenty-four months old. The length of time it takes to finalise these matters is indicative of their complexity both for the parties in preparing the matters for hearing and the judge in hearing and deciding the case.

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 matters	22	33	12	7	377	451
% of Total	4.9%	7.3%	2.7%	1.6%	83.6%	100.0%
Running Total	**22**	**55**	**67**	**74**	**451**	
Running %	4.9%	12.2%	14.9%	16.4%	100.0%	

There were 384 native title matters over eighteen months old at 30 June 2011 compared with 422 in 2010.

The Court will continue to focus on reducing its pending caseload and the number of matters over eighteen months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 6 commencing on page 83.

The Court's appellate jurisdiction

The appellate workload of the Court constitutes a significant part of its overall workload. While most of the appeals arise from decisions of single judges of the Court or the Federal Magistrates Court, some are in relation to decisions by State and Territory courts exercising certain federal jurisdiction.

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 Federal Magistrates Court and courts of summary jurisdiction exercising federal jurisdiction may be heard by a Full Court of the Federal Court or by a single judge in certain circumstances. All other appeals must be heard by a Full Court, which is usually constituted by three, and sometimes five, judges.

The Court publishes details of the four scheduled Full Court and appellate sitting periods to be held in February, May, August and November of each year. Each sitting period is up to four weeks in duration. In the 2011 calendar year, Full Court and appellate sitting periods have been scheduled for Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, Hobart and Darwin. Once an appeal is ready to be heard, it can usually be listed for the next scheduled Full Court and appellate sittings in the capital city where the matter was heard at first instance.

When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court which may, if necessary and appropriate, use video conferencing facilities or hear the appeal in a capital city other than that in which the case was originally heard.

During the reporting year a Full Court was specially convened to enable the early hearing and disposition of urgent appeals on fifteen occasions. Hearing these appeals involved a total of twenty-one days with three judges sitting on each day.

The appellate workload

During the reporting year 837 appellate proceedings were filed in the Court. They include appeals and related actions (638), cross-appeals (38) or interlocutory applications made by notice of motion such as applications for security for costs in relation to an appeal, for a stay of an appeal, to vary or set aside orders or various other applications (161).

The Federal Magistrates Court is a significant source of appellate work accounting for forty-nine per cent (408) of the total number of appeals and related actions, cross-appeals and other appellate motions filed in 2010–11. 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 Figure 6.16 on page 102.

The above figures indicate that the Court's appellate workload in 2010–11 (837) has remained relatively constant when compared with 2009–10 (860).

During the reporting year the number of migration appeals and applications filed decreased by thirty-one per cent from 392 matters filed in 2009–10 to 269 in 2010–11. Notwithstanding the decline in the number of migration cases filed, this workload is subject to fluctuation due to changes that may occur in Government policy or the impact of decisions of the High Court.

By contrast, the Court's more complex and generally lengthier non-migration appellate workload has increased significantly by twenty-one per cent in 2010–11 (568) compared with 2009–10 (468). These cases often involve more active case management by judges and registrars to ensure the timely and efficient preparation and conduct of these proceedings. Non-migration matters currently account for sixty-eight per cent of the Court's overall appellate workload.

In the reporting year 831 appeals, cross-appeals and related actions were finalised, including 192 interlocutory applications made by notice of motion.

At 30 June 2011, 402 appeals, cross-appeals and related actions were current including forty-eight interlocutory applications made by notice of motion. The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2011 is set out in Table 3.3 below.

At 30 June 2011 there were six appeals, cross-appeals, related actions or applications that are eighteen months or older. Five of these were cases awaiting the outcome of decisions in the High Court or the Federal Court. A negotiated native title outcome is being pursued in the other case.

Table 3.3 – Age of current appeals and related actions (including notices of motion and cross appeals)

CURRENT AGE	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	TOTAL
Appeals & Related Actions	311	67	18	1	5	402
% of Total	77.4	16.7%	4.5%	0.2%	1.2%	100.0%

Managing migration appeals

In 2010–11 five migration cases filed in the Court's appellate jurisdiction related to judgments of single judges of the Court exercising the Court's original jurisdiction and 264 migration cases related to judgments of the Federal Magistrates Court.

Table 3.4 below shows the number of appeals involving the Migration Act as a proportion of the Court's overall appellate workload since 2006–07. 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.

Initially, the Court applies systems to assist with identifying matters 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 docket judge or duty judge (in accordance with local practice) 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 notices of motion and cross appeals)

APPELLATE PROCEEDINGS	2006–07	2007–08	2008–09	2009–10	2010–11
Migration Jurisdiction	1092	1020	530	392	269
Per cent	72%	67%	50%	46%	32%
Total Appellate Proceedings	1520	1526	1067	860	837

Information about the Court's time goal for the disposition of migration appeals can be found in Part 2 at page 16.

The Court's native title jurisdiction

Current and Future Workload

As at 30 June 2011 the Court had 451 current native title matters including 420 claimant applications and eight compensation applications.

During the reporting year, the Court made twenty-four determinations in respect of the existence of native title. One of these was a litigated hearing and twenty-three were achieved through mediation and negotiation. In addition there were four unopposed non-claimant determinations.

Previous Annual Reports have recognised the Court's and parties' achievements in the native title jurisdiction. In this reporting period it remains important to recognise the parties' commitment to achieving results in this jurisdiction. The outcomes achieved and those still to come are not possible without the focussed efforts of the parties over many years. The Court values its users and continues to meet with those involved in the jurisdiction so as to be informed and assisted by their feedback.

As with other litigation in the Court, native title cases continue to be subject to intensive case management with extensive judicial involvement in the supervision and monitoring of a case in progress. The Court encourages innovative approaches to settling a native title claim and uses a number of different mechanisms to progress matters. The management of the evidence of expert anthropologists continues to assist in the timely resolution of many matters. In addition the Court's innovative approach to the management of connection in a number of claims in the Northern Territory and South Australia is now translating into outcomes.

The key elements to the effectiveness of the Court's approach are:

- Active judicial management of the caseload in a manner designed to achieve the desired outcomes.
- A realistic targeting of resources.
- Highly effective Assisted Dispute Resolution (ADR) practitioners to implement the proposed case management strategies and ADR initiatives.

