



FEDERAL COURT OF AUSTRALIA

ANNUAL REPORT 2012-2013

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CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
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Queens Square, Sydney NSW 2000
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Facsimile: +61 2 9230 8697

13 September 2013

Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I have the pleasure in submitting, in accordance with section 18S of the *Federal Court of Australia Act 1976*, a report of the management of the administrative affairs of the Court during the financial year 2012–2013 and the financial statements in respect of that financial year. The report also includes information about the Court, its composition, jurisdiction and workload.

This is the Court's twenty-fourth annual report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'J L B Allsop'.

J L B Allsop AO
Chief Justice

PART 1 OVERVIEW

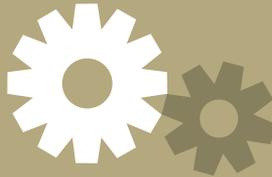
OF THE FEDERAL COURT OF AUSTRALIA



Establishment

The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* and began to exercise its jurisdiction on 1 February 1977. It assumed jurisdiction formerly exercised in part by the High Court of Australia and the whole jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy.

The Court is a superior court of record and a court of law and equity. It sits in all capital cities and elsewhere in Australia from time to time.



Functions and powers

The Court's original jurisdiction is conferred by over 150 statutes of the Parliament. A list of these Acts is available in the jurisdiction section of the Court's website www.fedcourt.gov.au.

The Court has a substantial and diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and from the Federal Circuit Court in non-family law matters. The Court also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of Norfolk Island. The Court's jurisdiction is described more fully in Part 3.



Objectives

The objectives of the Court are to:

- Decide disputes according to law – promptly, courteously and effectively and, in so doing, to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfill the role of a court exercising the judicial power of the Commonwealth under the Constitution.
- Provide an effective registry service to the community.
- Manage the resources allotted by Parliament efficiently.

THE COURT'S OUTCOME AND PROGRAM STRUCTURE

The Court's outcome and program structure appears in Part 4 on page 58.

This report uses the outcome and program structure to outline the Court's work and performance during 2012–13. Part 3 reports on these issues in detail.

JUDGES OF THE COURT

The Federal Court of Australia Act provides that the Court consists of a Chief Justice and other judges as appointed. The Chief Justice is the senior judge of the Court and is responsible for managing the business of the Court.

Judges of the Court are appointed by the Governor-General by commission and may not be removed except by the Governor-General on an address from both Houses of Parliament in the same session. All judges must retire at the age of seventy.

Judges, other than the Chief Justice, may hold more than one judicial office. Most judges hold other commissions and appointments.

At 30 June 2013 there were forty-three judges of the Court. They are listed below in order of seniority with details about any other commissions or appointments held on courts or tribunals. Of the forty-three judges, there were three whose work as members of other courts or tribunals occupied all, or most, of their time.

Judges of the Court (as at 30 June 2013)

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
Chief Justice		
The Hon James Leslie Bain ALLSOP AO	Sydney	
The Hon Terence John HIGGINS AO	Canberra	Supreme Court of the ACT – Chief Justice
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon John Ronald MANSFIELD AM	Adelaide	Supreme Court of the ACT – Additional Judge Supreme Court of the NT – Additional Judge Australian Competition Tribunal – Part-time President Administrative Appeals Tribunal – Presidential Member Aboriginal Land Commissioner – Part-time
The Hon John Alfred DOWSETT AM	Brisbane	Supreme Court of the ACT – Additional Judge
The Hon Susan Coralie KENNY	Melbourne	Administrative Appeals Tribunal – Presidential Member
The Hon Peter Michael JACOBSON	Sydney	Supreme Court of Norfolk Island – Chief Justice Australian Competition Tribunal – Part-time Deputy President
The Hon Annabelle Claire BENNETT AO	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Bruce Thomas LANDER	Adelaide	Supreme Court of the ACT – Additional Judge Supreme Court of Norfolk Island – Judge Administrative Appeals Tribunal – Presidential Member
The Hon Antony Nicholas SIOPIS	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Steven David RARES	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Berna COLLIER	Brisbane	Australian Law Reform Commission – Part-time Commissioner Supreme and National Courts of Justice of Papua New Guinea – Judge
The Hon Dennis Antill COWDROY OAM	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member Australian Defence Force – Judge Advocate Australian Defence Force – Defence Force Magistrate Defence Force Discipline Appeal Tribunal – Member

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Anthony James BESANKO	Adelaide	Supreme Court of the ACT – Additional Judge
The Hon Christopher Neil JESSUP	Melbourne	
The Hon Richard Ross Sinclair TRACEY RFD	Melbourne	Australian Defence Force – Judge Advocate General Defence Force Discipline Appeal Tribunal – President
The Hon John Eric MIDDLETON	Melbourne	Australian Competition Tribunal – Part-time Deputy President Administrative Appeals Tribunal – Presidential Member Australian Law Reform Commission – Part-time Commissioner
The Hon Robert John BUCHANAN	Sydney	Supreme Court of the ACT – Additional Judge
The Hon John GILMOUR	Perth	Supreme Court of the ACT – Additional Judge
The Hon Michelle Marjorie GORDON	Melbourne	
The Hon John Alexander LOGAN RFD	Brisbane	Administrative Appeals Tribunal – Presidential Member Defence Force Discipline Appeal Tribunal – Member Supreme and National Courts of Justice of Papua New Guinea – Judge
The Hon Geoffrey Alan FLICK	Sydney	
The Hon Neil Walter McKERRACHER	Perth	
The Hon John Edward REEVES	Brisbane	Supreme Court of the NT – Additional Judge
The Hon Nye PERRAM	Sydney	Copyright Tribunal – Deputy President Australian Law Reform Commission – Part-time Commissioner
The Hon Jayne Margaret JAGOT	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member Copyright Tribunal – Deputy President

JUDGE	LOCATION	OTHER COMMISSIONS/APPOINTMENTS
The Hon Lindsay Graeme FOSTER	Sydney	Supreme Court of the ACT – Additional Judge Australian Competition Tribunal – Part-time Deputy President
The Hon Michael Laurence BARKER	Perth	
The Hon John Victor NICHOLAS	Sydney	
The Hon David Markey YATES	Sydney	
The Hon Mordecai BROMBERG	Melbourne	
The Hon Julie Anne DODDS-STREETON	Melbourne	
The Hon Anna Judith KATZMANN	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Alan ROBERTSON	Sydney	
The Hon Bernard MURPHY	Melbourne	
The Hon Iain James Kerr ROSS AO	Melbourne	Fair Work Australia – President
The Hon John Edward GRIFFITHS	Sydney	
The Hon Duncan James Colquhoun KERR Chev LH	Hobart	Administrative Appeals Tribunal – President
The Hon Kathleen FARRELL	Sydney	
The Hon Tony PAGONE	Melbourne	

The Chief Justice was absent on the following dates during the year. Acting Chief Justice arrangements during these periods were as follows:

1–3 July 2012	The Hon Justice Finn
22–26 October 2012	The Hon Justice Gray
5–8 November 2012	The Hon Justice Gray
24 December 2012–28 January 2013	The Hon Justice Gray

Most of the judges of the Court devote some time to other courts and tribunals on which they hold commissions or appointments. Judges of the Court also spend a lot of time on activities related to legal education and the justice system. More information about these activities is set out in Part 3 and Appendix 8.

APPOINTMENTS AND RETIREMENTS DURING 2012-13

During the year three judges were appointed to the Court:

- **The Honourable Justice Kathleen Farrell** (resident in Sydney) was appointed on 5 December 2012.
- **The Honourable Chief Justice James Allsop** (resident in Sydney) was appointed on 1 March 2013.
- **The Honourable Justice Tony Pagone** (resident in Melbourne) was appointed on 21 June 2013.

During the year four judges retired from the Court:

- **The Honourable Justice Paul Finn** resigned his commission as a judge of the Court with effect from 4 July 2012.
- **The Honourable Chief Justice Patrick Anthony Keane** resigned his commission as a judge of the Court with effect from 28 February 2013.
- **The Honourable Justice Arthur Robert Emmett** resigned his commission as a judge of the Court with effect from 6 March 2013.
- **The Honourable Justice Peter Ross Awdry Gray** resigned his commission as a judge of the Court with effect from 17 May 2013.

Other appointments, awards, resignations and retirements during the year included:

- **Justice Gilmour** was appointed as an additional judge of the Supreme Court of the Australian Capital Territory, with effect from 6 July 2012.
- **Justices Middleton** and **Perram** were appointed as Part-time members of the Australian Law Reform Commission for a term of three years commencing on 28 November 2012.
- **Justice Emmett** resigned his commission as President of the Copyright Tribunal of Australia with effect from 6 March 2013.
- **Justice Lander** was awarded, by Flinders University, the citation of Honorary Doctorate of Laws on 16 April 2013 for his contribution to the law and to the University.
- **Justice Cowdroy** was appointed a Presidential Member of the Administrative Appeals Tribunal for a period of ten months, with effect from 16 May 2013.
- **Justice Gray** resigned his commissions as a judge of the Industrial Relations Court of Australia and a Presidential Member of the Administrative Appeals Tribunal with effect from 17 May 2013.

FEDERAL COURT REGISTRIES

Registrar

Mr Warwick Soden is the Registrar of the Court. The Registrar is appointed by the Governor-General on the nomination of the Chief Justice. The Registrar has the same powers as the Head of a Statutory Agency of the Australian Public Service in respect of the officers and staff of the Court employed under the *Public Service Act 1999* (section 18Q of the *Federal Court of Australia Act*).

Principal and District Registries

The Principal Registry of the Court, located in Sydney, is responsible for the overall administrative policies and functions of the Court's registries and provides policy advice, human resources, financial management, information technology support, library services, property management and support to the judges' committees.

There is a District Registry of the Court in each capital city. The District Registries provide operational support to the judges in each state, as well as registry services to legal practitioners and members of the public. The registries receive court and related documents, assist with the arrangement of court sittings and facilitate the enforcement of orders made by the Court.

The Registry of the Copyright Tribunal is located in the New South Wales District Registry. The Victorian Registry is the Principal Registry for the Defence Force Discipline Appeal Tribunal. The South Australia Registry is the Principal Registry for the Australian Competition Tribunal. Most other District Registries are also registries for these two Tribunals. The Queensland, South Australia, Western Australia and Northern Territory District Registries are registries for the High Court. The Tasmania District Registry provides registry services for the Administrative Appeals Tribunal.

The registries of the Court are also registries for the Federal Circuit Court in relation to non-family law matters. More information on the management of the Court is outlined in Part 4.

Officers of the Court

Officers of the Court are appointed by the Registrar under section 18N of the Federal Court of Australia Act and are:

- (a) a District Registrar for each District Registry
- (b) Deputy Registrars and Deputy District Registrars
- (c) a Sheriff and Deputy Sheriffs
- (d) Marshals under the *Admiralty Act 1988*

The registrars must take an oath or make an affirmation of office before undertaking their duties (section 18Y of the Federal Court of Australia Act). Registrars perform statutory functions assigned to them by the Federal Court of Australia Act, Federal Court Rules 2011, Federal Court Bankruptcy Rules 2005 and the Federal Court (Corporations) Rules 2000. These include issuing process, taxing costs and settling appeal indexes. They also exercise various powers delegated by judges under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Circuit Court of Australia Act 1999*. Appendix 4 on page 136 lists the registrars of the Court.