The choice of an appropriate ADR practitioner is most often dependent upon the individual requirements of a case. This is a truism in native title as much as it is in other jurisdictions, as experience shows that parties will generally seek out appropriate expertise and a proven record of results. Currently parties in native title matters have three mediation options, the National Native Title Tribunal (NNTT), a Court registrar or an external mediator. As at 30 June 2011 fourteen matters were in court annexed mediation and all were being undertaken by registrars of the Court, in accordance with parties' preferences.

In some instances the particular characteristics of a case have necessitated that the Court look beyond its employees to find the skills needed. In these cases the Court has appointed an individual from the mediator list whose skills and experience match the issues in dispute. To date this has yielded timely and very positive results.

It is well accepted that native title cases are fact intensive and complex matters that require sophisticated case management to bring about their just resolution quickly, inexpensively and as efficiently as possible. The Court's experience to date suggests that a strong culture of active case management will deliver these outcomes and do so with due regard to the preamble and purpose of the *Native Title Act 1993* (the Act). Within the resources available and with the cooperation and engagement of the parties the Court has delivered a coordinated, consistent and refined focus on case management and ADR with a view to arriving at determinations that encompass broad outcomes, as soon as possible.

The following case notes highlight the Court's case management approach to native title cases which were resolved during the reporting year.

The Montejinni and Auvergne matters
Northern Territory
On 31 May and 2 June 2011 Justice Mansfield determined that native title exists in respect of twelve matters in the Northern Territory, referred to as the Montejinni and Auvergne matters. The Montejinni and Auvergne matters represented two clusters of claims covering land in the extensive pastoral estate of the Northern Territory. The determinations herald a new refined case management approach supported by the Court and taken by the parties which will see cases such as these being resolved much more quickly than they have in the past.

In the northern part of the Northern Territory (the area of these determinations) many matters were filed in response to notices issued under the Act of the proposed grant of a mining interest on pastoral leases. The claims, made to cover the particular proposed mining interest, were generally small in area and irregular in shape. As the claims did not correspond to the whole of the particular claim group's asserted country they presented the Court with some case management challenges.

In response to these challenges the Court employed an approach that grouped claims together in a manner designed to accommodate a commonality of particular Indigenous claim groups, their geographical proximity and the issues likely to arise in the cases by virtue of the underlying pastoral tenure. Lead cases were identified for each cluster and, with the agreement of the Northern Land Council and the Northern Territory, groups of claims were dealt with together in a way convenient to all parties. The lead case in respect of the Montejinni and Auvergne matters was the Newcastle Waters Station case. This case was also the vehicle agreed by the parties and the Court to test some outstanding legal issues arising from the recognition of native title where there is a coexistent pastoral lease. It was determined after a short hearing: *King v Northern Territory* (2007) 162 FCR 89.

With the claims clustered and many of the legal principles settled, the parties actively engaged in reaching agreement about the recognition of native title on the related cluster of cases. After exploring with the Court a number of ways in which that recognition could be achieved in a more timely manner, the Northern Territory Government, the Northern Land Council and the Northern Territory Cattlemen's Association came to an agreement about what evidence is required to establish that the native title claim group named in an application are the persons who hold the claimed native title rights and interests in the determination area.

The agreed approach balances targeted anthropological evidence as well as the evidence of the indigenous people, and having regard to the interests of all parties, has delivered a just resolution of these claims as quickly, inexpensively and efficiently as possible. The new approach moves away from earlier requirements for extensive anthropological and other evidence, allowing for the Applicant's anthropologist to provide a report certified by the Land Council dealing with key evidentiary requirements sufficient to satisfy the parties and the Court that the requirements of s 87 of the Act have been met.

Gunaikurnai #1 & #2 – VID6007/1998 & VID482/2009
Victoria

In 1997 the Gunaikurnai claimed a large area of land in Gippsland, Victoria. Following notification in 2002, approximately 480 respondents were joined as parties to the claim. As is the practice of the Court, parties with similar interest types were grouped into twenty-eight interest groups. Legal representatives were nominated for most groups, with responsibility for providing legal advice to and obtaining instructions from group members.

On 17 December 2004 the Court made orders referring the matter to mediation by the NNTT. The primary focus of that mediation, over a number of years, was the resolution of a dispute among the claimant group. In June 2007 the Court made orders for an early/preservation of evidence hearing. Orders requiring respondents to confirm their intention to remain as a party in writing to the Court registry within a set timeframe were made to refresh the party list in preparation for that hearing. As a result of those orders the 186 respondent parties who did not confirm their intention to remain as parties were removed.

On 29 June 2009 the Gunaikurnai filed a second claim to include parcels of crown land within the boundary of the original claim that were omitted. The matter was notified in June 2010, and seventeen parties were joined as a result, many of which were respondents to the first claim. These parties were grouped into interest types reflecting those in Gunaikurnai #1. The matters were run concurrently.

Following the early/preservation of evidence hearing in 2007, the State of Victoria indicated a willingness to enter into consent determination negotiations with the Gunaikurnai. Those negotiations were initially supervised by a registrar of the Court and in December 2009 were referred to the registrar for mediation.

On 6 May 2010 the applicant and State indicated to the Court that they had reached agreement in principle on the terms of a consent determination and that they wished to engage with non-State respondents on the terms of that agreement. In response to this information, and at the request of the applicant and State, the Court made orders requiring the applicant and State to jointly write to each respondent informing them of the area of the proposed determination, the general nature of the native title rights and interests proposed to be recognised and their relationship to other rights and interests. The Court made further orders requiring each respondent, having considered the terms of the proposed consent determination, to again confirm to the registry their intention to remain a party and to identify to the Applicant their parcel specific interest. As a result of those orders a further 145 parties were removed.

Mediation with non-state respondents (around 140 parties) commenced in June 2010. Respondent party groups were combined into five groups by common interest type, including mining, land, water and recreational users, fishing interests and those with public access requirements. Separate initial mediation sessions were conducted with each of the five groups over a period of three days. Further mediation sessions were convened with individual respondents to address discrete issues, concluding on 11 October 2010. Consent orders were filed on 19 October, and the matters were determined by consent on 22 October 2010.

Kalkadoon #5 & #6, QUD579/2005 & QUD15/2006
Queensland
The Kalkadoon #5 and #6 claims were filed in 2005 and 2006 respectively in response to an agreement arising out of mediation which saw six related applications, which had originated in 1996, being withdrawn.

Mediation by the NNTT continued in the new Kalkadoon matters and the matters were allocated in the early part of 2008 to Justice Dowsett, who regularly reviewed progress. In mid 2009 orders were made listing both matters for the hearing of whether or not the Kalkadoon Peoples had continued to observe traditional laws and customs and thus were and are a native title holding group. Justice Dowsett's orders did not extend to the nature and extent of the extinguishment as it was agreed that issue would be considered after the question of native title was resolved.

The matters were set down for a 6–8 week hearing, commencing in the last week of February 2011. In August 2010 Justice Dowsett made further orders defining the nature of the question to be heard and encouraged the parties to meet in the intervening period in order to resolve these issues by agreement. To assist in the preparation of the question the Applicant and the State were ordered to confer on what issues could be agreed and identify what remained in dispute. The matters were then referred to case management before a judge and registrar.

On 15 November 2010 orders were made providing that the matter as it related to the Applicant and the State be referred to a Court appointed mediator. On 18 November an appointment of a mediator from the Court's list was made and the matters were referred to mediation on 29 and 30 November.

In the lead-up to mediation the parties were encouraged to clarify their concerns. It became apparent there was an ongoing issue between a non-State respondent and the Applicant and that issue was also referred to the mediator.

The mediations were conducted in late November and the matters re-listed for a directions hearing in the first week of December where the Court was informed that, aside from the nature and extent of extinguishment, the question of native title was resolved as between the Applicant and all but one respondent.

This outstanding issue was listed for argument with a hearing date for February 2011, however the issue was also referred to the Court appointed mediator in the intervening period. Mediation was successful and terms of settlement were signed.

The Court was then informed that the question as to connection was resolved as between the parties and the tenure and extinguishment analysis remained to be negotiated as between the Applicant and the State. The parties' progress with this analysis is being closely monitored by a Court registrar.

Figure 6.11 on page 97 provides more information on native title act filings.

Assisted Dispute Resolution (ADR)

Referrals to ADR and Mediation

The ADR options currently available to the Court under the Federal Court Act (the Act) and Federal Court Rules (the Rules), supplemented by established case management practices of the Court include:

- Mediation
- Arbitration
- Early neutral evaluation (ENE)
- Experts' conferences
- Court appointed experts
- Case management conferences
- Referral to a referee

Over the reporting year the increasing profile among practitioners and the public of ADR as a means of resolving disputes has seen a significant increase in the number of matters referred to mediation. It is now common practice for parties to request, or for judges to suggest, that matters be referred to mediation as part of preparing a matter for hearing.

Mediation continues to be the most frequently used ADR referral made by judges of the Court. While the numbers of mediation and other forms of ADR have increased in the reporting period, the data collected does not reflect the full extent of ADR activities carried out as part of the Court's general case management. Parties may indicate to the Court that they have made their own arrangements for a matter to be mediated by a private mediator and that orders referring the matter to mediation are not necessary. A judge may refer a matter to mediation but allow the parties the choice of mediator. Where the parties choose a private mediator the Court may not always record the 'external' referral. A judge may order that the experts proposed to be called in a matter confer to clarify areas of agreement and disagreement but may not require that process to take place under the supervision of a registrar.

Table 3.5 – ADR referrals in 2010–11 by type and Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Mediation	208	272	61	14	3	24	10	18	610
Arbitration	–	–	–	–	–	–	–	–	–
ENE	–	–	–	–	–	–	–	–	–
Conference of experts	–	3	–	1	3	–	–	–	7
Court appointed experts	–	–	–	4	–	–	–	–	4
Referee	–	–	–	–	–	–	–	–	–
Total	**208**	**275**	**61**	**19**	**6**	**24**	**10**	**18**	**621**

Table 3.6 shows the referrals to mediation by matter type and State. The information suggests that on a national basis consumer protection and Corporations Law matters are the most frequently referred matter types. This trend, however, is not reflected in every state/territory – see, for example, industrial matters in Victoria.

Table 3.6 – Mediation referrals in 2010–11 by Cause of Action (CoA) and Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Administrative law	5	7	2	–	2	–	–	1	17
Admiralty	3	5	3	1	–	4	–	–	16
Appeals	1	4	4	–	–	–	–	1	10
Bankruptcy	7	2	1	–	–	–	–	–	10
Corporations	47	50	19	1	–	3	1	7	128
Costs	11	1	1	–	–	–	–	–	13
Human Rights	5	22	2	1	–	2	1	–	33
Industrial	11	73	7	–	–	2	–	3	96
Intellectual Property	24	45	8	4	–	–	–	–	81
Migration	–	1	1	–	–	–	–	–	2
Native Title	–	–	1	3	–	4	–	–	8
Tax	2	11	3	–	–	2	–	–	18
Consumer law	89	47	9	4	1	7	8	6	171
Competition law	3	4	–	–	–	–	–	–	7
Total	**208**	**272**	**61**	**14**	**3**	**24**	**10**	**18**	**610**

Table 3.7 shows referrals to mediation as a percentage of total filings for each of the last five reporting years. The percentage of referrals has averaged thirteen per cent for the last three reporting years. Total filings may, however, not give the clearest representation of the rate of referral to mediation. While all matters are capable under the Act and Rules of being referred to mediation, there are categories of matters whose features mean that it is generally accepted that ADR may not be appropriate. This is not to say that these matter types are never referred to mediation but rather that referral of these types of matters to mediation is very infrequent. These categories include migration appeals and company winding up applications dealt with by registrars. Consistent with previous reports, the term ‘suitable filings’ is used to refer to matters commonly considered for referral to mediation.

Table 3.7 – Mediation referrals as a proportion of total filings by financial year

	2006–07	2007–08	2008–09	2009–10	2010–11
Referrals	332	379	522	476	610
Total filings	4925	4428	3862	3646	4941
Proportion (%)	7%	9%	14%	13%	12%

Table 3.8 shows the total matters filed and the number of filings once matters not commonly referred to mediation are excluded. While figures vary from registry to registry, applicable filings make up fifty-two per cent of total filings nationally.