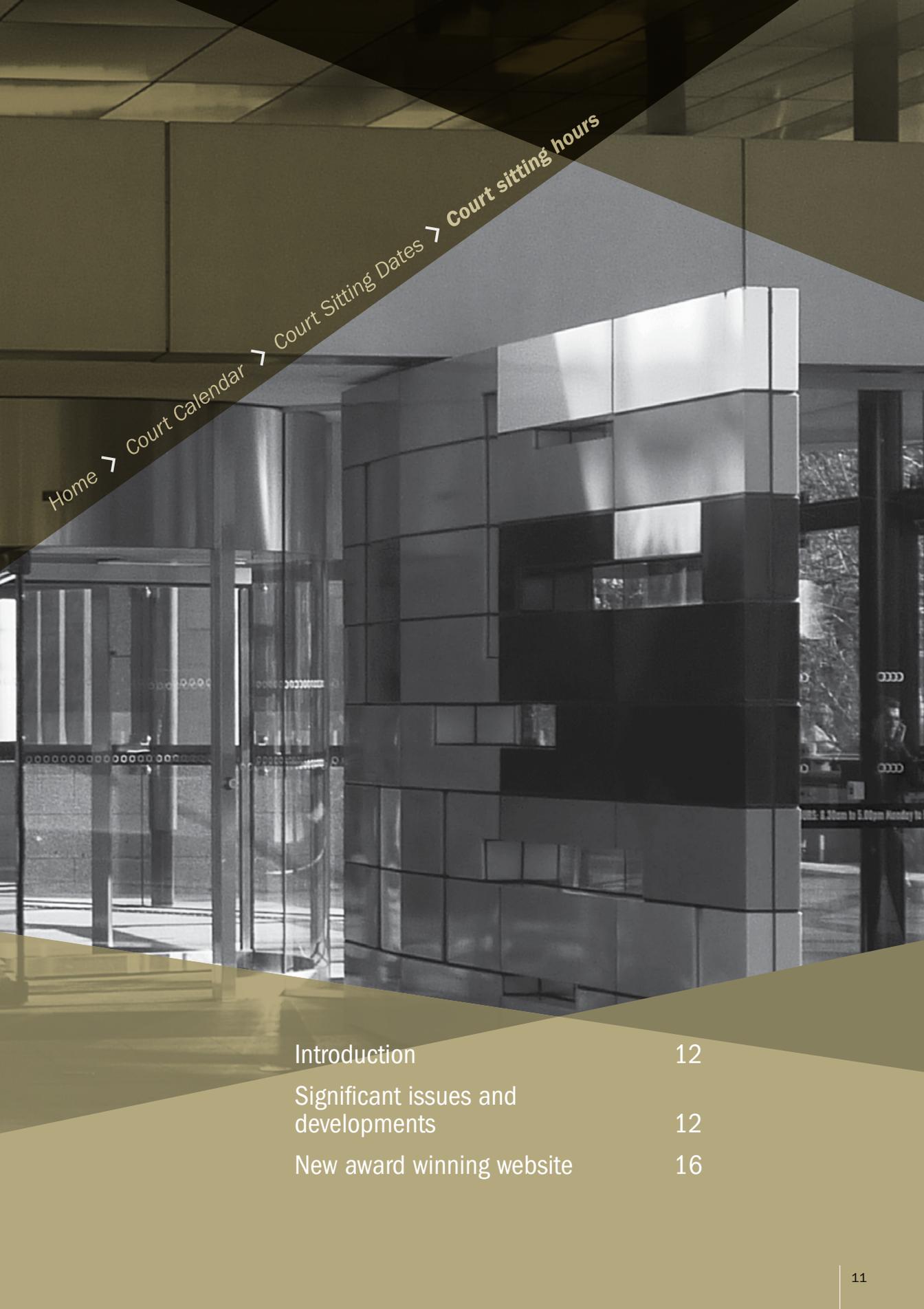
Staff of the Court

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs and Marshals) are appointed or employed under the Public Service Act. On 30 June 2013 there were 476 staff employed under the Public Service Act. Generally, judges have two personal staff members. More details on Court staff are set out in Part 4 and Appendix 9.

PART 2

THE YEAR IN REVIEW





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THE YEAR IN REVIEW

INTRODUCTION

During the year under review the Court continued to seek to achieve its objective of promptly, courteously and effectively deciding disputes according to law, in order to fulfil its role as a court exercising the judicial power of the Commonwealth under the Constitution. The Court's innovative approach to managing its work, and the way it operates as an organisation, brought continuing recognition of its leading role.

During 2012–13 the Court maintained its commitment to achieving performance goals for its core work, while also developing and implementing a number of key strategic and operational projects. These are discussed separately below.

SIGNIFICANT ISSUES AND DEVELOPMENTS

Work of the Court – maintaining and increasing performance

In the five year period since 2008–09 the Federal Court's caseload increased by fifty per cent. This is at a time when the Court's staffing decreased fifteen per cent from 422 at the commencement of the 2008–09 financial year to 358 as at 30 June 2013. For comparison purposes the 2013 figure excludes the twenty-four staff who transferred to the Court from the National Native Title Tribunal (NNTT) to undertake corporate services and native title mediation related functions.

In addition to an increased number of filings, the complexity of the cases heard by the Court has risen markedly. One of the most reliable indicators of the complexity of a case is the number of trial days it takes to hear the matter. Between 2009 and 2013 the number of cases with ten or more hearing days almost doubled; there was a 260 per cent increase in cases with fifteen or more hearing days; and those with twenty or more hearing days increased by 216 per cent. This is notwithstanding the reduction in mid-length cases of between five and nine hearing days.

Table 2.1 Length of trials

	2009	2013
5 days or more	135	108
10 days or more	25	47
15 days or more	8	29
20 days or more	6	19

Increasingly complex cases require a higher level of judicial case management and time in both hearing the matter and writing often long judgments with a multitude of complex issues of fact and law.

In a time of scarce resources the Court recognises that it must be open to new strategies to manage these complex cases. In early 2013, for the first time in Australia, two judges heard evidence in a case involving multiple patents, complex claims and mountains of documents. With the parties' cooperation the litigation was structured so that each judge heard and determined groups of claims associated with one of two sets of patents and together they heard the evidence which overlapped all the patents. In this way it is hoped costs will be saved and a speedier determination facilitated. This matter was *Samsung Electronics Co Ltd & Anor v Apple Inc. & Anor*.

Examples of other particularly long and complex cases in which hearings were held or judgments delivered during the reporting year include; *ASIC v Storm Financial Limited (Receivers and Managers Appointed) (In Liquidation)*; *Modtech Engineering Pty Limited v GPT Management Holdings Limited & Ors*; *ACCC v Advanced Medical Institute Pty Limited & Ors*; *Wingecarribee Shire Council v Lehman Brothers Australia Ltd*; and *Clara George & Ors v State of Western Australia & Ors (Badimia)*.

Performance against time goals

The Court maintains three time goals for the performance of its work, two of which were put in place over thirteen years ago when the majority of the Court's work was less complex. Notwithstanding the increased complexity, the Court has maintained these time goals. The first goal concerns the time taken from filing a case to completion, the second goal concerns the time taken to deliver reserved judgments and the third goal concerns the time taken to complete migration appeals. The goals do not determine how long all cases will take, as some are very long and complex and others will, necessarily, be very short.

Time goal 1: Eighty-five per cent of cases completed within eighteen months of commencement

During the reporting year, the Court completed ninety-two per cent of cases in less than eighteen months, compared with ninety-four per cent in the previous year. As shown in Figure A5.5 and Table A5.5 in Appendix 5 on page 147, over the last five years the Court has consistently exceeded its benchmark of eighty-five per cent, with the average over the five years being ninety-one per cent.

Time goal 2: Judgments to be delivered within three months

The Court has a goal of delivering reserved judgments within a period of three months. Success in meeting this goal depends upon the complexity of the case and the pressure of other business upon the Court. During 2012–13 the Court handed down 1869 judgments for 1405 court files (some files involve more than one judgment being delivered e.g. interlocutory decisions and sometimes, one judgment will cover multiple files). The data indicates that eighty-five per cent of appeals (both full court and single judge) were delivered within three months (an increase from seventy-seven per cent in 2011–12) and eighty-four per cent of judgments at first instance were delivered within three months of the date of being reserved (compared with eighty-three per cent in 2011–12).

Time goal 3: Disposition of migration appeals and related applications within three months

Most matters commenced in the Federal Court from decisions arising under the Migration Act are appeals and related applications.

The majority of these cases are heard and determined by a single judge exercising the appellate jurisdiction of the Court. The Court's goal for disposing of migration appeals and related applications is three months from the date of commencement.

The Court applies a number of initiatives to assist in achieving the goal, including special arrangements to ensure that all appeals and related applications are listed for hearing in the Full Court and Appellate sitting periods as soon as possible after filing. Additional administrative arrangements are also made to streamline the pre-hearing procedures.

The Court carefully monitors the achievement of the three month goal in order to ensure that there are no delays in migration appeals and related applications, and that delay is not an incentive to commencing appellate proceedings.

THE YEAR IN REVIEW

The Court continues to achieve the disposition target of three months for most of the migration appeals and related applications dealt with by a single judge or a Full Court. In the period covered by this report, 219 migration appeals and related applications from the Federal Circuit Court (FCC) or the Court were filed and finalised, with the average time from filing to final disposition being ninety-six days, and the median time from filing to final disposition being ninety-five days. The time taken to dispose of some matters was longer where hearings were adjourned pending the outcome of other decisions in the Court or the High Court.

Workload

In 2012–13 the total number of filings (including appeals) in the Federal Court increased by ten per cent to 5802. Filings in the Court's original jurisdiction (excluding appeals) increased by eleven per cent. In the five-year period since 2008–09 the Court's workload has increased by fifty per cent.

Further information about the Court's workload, including the management of appeals, can be found in Part 3 on page 26.

The Federal Court's registries also undertake registry services for the FCC. The overall workload has grown since 2000, when the Federal Magistrates Court (as it was then known) was established. In 1999–2000 the combined filings in the general federal law jurisdiction of the FMC and the original jurisdiction (i.e. not including appeals) of the Federal Court were 5885, compared with 12 150 this year. During the reporting year the combined workload of the two courts increased by four per cent compared with 2011–12.

It should be noted that Federal Court Registrars hear and determine a substantial number of cases in the FCC, particularly in the bankruptcy jurisdiction. During the year Federal Court Registrars dealt with, and disposed of 3717 FCC bankruptcy matters which equates to ninety-one per cent of the FCC's bankruptcy caseload, or almost sixty-three per cent of the FCC's general federal law caseload.

Native title institutional reforms

The commencement of the reporting period saw the implementation of the Government's further institutional reforms to the native title system. Under these reforms the mediation of claims and corporate functions of the NNTT were transferred to the Federal Court from 1 July 2012.

A joint Steering Committee comprising officers from the Court, the NNTT and the Attorney-General's Department was established to implement the reforms. It included specialist working groups to deal with finance, human resources, property and information and communications and technology (ICT) issues. It should be noted that, due to the excellent work by staff of the Tribunal and the Court, the reforms were successfully implemented with no disruption to the services provided by the NNTT or Court.

The NNTT remains an independent and separate statutory authority. Following the merge of the agencies the annual appropriation for the NNTT was transferred to the Federal Court. The NNTT and the Court have agreed upon an annual budget for the NNTT to enable it to effectively discharge its statutory functions and the Native Title Registrar remains responsible for recruiting and managing all NNTT staff within this budget.

Rather than preparing a separate Annual Report for the NNTT, the *Native Title Act 1993* has been amended to require that the President of the NNTT prepare a report on the NNTT's activities for inclusion in the Federal Court's Annual Report. This Report can be found in Part 5 at page 68.

Native title outcomes

Notwithstanding the significant challenges created by the transition of functions, the Court, with the assistance of the parties, continued to sustain the momentum that has seen a substantial increase in the rate that native title matters are resolved. In 2008–09 seven determinations relating to the existence of native title were made. In 2012–13 this had increased by over 400 per cent with thirty-six determinations being made. A further thirty-five matters were finalised without the requirement for the Court to make a determination.

These outcomes reflect the Court's continuing innovations in native title practice. These initiatives aim to identify the issues in dispute in high priority matters and target strategies for resolving those issues, which often lead to ultimate agreement between the parties. These outcomes could not be achieved without the significant contribution of all parties.

More information about the native title initiatives and workload appears in Part 3 on page 32.

Resignation of Chief Justice Keane and Appointment of Chief Justice Allsop

On 28 February 2013 a ceremonial sitting of the Federal Court was held in Brisbane to mark the resignation of the Honourable Patrick Keane following his appointment as a judge of the High Court of Australia.

Chief Justice Allsop was sworn in as the Court's fourth Chief Justice on 4 March 2013 at a ceremony at the Federal Court in Sydney. Prior to his appointment to the Court he was President of the New South Wales Court of Appeal and was also a judge of the Federal Court from 2001 to 2008.

Electronic Court File

In order to further enhance the Court's productivity and increase access to justice the Court is developing an Electronic Court File (ECF) which will also be used by the FCC for their general federal law matters.

The ECF, which is the culmination of the Court's 'Myfiles' concept, will completely replace the paper file. It will be particularly beneficial to members of the legal profession with multiple matters in the Court at the one time. They will be able to lodge documents and correspondence electronically with the Court and remotely view the documents on the Court file.

In 2012–13 work continued on developing the document management system, which will provide the foundation for the ECF. External consultation (with members of the legal profession and other court users) also began.

The ECF will require enhancements to the Court's eLodgment system. During the reporting year a targeted survey of court users was undertaken to obtain feedback on the Court's current eServices products, particularly eLodgment. The survey results show a high level of satisfaction with eLodgment with all survey participants rating it good, excellent or very good. The features that were particularly appreciated by survey respondents were the ability to lodge documents at any time and the ability to lodge documents from their work desk.

The Court is considering the survey respondents' suggestions for enhancements to eLodgment which include the lodging of large documents and better ordering the drop down list of documents to be selected for lodgment.