Table 3.8 – Total filings and suitable filings (excluding non-mediation CoAs, e.g. migration appeals) by Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total filings	2109	1383	498	497	51	288	62	53	4941
Suitable filings	1073	791	225	223	44	150	18	47	2571
Proportion (%)	51%	57%	45%	45%	86%	52%	29%	89%	52%

When the suitable filings figures are used to ascertain the rate of referral to mediation, the percentage of matters referred by judges to mediation nationally in the reporting year was twenty-four per cent (see Table 3.9). This figure is the same as for the last reporting period. The real figure is likely to be higher as some registries only record referrals to mediation when the parties request that the mediation be conducted by a registrar. As not all parties seek a referral to mediation where they intend to use a private mediator, the percentage of applicable matters that have some form of ADR process applied is likely to be considerably higher than twenty-four per cent.

Table 3.9 – Mediation referrals as a proportion of applicable filings, by Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total referrals	208	272	61	14	3	24	10	18	610
Applicable filings	1073	791	225	223	44	150	18	47	2571
Proportion (%)	19%	34%	27%	6%	7%	16%	56%	38%	24%

Table 3.10 shows a breakdown of internal and external referrals to mediation by matter type. Internal and external referrals to mediation are presented as percentages of applicable matters in Table 1.7.

Table 3.10 – Internal and external mediation referrals by CoA

	INTERNAL	EXTERNAL
Administrative law	15	2
Admiralty	11	5
Appeals	10	–
Bankruptcy	10	–
Corporations	93	35
Costs	13	–
Human rights	33	–
Industrial	96	–
Intellectual property	77	4
Migration	2	–
Native Title	3	5
Tax	16	2
Consumer law	164	7
Competition law	4	3
Total	**547**	**63**

Table 3.11 – Internal and external mediation referrals as a proportion of applicable filings

	INTERNAL	EXTERNAL
Total referrals	547	63
Applicable filings	2571	2571
Percentage	21%	2.5%

Mediations held in the reporting period

Table 3.12 shows the outcomes of mediations conducted by Federal Court registrars by matter type. The percentage of these matters that are resolved either in full or in part is also shown. The overall percentage of matters referred to mediation by a registrar that are resolved either in full or in part is fifty-nine per cent.

It should be noted that the number of matters referred by judges to registrars for mediation in the reporting year (547) is more than the number of mediations convened by registrars of the Court. This reflects the fact that matters referred to mediation in one reporting year may not be mediated until the following reporting year.

Table 3.12 – Mediation outcomes by CoA in 2010–11

OUTCOMES BY COA	RESOLVED	RESOLVED IN PART	NOT RESOLVED	TOTAL	PROPORTION RESOLVED/IN PART (%)
Administrative law	6	1	2	9	78%
Admiralty	6	–	2	8	75%
Appeals	1	1	3	5	40%
Bankruptcy	3	2	–	5	100%
Corporations	32	5	20	57	65%
Costs	7	–	4	11	64%
Human rights	12	–	14	26	46%
Industrial	47	3	26	76	66%
Intellectual property	53	2	18	73	75%
Migration	–	–	–	–	–%
Native Title	2	2	5	9	44%
Tax	4	–	1	5	80%
Consumer law	63	9	86	158	46%
Competition law	1	–	2	3	33%
Total	**237**	**25**	**183**	**445**	**59%**

Table 3.13 shows the outcome of mediated matters by registry including the percentage of mediated matters resolved either in full or part.

Table 3.13 – Mediation outcomes by State

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Resolved	69	131	20	6	–	6	2	3	237
Resolved in part	7	11	–	2	1	1	–	3	25
Not resolved	72	78	15	4	1	1	6	6	183
TOTAL	148	220	35	12	2	8	8	12	445
Proportion resolved/ in part (%)	51%	65%	57%	67%	50%	88%	25%	50%	59%

For the purposes of reporting, the Court records only the number of mediations regardless of whether a matter is mediated over one or more days. If mediation in a matter occurs over a number of days, each day will be recorded in the Court's case management database, Casetrack. Table 3.14 compares the Casetrack statistic of 1007 mediation events compared with the 445 mediations recorded by registries. The large difference suggests that in many instances mediations occurred over more than one day.

Table 3.14 – Mediations held in comparison with Casetrack mediation events, by matter type

	REGISTRY	CASETRACK
Administrative law	9	11
Admiralty	8	17
Appeals	5	26
Bankruptcy	5	13
Corporations	57	150
Costs	11	–
Human rights	26	53
Industrial	76	168
Intellectual property	73	174
Migration	–	3
Native Title	9	105
Tax	5	26
Consumer law	158	255
Competition law	3	6
Total	**445**	**1007**

Table 3.15 shows the number of mediations held during the reporting year as a percentage of the suitable filings. Again, the proportion of suitable filings mediated is less than the proportion of suitable filings referred to mediation. This may be because of the time between referral and the mediation or because of the use by the parties of private mediators in respect of some referrals.

Table 3.15 – Mediations held as a proportion of applicable filings, by Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total held	148	220	35	12	2	8	8	12	374
Applicable filings	1073	791	225	223	44	150	18	47	2571
Proportion (%)	14%	28%	16%	5%	5%	5%	44%	26%	15%

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 7 on page 103.

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 practices and procedures, enhancements in the use of technology and improvements to the information about the Court and its work.

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

eServices strategy

The Court's eServices strategy aims to implement a series of integrated electronic services to support the efficient management of cases from the time of filing through to disposition and archiving. The eServices strategy is central to increasing the Court's accessibility and assisting judges in their task of deciding cases according to law quickly, inexpensively and as efficiently as possible.

During the reporting period the Court continued to promote and use contemporary technology to improve efficiency and increase accessibility to the Court. Through the launch of its electronic filing application, eLodgment, the Court delivered on its commitment to create an environment where actions which are commenced electronically, are managed electronically. It also embarked on the

implementation of enhancements to on-line applications such as eCourtroom. Much has been accomplished as a result of the implementation of these key components of the strategy including:

- improved access to court services through on-line delivery
- reduced need to be present in court or visit a Court registry
- increased service availability
- reduced reliance on the printing and photocopying of documents
- the potential to reduce the costs of litigation

eLodgment has proven to be a successful on-line application with over 2000 registered users electronically lodging over 28 000 documents in both the Federal Court and the Federal Magistrates Court. It is anticipated that with the integration of other online services, such as eCourtroom and the Commonwealth Courts Portal, this usage will increase during 2011–12.

In line with the uptake of eLodgment, the year also saw increased activity on eCourtroom, resulting in 600 matters being commenced in eCourtroom during 2010–11.

During the next reporting year the Court will deliver an integrated solution, providing on-line users with a suite of applications accessed through a user ID and password.

Practice and procedure reforms

The National Practice Committee is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee dealt with a range of matters including:

- The adoption of revised costs rules and a new scale of costs that will allow the amount of party and party costs to be determined on the basis of what is fair and reasonable.
- Monitoring the impact of increased filing, setting down and hearing fees introduced on 1 July 2010 and the consequences of changes to the fee waivers and exemptions and deferral of fees as well as the introduction of reduced fees which took effect from 1 November 2010.
- Consideration of the Australian Law Reform Commission (ALRC) reference on discovery in the federal courts, the Administrative Review Council inquiry into federal judicial review and the review of the refugee determination process.
- Consideration of the jurisdiction to grant compulsory licences to generic pharmaceuticals manufacturers to produce patented medicines to export to least-developed and developing countries with health crises.
- Requesting an amendment to existing federal legislation governing representative proceedings to permit these proceedings being taken against several defendants when not all group members have a claim against all defendants and bringing 'closed class' actions.
- Development of procedures in the area of taking evidence overseas by way of an examination and ex parte substituted service applications in Bankruptcy matters.

The Committee also considered proposed legislative changes in the areas of: the national legal profession reform; implementation in the federal courts of the Standing Committee of Attorneys-General model law for suppression and non-publication orders; public interest disclosure and whistleblower protection; updating of the Acts Interpretation Act; and in implementation of recommendations of the National Alternative Dispute Resolution Advisory Council in its 2009 Report *The Resolve to Resolve – Embracing ADR to Improve Access to Justice in the Federal Jurisdiction*, providing encouragement to parties to take 'genuine steps' to resolve their disputes before commencing certain proceedings in the Court.

Liaison with the Law Council of Australia

Members of the National Practice Committee met during the reporting year with the Law Council's Federal Court Liaison Committee to discuss matters concerning the Court's practice and procedure. These included:

- interaction of the Civil Dispute Resolution Act 2011 and Part VB of the Federal Court of Australia Act
- ALRC Report 115 *Managing Discovery of Documents in Federal Courts*
- the impact of fee changes
- class actions
- case management reforms – including the development and implementation of the legislative reforms to support active case management
- the Rules revision project
- the review of the basis for determination of costs and scales of costs
- the impact of possible changes to the structure of the federal courts and the creation of a new Military Court
- implementation of modifications to eLodgment and eCourt applications
- developments with arrangements for providing assistance to self represented litigants in the Court
- improving communications and co-ordination between the Court and the Law Council.

Assistance for self represented litigants

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

In early 2011 the Court developed a proposal, in consultation with the Queensland Public Interest Law Clearing House (QPILCH), to pilot a program for self represented litigants in the Queensland District Registry. The program, which will be run by QPILCH, consists of two elements:

1. The provision of legal advice and procedural assistance to self represented litigants in a range of matters in the Federal Court and bankruptcy proceedings in the Federal Magistrates Court. The advice will be provided by experienced volunteer lawyers.
2. Court Network volunteers – to provide emotional support for people attending court.

The pilot will commence in July 2011 and will run for an initial six month period.

The Court is able to extract some broad statistics about the number of self represented litigants appearing in the Court as applicants in a matter (respondents are not recorded). As the recording of self represented litigants is not a mandatory field in the Court's case management system the following statistics are indicative only. In the reporting year, 336 people who commenced proceedings in the Federal Court were identified as self represented. The majority were appellants in migration appeals.

The following tables provide some further information.

Table 3.16 – Actions commenced by Self Represented Litigants (SRLs) during 2010–11 by Registry

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
SRLs	–	172	–	35	18	–	59	52	336
%Total	–	51%	–	10%	5%	–	18%	15%	100%

The 336 SRLs were applicants in 275 proceedings, as a proceeding can have more than one applicant. The following table breaks down these proceedings by major CoA.

Table 3.17 – Proceedings commenced by SRLs in 2010–11 by CoA

COA	TOTAL ACTIONS	% OF TOTAL
Administrative Law	42	15%
Appeals and related actions	169	61%
Bankruptcy	13	5%
Consumer protection	8	3%
Corporations	11	4%
Fair work	4	1%
Human rights	7	3%
Intellectual property	1	–
Migration	7	3%
Miscellaneous	8	3%
Native title	1	–
Taxation	4	1%
Total	**275**	**100%**

Table 3.18 – Appeals commenced by SRLs in 2010–11 by type of appeal

COA	TOTAL ACTIONS	% OF TOTAL
Migration	115	68%
Bankruptcy	29	17%
Administrative Law	6	4%
Miscellaneous	5	3%
Consumer Protection	2	1%
Corporations	2	1%
Human Rights	2	1%
Industrial	2	1%
Taxation	2	1%
Admiralty	1	1%
Competition Law	1	1%
Fair Work	1	1%
Intellectual Property	1	1%
Total	**169**	**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 unrepresented and who do not have the financial means to purchase the services, and for litigants who are represented but are entitled to a reduction of payment of court fees, under the Federal Court of Australia Regulations (see below).

Remission or waiver of court and registry fees

As noted on page 22, on 1 November 2010 changes took effect which removed some fee exemptions and waivers and introduced instead minimum fees. For most proceedings commenced since then under the Federal Court of Australia Regulations, fees are charged for commencing a proceeding and for setting a matter down for hearing (including a daily hearing fee). A setting down fee is also payable on some matters and the amount of the daily hearing fee will vary depending on the length of the hearing.