THE YEAR IN REVIEW

New Award Winning Website

FEDERAL COURT OF AUSTRALIA *Attending Court* *Online Services*

ABOUT THE COURT CASE MANAGEMENT SERVICES LAW & PRACTICE FORMS & FEES COURT CALENDAR PUBLICATIONS

Top 10 Court Websites
fact
www.court-fact.org
2013 WINNER

About the Court
The Federal Court began to exercise its jurisdiction on 1 February 1977. The court is a superior court of record and a court of law and equity.
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Ceremonial sitting of the Full Court. **24 JUL 2013**
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"What lessons for Australian administrative law?" Presented by Justice Perram. **11 JUL 2013**
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In December 2012, the Court's new website was launched, the first significant redevelopment of the site since 2004. The overall objective of the project was to create a modern, user focused site, providing easy access to key functionality and information. A specific objective of the new site is to increase the portion of Court business conducted electronically by promoting and facilitating access to the Court's suite of online services.

The website is another door through which people can access the Court. This theme is reflected in the images used in the website and in the design of this Annual Report.

A new addition to the website is the full collection of Federal Court judgments dating back to 1977, a collection that was previously only available to judges and staff of the Court. The collection is updated every working day and provides extensive search capabilities.

The range of subscriptions on offer through the website has been extended to include rich site summary (RSS) feeds of news and judgments.

The launch of the new website generated very positive feedback from key user-groups including the legal community and the media. It was also named one of the top ten court websites in the world by the Forum on the Advancement of Court Technology (FACT). This annual award aims to acknowledge courts 'who are working hard to extend and expand access to public records, court services and information online'. Information about FACT and the award can be found at <http://court-fact.org/announcing-the-2013-top-ten-websites-award-winners/>.

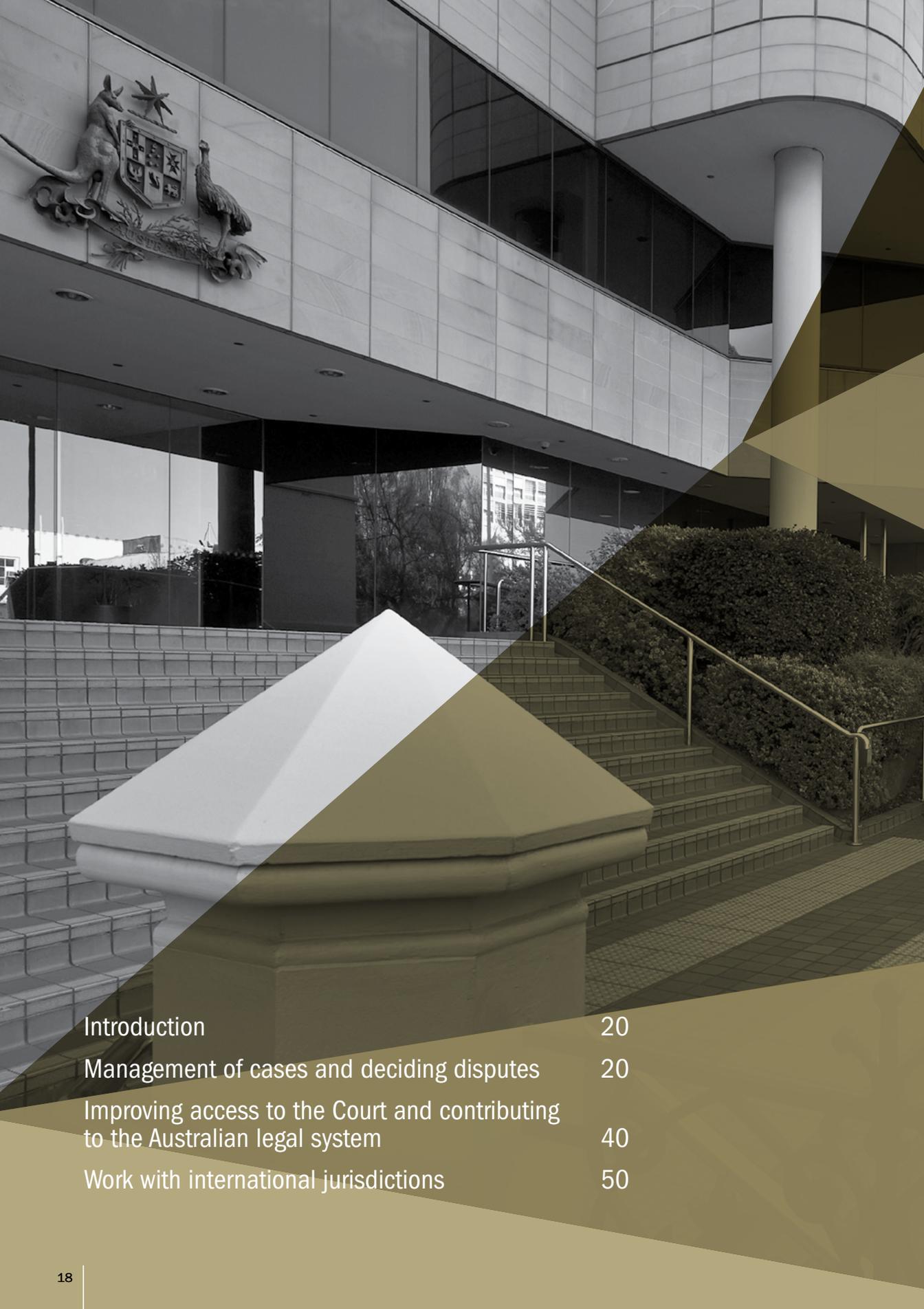
Financial management and organisational performance

The Court's appropriation includes funding for the operations of the NNTT from 2012–13. The financial figures outlined in this report are for the consolidated results of both the Federal Court and the NNTT. A summary of the NNTT's expenditure is included in Table 4.1 on page 58.

The Court's budget position continues to be affected by the government's tight fiscal position. From 1 January 2013, following a review by the Heads of Jurisdiction Consultative Committee (which was established in 2011 to formalise existing arrangements and foster greater administrative cooperation between the Federal Court, Family Court and Federal Circuit Court), the Federal Court assumed responsibility for library services for the three courts. \$0.358 million was transferred from the Family Court and Federal Circuit Court in 2012–13 to cover the cost of providing these services.