Some specific proceedings are exempt from all or some fees. These include:

- Human Rights applications (other than the initial filing fee of $54).
- Some Fair Work applications (other than the initial filing fee of $60.60 [with effect from 1 July 2011]).
- Appeals from a single judge to a Full Court in Human Rights and some Fair Work applications.
- Setting-down and hearing fees in proceedings under the *Bankruptcy Act 1966*.

A person is entitled to apply for a 'reduction of payment of court fees – general' and pay only a 'one off' flat fee of $100 (or the full fee if it is less than $100) on the first occasion a full fee would otherwise be payable 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 have 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 or a Commonwealth seniors health card.
- Is the holder of another card issued by the Department of Families, Housing, Community Services and Indigenous Affairs or the Department of Veterans' Affairs entitling them to Commonwealth health concessions.
- is an inmate of a prison or are otherwise lawfully detained.
- is under the age of 18 years.
- is in receipt of youth allowance or Austudy or is receiving a benefit under ABSTUDY.

Such a person, however, must pay fees for copying any court document other than for a first copy of the document or for a copy required for the preparation of appeal papers.

For proceedings commenced on or before 31 October 2010, if a person had been granted an exemption from payment of fees because that person fitted one of the categories mentioned above then that exemption continues and no further filing, setting-down or hearing fees in those proceedings have to be paid unless that person's circumstances change, although fees for copying as above are payable.

A corporation which has been granted Legal Aid or similar assistance or funding under the *Native Title Act 1993* has the same entitlements.

In addition, a Registrar or an authorised officer may approve payment of a minimum fee of $100 instead of the full fee which would otherwise be payable if, having regard to the income, day-to-day living expenses, liabilities and assets of the person or corporation, the Registrar or authorised person is satisfied that payment of the fee would cause financial hardship to the person or corporation liable for the fee.

More detailed information about the operation of the fee waivers and reductions is available on the Court's website www.fedcourt.gov.au. Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 72.

Website

The website is integral to the Court's business and contains useful information about the Court and its work including practice and procedure guides, daily court lists, forms and fees and information for litigants and legal practitioners. The website is also a gateway to the Court's eServices.

In 2010, the website's content management system and search engine were upgraded resulting in improved performance and streamlined work practices. This platform enables the sharing of content between the Court's intranet and website supporting, for example, the replication of the Court's archive of judgments.

During the reporting period a project to redesign the website commenced with the intention to deliver a new look website during the next reporting period inclusive of further improved functionality and content.

Requests for information

Every year approximately 500 emails are received by the Court through the website's email account 'query@fedcourt.gov.au'. Frequent questions are received from students, researchers and members of the public who are interested in the role of the Court, its jurisdiction, practice and procedure and at times particular cases of interest. Staff ensure they respond to the queries in a comprehensive and timely fashion.

Some enquiries concern legal advice. Whilst court staff cannot provide legal advice, they endeavour to assist all enquirers by referring them to reliable sources of information on the internet or to community organisations such as legal aid agencies and libraries.

Published information

The Court publishes a number of brochures on aspects of its work including: a guide for witnesses appearing in the Court; information on procedures in appeals, bankruptcy, native title and human rights cases; and information on the Court's use of mediation. These brochures are available from any of the Court's registries and are downloadable from the Court's website, www.fedcourt.gov.au.

Access to judgments

When a decision of the Court is delivered, a copy is made available to the parties as well as being published on the Internet at the AustLII website and therefore available to the media and the public. A link to this site is provided on the Court's website. Judgments of public interest are usually made available at the AustLII site within a few hours of publication and other judgments within a few days. The Court also provides electronic copies of judgments to legal publishers and other subscribers.

Information for the media and televised judgments

During the reporting year a range of assistance was provided to journalists covering cases before the Court and issues related to the Court's work. The Chief Justice, judges and senior staff were interviewed about major areas of the court's work and television access was facilitated in matters including:

- *Akiba on behalf of the Torres Strait islanders of the Regional Seas Claim Group v State of Queensland* (No 2) [2010] FCA 643 at Cairns, Justice Finn granted camera access to mainstream media for the determination. The claim related to most of the waters in the Torres Strait.

- *Mullett on behalf of the Gunai/Kurnai People v State of Victoria* (No 2) [2010] FCA 1144. Justice North permitted extensive media access to coverage of the determination at Stratford, Victoria. The determination recognised traditional ownership across a large part of eastern Victoria as well as rights to some 22,000 square kilometers of Crown and other land.
- The Montejinni Applications at Pigeon Hole, Northern Territory. Justice Mansfield allowed electronic media access at Pigeon Hole on Victoria River Downs, Northern Territory when delivering six determinations that covered just under 16,000 square kilometres. The determinations were: Camfield Pastoral Lease [2011] FCA 580; Dungowan Pastoral Lease [2011] FCA 581; Montejinni East Pastoral Lease [2011] FCA 582; Montejinni West Pastoral Lease [2011] FCA 583; Birrimba Pastoral Lease [2011] FCA 584; Killarney Pastoral Lease [2011] FCA 585.

Community relations

The Court engages in a wide range of activities with the legal profession, including regular user group meetings, as well as seminars and workshops on issues of practice and procedure in particular areas of the Court's jurisdiction. 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.

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

In 2010–11 judges and registrars in the NSW Registry hosted six user group meetings or seminars with practitioners in areas such as corporations law, admiralty, native title, patents and copyright.

The District Registrar and Deputy District Registrars hosted an information session for lawyers new to practice in the Federal Court; gave a presentation to the NSW Bar Association on appearing before registrars in the Federal Court; and presentations to various organisations about Assisted Dispute Resolution.

The Court's facilities in Sydney were made available for a number of events during the reporting year including: the Australian Maritime and Transport Arbitration Commission annual address delivered by the Hon Robert McClelland MP; the Tristan Jepson Memorial Lecture delivered by Professor Patrick McGorry; a Macquarie University seminar Super Sovereign presented by Professor Lea Brilmayer; and the 2010 Sydney University Ross Parsons Corporate Law Address: *Fraud on the Market in the US – Can it be Fixed?*

Judges and registrars in the Victoria Registry hosted quarterly Federal Court Users Committee meetings and quarterly class action and insolvency user group meetings. These meetings 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.

On Thursday, 5 August 2010, a Deputy District Registrar and senior registry staff from the Victoria Registry conducted an information session for recently admitted solicitors who practice in the Federal Court and the Federal Magistrates Court.

On 14 February 2011 the Victoria Registry held a function to thank barristers and solicitors who had volunteered their time and expertise to support the Court's pro bono scheme. The Court instituted its pro bono scheme in 1998 to assist unrepresented individuals with the challenges associated with court litigation. The Court's pro bono scheme was the first of its kind in Australia. Since its inception judges in the Victoria District Registry have made approximately 390 pro bono referrals.

The Chief Justice hosted the function and over forty Victorian barristers and solicitors who have accepted pro bono referrals from the Court, members of the Victorian Bar Pro Bono Committee and representatives of the Public Interest Law Clearing House attended the function.

On 29 March 2011 Justices Gray and Bromberg hosted a meeting of lawyers who practise in disability discrimination cases. The purpose of the meeting was to consider case management strategies in disability discrimination cases concerning children with disabilities and the education sector.

The Victoria Registry hosted a number of Moot Courts in 2010–11 for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities and Moot Court Competitions for the Victorian Bar Readers. On two occasions Justice Gray and a Deputy District Registrar addressed the Victorian Bar Readers Welcome. The address provided an overview of the Court, the Victoria Registry and federal jurisdiction.

During the reporting year the Victoria Registry participated in the Indigenous Clerkship Program run by the Victorian Bar. Three clerks participated in the program with each clerk spending one week with the Court. Two library students undertook industrial placements at the Victoria Registry library and the Registry hosted several work experience students.

Queensland judges and registrars hosted moot courts for the Queensland University of Technology, University of Queensland and the Red Cross International Humanitarian Law School Mooting Competition.

On 11 November 2010 Professor Bradford Morse delivered the Richard Cooper Memorial Lecture at the Court in Queensland.

Judges and registrars in Queensland hosted an insolvency user group meeting and two presentations for legal practitioners about the Federal Court's revised Rules. Four groups of high school students visited the Queensland Registry during the reporting year.

Judges and registrars from the West Australia Registry hosted two native title forums and three intellectual property seminars during the reporting year. The grand final of the University of Western Australia's International Humanitarian Law Mooting Competition was held in the Court and was adjudicated by Justice Siopis.

Registry staff spoke about the Court's eServices to members of the local legal profession. The registry library hosted a technology showcase for the Australian Law Librarians' Association Western Australia Division.

Judges and staff in South Australia hosted seminars for new legal practitioners, participated in the Flinders University New-In-Law program, conducted information sessions on the revised Federal Court Rules and ADR, participated in the South Australia Bar Readers course, undertook presentations during Law Week and hosted school visits.

Staff in the Australian Capital Territory, Northern Territory and Tasmania registries participated in information sessions on the revised Federal Court Rules hosted by Justice Lander. In December 2010 Justice Marshall hosted a user group meeting with Tasmanian legal practitioners.

Pegasus Scholar

The Pegasus Scholarship Trust was established in England to make it possible for gifted young lawyers to learn about the practical working of the common law system in countries other than their own, and to form enduring links with lawyers in those countries. Since 1987 the Trust has been sponsoring Pegasus Scholars from overseas to study and work in England, and Pegasus Scholars from England to live and work abroad.

The Victoria registry has been involved in the Pegasus Scholarship Trust for many years. In 2010, the registry hosted Ms Niamh O'Reilly who was named the 2010 Pegasus Scholar. Ms O'Reilly commenced with the Court on 11 October 2010 for a period of nearly two months. On 1 December 2010, Ms O'Reilly gave a presentation to Judges and staff entitled *Life at the English Bar, and a brief comparative look at the Irish Bar.*

Complaints about the Court's processes

During the reporting year, twelve complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. 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.

Involvement in legal education programs and legal reform activities

The Court is an active supporter of legal education programs, both in Australia and overseas. On 9 November 2010, the Court's Admiralty Committee hosted an Admiralty and Maritime Law Seminar titled *Current Issues in Admiralty.* This public seminar was held simultaneously in all registries of the Court, via video conference.

The Court and the Law Council of Australia jointly organised and convened the second International Commercial Law Conference from 5 to 7 May 2011. This followed the success of the first conference in November 2009. Over 140 delegates attended from many countries including Canada, New Zealand, China, Hong Kong, Singapore, Vietnam, the Philippines and Papua New Guinea. The Conference was opened by the Attorney General, the Hon Robert McClelland MP, with a keynote address by Chief Justice Keane. The Conference papers have been compiled into a book which will be launched later in 2011.

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.

An outline of the judges' work in this area is included in Appendix 9 on page 128.

WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programmes Office, the Court collaborates with many neighbouring judiciaries across the Asia-Pacific region. In 2010–11, the Court coordinated a number of programs and hosted official visits from judicial and senior administrative staff from other countries.

Pacific Judicial Development Programme

Since July 2010 the Court has managed the Pacific Judicial Development Programme (PJDP) on behalf of the New Zealand Ministry of Foreign Affairs and Trade. PJDP is designed to strengthen governance and the rule of law across the Pacific region by enhancing the professional competence of judicial and court officers along with the processes and systems they use. The Federal Court is consolidating and extending the delivery of high quality and practical judicial training and court development services, while enhancing the establishment, localisation and sustainability of those services across the region.

In the first six months of 2010–11 an assessment was conducted to identify and prioritise the region's development needs. Consequently, a number of projects were developed which focus on building both institutional and individual capacity. These projects will:

- Research and develop a customary dispute resolution strategy as a mechanism for promoting an holistic approach to alternative dispute resolution in the region.
- Introduce codes of judicial conduct to strengthen governance mechanisms in selected courts.
- Research and develop a medium to long–term plan for the sustainability of ongoing judicial development across the region.
- Strengthen judicial leadership by providing opportunities for intra–regional interaction and actively involving leaders in the ongoing development and implementation of PJDP.
- Diagnose the needs for judicial administration and support pilot activities to guide the formulation of a regional support strategy for registry systems and processes.
- Design a judicial monitoring and evaluation framework to provide the basis for future performance monitoring and assessment of the impact of development assistance.
- Mobilise the Regional Training Team, a group of certified trainers from member countries, and actively support this team to develop sustainable training capacity regarding four core modules.
- Develop core orientation and decision making training modules for judges, court officers and lay magistrates to provide the basis for ongoing and locally driven training in the region.
- Publish and revise benchbooks to develop selected resources with medium to longer–term value to counterpart courts.
- Manage a Responsive Fund for locally based, incentive driven, development applications.