During the financial year expenditure was closely monitored to ensure that savings were realised wherever possible. Further savings arose from two judicial positions being vacant for the majority of 2012–13 and the reversal of a number of over-provisions transferred from the NNTT. As a result, the Court achieved an operating surplus before depreciation of \$2.680 million.

Notwithstanding the ability to achieve a surplus in 2012–13 in the next three-year budget cycle, the Court will continue to manage limited parameter adjustment funding increases together with escalating costs. The fixed nature of sixty per cent of the Court's costs (such as judges and their direct staff and the requirement for purpose built court accommodation) severely limits the Court's ability to reduce these costs. These fixed costs also mean that, in effect, the impact of the efficiency dividend on the Court's remaining costs is more than doubled. That is, it can only be applied to forty per cent of the Court's appropriation and the bulk of that forty per cent includes the cost of wages for registry employees. This is the main reason why the employee numbers have so substantially reduced as mentioned earlier in this report. Such an ongoing reduction is unsustainable.



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PART 3

THE WORK OF THE COURT IN 2012-13

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THE WORK OF THE COURT IN 2012–13

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 of the Annual Report covers 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. Aspects of the work undertaken by the Court to improve access to the Court for its users, including changes to its practices and procedures, 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.

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 dealing or false advertising. See Figure A5.8 on page 150 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.

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 A5.13 on page 155 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 A5.14 on page 156 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 (NNTT) and matters filed under the ADJR Act involving native title. The Court's native title jurisdiction is discussed on page 32. Figure A5.11 on page 153 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 eleven arrests and two ships were sold by order of the Court. See Figure A5.10 on page 152 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 A5.7 on page 149 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 A5.6 on page 148 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 A5.12 on page 154.

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 (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 this Part 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 30. Figure A5.15 on page 157 shows the appeals filed in the Court since 2008-09.

THE WORK OF THE COURT IN 2012–13

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

Changes to the Court's jurisdiction in 2012–13

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

- *Australian Charities and Not-for-profits Commission Act 2012*
- *Defence Trade Controls Act 2012*
- *Fair Work Amendment Act 2013*
- *Greenhouse and Energy Minimum Standards Act 2012*
- *Illegal Logging Prohibition Act 2012*
- *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*
- *Migration Amendment (Reform of Employer Sanctions) Act 2012*
- *Migration Amendment (Temporary Sponsored Visas) Act 2013*
- *National Gambling Reform Act 2012*
- *Not-for-profit Sector Freedom to Advocate Act 2013*
- *Road Safety Remuneration Act 2012*
- *Stronger Futures in the Northern Territory Act 2012*
- *Sugar Research and Development Services Act 2013*

Amendments to the Federal Court of Australia Act

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

The *Statute Law Revision Act 2012* made a typographical correction to Note 1 at the foot of section 23DE of the Federal Court Act. The *Parliamentary Counsel and Other Legislation Amendment Act 2012* amended subsection 59(5) consequential on the transfer of the functions of the Office of Legislative Drafting and Publishing in the Attorney-General's Department to the Office of Parliament Counsel (OPC). This amendment makes it clear that the OPC may provide assistance with the drafting of rules of the Court.

The *Access to Justice (Federal Jurisdiction) Amendment Act 2012* inserted into section 4 of the Federal Court Act a note after the definition of 'proceeding' indicating that discovery is an example of an incidental proceeding. It also inserted provisions relating to discovery (para 43(3)(h)), suppression and non-publication orders (new Part VAA) and vexatious proceedings (new Part VAAA) and repealed section 50 of the Federal Court Act.

The *Courts Legislation Amendment (Judicial Complaints) Act 2012* inserted into section 4 of the Federal Court Act definitions for the terms complaint, complaint handler, handle and relevant belief. It also inserted provisions to establish a framework enabling the Chief Justice to manage judicial complaints that are referred to him (paras 15(1AA)(c) and (d) and ss 15(1AAA), 15(1AAB), 15(1AB), 15(1AC) and s 18XA). It applies to complaints made before, on or after the commencement of these provisions and in circumstances giving rise to the complaint which occurred before, on or after the commencement.

The *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* implemented the change of name from the Federal Magistrates Court to the Federal Circuit Court of Australia. The Amending Act inserted a definition for Federal Circuit Court into section 4 of the Federal Court Act and amended the name of the Federal Circuit Court in headings to sections 32AA and 32AB.

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 Trans-Tasman Proceedings Act and the Transitional Act have still not yet commenced.

Fee Regulations

Filing and other court fees prescribed under the Federal Court of Australia Regulations 2004 increased from 1 July 2012 by 4.9 per cent by virtue of the biennial increase provisions in those Regulations (r 8 and Schedule 2). That increase was calculated under a formula based on the change in the Consumer Price Index for the March quarter 2012 compared to that index for the March quarter 2010.

The 2012 Federal Budget included an announcement that from 1 January 2013 court fees would be reformed to 'better reflect the capacity of different types of litigants to pay, with an overall increase to court fee revenue of \$76.9 million over four years'.

This change was implemented through the Federal Court and Federal Magistrates Court Regulation 2012 (as it was then titled) which commenced on 1 January 2013. That Regulation replaced both the Federal Court of Australia Regulations 2004 and the Federal Magistrates Regulations 2000 and makes provision for fees for filing and other services provided by the Federal Court of Australia and the Federal Magistrates Court of Australia (now the Federal Circuit Court) other than under the *Family Law Act 1975* or their officers in relation to a proceeding.

As a consequence of the new Regulation, changes were made to all existing forms used in the administration of fees and the content on the Court's website was re-written. The changes made included increasing court fees by approximately forty per cent for corporations and fifteen per cent for non-corporations; introducing a separate higher fee for a corporation that is a publicly listed company; treating public entities as corporations; and increasing bankruptcy fees by approximately forty per cent. Small businesses and unincorporated not-for-profit associations are eligible to pay the fee charged to non-corporations. Mediation fees were increased and some new fees, for example for filing a bankruptcy examination summons and for hearing a bankruptcy or corporations examination, were introduced. Payment of a reduced fee of \$100 for disadvantaged litigants was removed and fee waiver and exemption was re-introduced, other than for corporations.

The name of the new Regulation was amended on 12 April 2013 to reflect the change of name of the Federal Magistrates Court to the Federal Circuit Court of Australia with consequential changes of that name throughout the Regulation.

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 WORK OF THE COURT IN 2012–13

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 Federal Court Rules 2011. These included amendments to:

- Subrules 2.32(3) and 20.13(5) consequential on amendments to the Federal Court Act by the Access to Justice (Federal Jurisdiction) Amendment Act relating to discovery and suppression and non-publication orders.
- Division 6.1 and Schedule 1 consequential on amendments to the Federal Court Act by the Access to Justice (Federal Jurisdiction) Amendment Act relating to vexatious proceedings.
- A number of rules to rectify minor errors or omissions, or to clarify or remove ambiguity in the Federal Court Rules.
- The Federal Court Rules consequential on the commencement of Schedule 1 of the *Federal Circuit Court of Australia Legislation Amendment Act 2012*.
- Schedule 3 to adjust the quantum of costs allowable for work done and services provided by lawyers in proceedings in the Court to give effect to recommendations made in the Fifth Report of the Joint Costs Advisory Committee.

Approved forms

A number of the Court's approved forms were amended by the Chief Justice during the reporting year. The revisions made included:

- Reflecting the change of name of the Federal Magistrates Court of Australia to the Federal Circuit Court of Australia.
- Rectifying minor errors or omissions and clarifying or removing some ambiguities.
- Achieving greater consistency in terminology across the approved forms generally.
- Reflecting the change of name of Fair Work Australia to the Fair Work Commission.
- Minor consequential modifications following commencement of the Federal Court Amendment Rules 2013 (No 1).

Approved forms are available on the Court's website. The Chief Justice may approve a form for the purposes of the Federal Court Rules (see subrule 1.52(2)). Any document that is filed in a proceeding in the Court must be in accordance with any approved form (see rule 2.11).

Practice notes

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 and 2.12 of the Federal Court Rules and the Court's inherent power to control its own processes.

During the reporting year the Chief Justice issued the following new or revised practice notes:

- Revised Practice Note APP 2 – Content of appeal books and preparation for hearing. Issued on 14 August 2012.
- Revised Practice Note CM 2 – List of authorities, citation of cases and legislation for proceedings generally. Issued on 14 August 2012.
- Revised Practice Note CM 7 – Expert witnesses in proceedings in the Federal Court of Australia. Issued on 4 June 2013.
- Revised Practice Note CM 18 – Title of proceedings for relief under section 39B of the *Judiciary Act 1903* (Cth) against the Fair Work Commission. Issued on 4 June 2013.
- Revised Practice Note CM 21 – Title of proceedings for relief under section 39B of the *Judiciary Act* or section 5 *Administrative Decisions (Judicial Review) Act* against Commonwealth Tribunals. Issued on 4 June 2013.
- Practice Note CM 22 – Video link hearing arrangements. Issued on 4 June 2013.

In addition, administrative notices are issued by each District Registrar at the request, or with the agreement, of judges in the District Registry to which the notice relates. These notices deal with local matters such as arrangements for the duty judge and the listing of particular types of matters (for example in a subpoena or corporations list).

The Queensland District Registrar revised two administrative notices on 12 April 2013, namely:

- Administrative Notice QLD 2 – Enforcement of Federal Court judgments.
- Administrative Notice QLD 3 – Listing arrangements in matters under the *Bankruptcy Act 1966*.

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.

Other Rules

There was one amendment to the Federal Court (Corporations) Rules 2000 commencing on 1 August 2012 consequential to the enactment of the *Corporations Amendment (Phoenixing and Other Measures) Act 2012* and the *Corporations Legislation Amendment Regulation 2012 (No.1)*. Part of this new legislation implemented the transition from newspaper notices to electronic publication on a single website administered by the Australian Securities and Investments Commission. The Amendment Rules included:

- Omitting from rule 1.4 references to a number of terms as being defined in section 9 or elsewhere in the *Corporations Act* which have, over recent years, been omitted from that section or from that Act.
- Inserting in rule 1.4 a reference to 'foreign company' being defined in section 9 of that Act.
- Omitting rule 2.11, which provides for publication of notices generally.
- Omitting any reference to rule 2.11 appearing elsewhere in the *Corporations Rules* and, where appropriate, substituting the elements of the omitted rule 2.11 that still apply where the application is for orders other than orders for winding up.
- Amending Form 9, Notice of application for winding up order, at paragraph 1 to insert an additional requirement for information, being for any trading name of the company, as required by the new Regulation 5.3A.03A.

There were no amendments to the Federal Court (Bankruptcy) Rules 2005.

THE WORK OF THE COURT IN 2012-13

Heads of Jurisdiction Consultative Committee

In late 2011 the Heads of Jurisdiction of the Federal Court, Family Court and Federal Circuit Court agreed to establish a Consultative Committee to formalise existing unofficial arrangements and foster greater administrative cooperation between the three courts.

The Committee meets quarterly and is supported by the Chief Executive Officers of the three courts. A senior official from the Attorney-General's Department attends the Committee's meetings as observer. Four meetings were held in the reporting year (August and November 2012 and February and May 2013).

In addition to including information about the Committee's activities in the courts' Annual Reports, the Committee provides a report to the Commonwealth Attorney-General twice in each calendar year. Two of these reports were submitted in the reporting year (August 2012 and March 2013).

The Committee's main focus has been on: reviewing the courts' library services; overseeing the resolution of accommodation issues for the Federal Circuit Court in Sydney; a review of the courts' case management systems and development of a strategic plan for the ongoing occupancy of Commonwealth Law Courts buildings.

In August 2012, following development of a detailed implementation plan and recommendations, the Heads of Jurisdiction formally approved an amalgamation of the courts' library services.

The merger necessitated the transfer of Family Court Library staff and associated funding to the Federal Court under Machinery of Government arrangements. On the 3rd of January 2013 the Federal Court assumed responsibility for the courts' library services. The transition was relatively smooth and proceeded without disruption to library users from any of the courts.

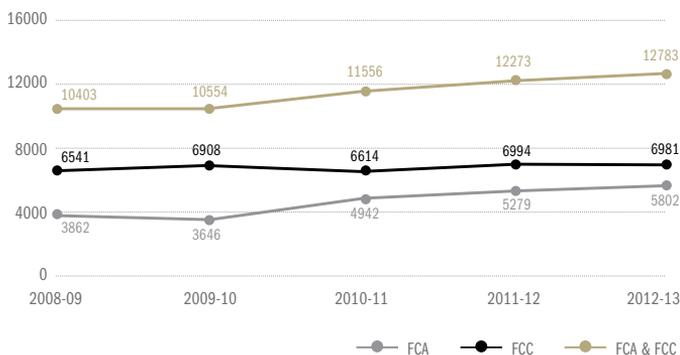
Workload of the Federal Court and Federal Circuit Court

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

Figure 3.1 below shows a continued increase in the combined filings of the two courts since 2008-09.