In addition to these projects, the Court hopes to secure further funding to enable it to deliver several complementary activities designed to promote the benefits of the PJDP, particularly in terms of judicial capacity building.

Supreme People's Court, People's Republic of China

The Court completed its second substantive project with the Supreme People's Court during the reporting year. The project focused on supporting the development of a judicial interpretation of international law to protect the nation's waterways. Both Courts wish to continue the mutually beneficial exchange. Future collaborations will likely focus on developing judicial interpretations of competition law along with the litigation and arbitration of cargo claims and damages and progress towards a regional exchange on maritime law and the interpretation of associated international conventions.

Supreme Court of Indonesia

As part of the ongoing relationship with the Supreme Court of Indonesia under the Memorandum of Understanding (MOU) between the Courts, significant planning and other activities took place this year. In September 2010 a new Annex to the MOU was signed in Melbourne, the first to be signed by Chief Justice Keane on behalf of the Court. The Annex sets out the priority areas for collaboration over the next two years which are: judicial transparency; case management; leadership and change management; and maintaining the court–to–court relationship.

To develop the Annex according to the priorities contained in the Supreme Court's new Blueprint for Reform, and to participate in the ongoing leadership and change management programme between the Courts, the District Registrar for Victoria, Ms Sia Lagos, visited Jakarta in August 2010. Ms Lagos participated in delivering the Women's Leadership and Change Management Programme for female Chief Justices from around Indonesia. Ms Lagos opened the workshop and led a number of discussions throughout the four day programme sharing case studies and successful changes implemented by the Federal Court.

In March 2011 Justice Moore, Registrar Warwick Soden and Ms Lagos visited Jakarta to engage in detailed planning meetings with the Supreme Court and its Judicial Reform Team. The purpose of the meetings was to discuss how the priority areas articulated in the Annex can be programmed into a suite of activities the Courts can work together on.

Supreme People's Court of Vietnam

Following the successful completion of the judicial benchbook revision project in 2009–10 and the signing of a Memorandum of Understanding between the Courts, Justices Moore and Marshall travelled to Hanoi, Da Nang and Ho Chi Minh City in September 2010 to deliver a series of workshops about Intellectual Property and Admiralty Law. Each workshop included presentations by members of the Vietnam Supreme People's Court along with local subject matter experts.

In October 2010 six delegates from the Supreme People's Court travelled to Sydney to participate in an information technology programme at the Court. The aim of this visit was to assist the Supreme People's Court to consider how it might utilise information technology to efficiently and effectively manage cases from both judicial and administrative perspectives. The programme involved a number of demonstrations and discussions and was well received by the delegates.

Supreme and National Court of Justice, Papua New Guinea

Pursuant to the Memorandum of Understanding signed with the Supreme and National Courts of Justice in November 2009, the Courts continued to work together during the reporting year. In August 2010, Deputy District Registrar Ian Irving visited Port Moresby to assist the Supreme and National Courts to review its progress made in relation to ADR and to make recommendations about what would be required in order to establish a fully functioning system for the courts.

Also in August, Deputy Registrar John Mathieson visited Port Moresby to assist the Supreme and National Courts to review its progress with respect to case management and the use of information technology. The review incorporated current court administration systems, policies, rules and procedures and produced a series of recommendations designed to increase the number of cases heard and the speed of processing them as well as refining file management, administration and security procedures.

Library Services to the South Pacific

The Federal Court continues to provide assistance to law libraries in the South Pacific with library staff coordinating shipments of books and law reports. The libraries assisted by the Court are the Supreme Court of Tonga including the Vava'u Court House, the Supreme Court of Vanuatu and the High Court of Kiribati.

Visitors to the Court

During the reporting year the Court facilitated a number of visits from international delegations or individuals interested in learning about the role of the Court and its systems and processes. Visitors were welcomed from:

- Hong Kong: 17 delegates from the Chinese University of Hong Kong visited the New South Wales Registry as part of an International Law Study Abroad Programme.
- Korea: A delegation from the Gwangju and Daejeon High Courts, Patent Court, and Daejeon, Gwangju and Cheongju District Courts of the Republic of Korea visited the registries in New South Wales and Victoria in July 2010 to discuss case management and civil procedure.
- Bangladesh: Three delegates from the Supreme and High Courts of Bangladesh visited Registries in Queensland, New South Wales and Victoria in September 2010 to discuss case management processes.
- South Africa: Justice Albie Sachs, a retired judge from the Constitutional Court of South Africa, met with judges and associates in the Victoria registry on 21 September 2010.
- China: A legal aid lawyer and Deputy Director of the Beijing Zhicheng Migrant Workers Legal Aid and Research Centre visited the Court's Victorian registry in October 2010 as part of the China–Australia Human Rights Technical Cooperation Programme. In addition, a delegation from the Migrant Legal Aid Lawyers from China visited the Victoria registry in November 2010.
- Japan: A delegation from the District and Family Courts in Nagasaki, Omuru Summary Court, Kagoshima District Court, and the Sendai District Court, visited the New South Wales Registry in November 2010 to attend a directions hearing and discuss the use of court room technology. In addition, three delegates from the Supreme Court visited the New South Wales Registry in December 2010 to discuss issues of court security and protection. Students from the Chuo Law School visited the Victoria Registry in February 2011 for a presentation by Justice Gordon which focused on the role and jurisdiction of the Federal Court. In March 2011 two judges from the Japanese District Court visited the New South Wales Registry as part of a study tour of Australian legal systems.
- Russia: A delegation of eight officials from the Constitutional Court of the Russian Federation visited the registry in Victoria in February 2011 to discuss the application of new information technologies in order to facilitate judicial proceedings.
- Sri Lanka: The Secretary and Assistant Secretary of the Ministry of Justice visited the Australian Capital Territory Registry in March 2011 to discuss case management.