In 2012-13, a total of 12 783 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 2013 Federal Court of Australia (FCA) and Federal Circuit Court (FCC)



Case flow management of the Court's jurisdiction

As noted in Part 2, 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 2008 to 30 June 2013, ninety-one per cent of cases (excluding native title matters) were completed in less than eighteen months, eighty-six per cent in less than twelve months and seventy-four per cent in less than six months (see Figure A5.4 on page 146). Figure A5.5 on page 147 shows the percentage of cases (excluding native title matters) completed within eighteen months over the last five reporting years. The figure shows that in 2012–13, ninety-two per cent of cases were completed within eighteen months.

Delivery of judgments

In the reporting period, 1869 judgments were delivered. Of these, 576 judgments were delivered in appeals (both single judge and full court) and 1293 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 7 on page 163 includes a summary of decisions of interest delivered during the year and illustrates the Court's varied jurisdiction.

THE WORK OF THE COURT IN 2012–13

The workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 5169 cases were commenced in, or transferred to, the Court's original jurisdiction. See Table A5.2 on page 141.

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 Circuit Court of Australia Act 1999*

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

- five from the High Court
- eighteen from the Federal Circuit Court
- twelve from the Supreme Courts
- five 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 2012–13, fourteen matters were transferred from the Court:

- nine to the Federal Circuit Court
- five to other courts

Matters completed

Table A5.2 on page 141 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 4923 against 5116 in the previous reporting year.

Current matters

The total number of current matters in the Court's original jurisdiction at the end of the reporting year was 2602 (see Table A5.2), compared with 2356 in 2011–12.

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 2013 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	57	30	10	6	11	114
Admiralty	15	6	9	2	8	40
Bankruptcy	38	24	6	3	8	79
Competition Law	2	5	1	1	10	19
Consumer Law	74	58	38	36	48	254
Corporations	783	66	37	32	55	973
Fair Work	65	43	22	8	8	146
Human Rights	19	11	3	9	17	59
Intellectual Property	63	37	22	16	49	187
Migration	6	5	1	4	1	17
Miscellaneous	32	14	2	10	13	71
Taxation	66	43	28	15	50	202
Workplace Relations	1	1	2	0	3	7
Total	1221	343	181	142	281	2168
% of Total	56.3%	15.8%	8.3%	6.5%	13.0%	100.0%
Running Total	1221	1564	1745	1887	2168	
Running %	56.3%	72.1%	80.5%	87.0%	100.0%	

THE WORK OF THE COURT IN 2012–13

The Court experienced an eleven per cent decrease in the number of matters over eighteen months old in 2012–13. Table 3.1 shows that at 30 June 2013 there were 423 first instance matters over eighteen months old compared with 475 in 2012 (not including native title matters). Corporations, consumer law (misleading and deceptive conduct), intellectual property and taxation 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 Action	19	28	19	48	320	434
% of Total	4.4%	6.5%	4.4%	11.1%	73.7%	100.0%
Running Total	19	47	66	114	434	
Running %	4.4%	10.8%	15.2%	26.3%	100.0%	

The number of native title matters over eighteen months old increased slightly from 361 in 2012 to 368 at 30 June 2013. However, the number of native title matters over two years old decreased from 345 at 30 June 2012 to 320 at 30 June 2013 a clear indication that the innovative case management strategies being employed in this area are working. Further information about the Court's native title workload can be found on page 32.

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 5 commencing on page 139.

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 FCC, 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 FCC, 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 2013 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 videoconferencing facilities or hear the appeal in a capital city other than that in which the case was originally heard.

In 2012–13 a Full Court was specially convened to enable the early hearing and disposition of urgent appeals on fifteen occasions outside of the Full Court and appellate sitting periods. Hearing these appeals involved a total of fourteen days with three judges sitting on each day.

The appellate workload

During the reporting year 787 appellate proceedings were filed in the Court. They include appeals and related actions (633), cross appeals (sixteen) and interlocutory applications 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 (138).

The FCC is a significant source of appellate work accounting for fifty-five per cent (434) of the total number of appeals and related actions, cross appeals and other interlocutory applications (787) filed in 2012–13. 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 A5.16 on page 158.

The above figures indicate that the Court's appellate workload in 2012–13 (787) varied only slightly by less than two per cent, when compared with 2011–12 (797). During the reporting year the number of migration appeals and applications filed remained almost unchanged from 338 matters filed in 2011–12 to 333 in 2012–13. As shown by Table 3.4, this workload is subject to fluctuation due to changes that may occur in government policy or the impact of decisions of the Full Court of the Federal Court or the High Court.

In the reporting year 634 appeals and related actions, five cross appeals and 148 interlocutory applications were finalised. At 30 June 2013, there were 355 current matters including appeals and related actions (282), cross appeals (twenty-one) and interlocutory applications (fifty-two). The comparative age of matters pending in the Court's appellate jurisdiction (including native title appeals) at 30 June 2013 is set out in Table 3.3 below.

At 30 June 2013 there were ten sets of appellate proceedings (involving twenty-three matters) that are eighteen months or older. These matters are awaiting either the outcome of decisions in the High Court or the Federal Court, further interlocutory action has been taken on the part of the parties following determination of the substantive appeal or a negotiated outcome is being pursued in a number of cases including native title.

Table 3.3 – Age of current appeals and related actions, cross appeals and interlocutory appellate applications as at 30 June 2013

CURRENT AGE	UNDER 6 MONTHS	6–12 MONTHS	12–18 MONTHS	18–24 MONTHS	OVER 24 MONTHS	TOTAL
Appeals and related actions, cross appeals and interlocutory appellate applications	242	78	12	6	17	355
% of Total	68%	22%	3%	2%	5%	100%

THE WORK OF THE COURT IN 2012-13

Managing migration appeals

In 2012-13 ten 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 322 migration cases related to judgments of the FCC. One matter was remitted back to the Court from the High Court. These 333 cases include 315 appeals and related actions and eighteen interlocutory applications.

Table 3.4 below shows the number of appellate proceedings involving the Migration Act as a proportion of the Court's overall appellate workload since 2008-09. 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 appeals and related actions, cross appeals and interlocutory applications)

APPELLATE PROCEEDINGS	2008-09	2009-10	2010-11	2011-12	2012-13
Migration Jurisdiction	530	392	269	338	333
% of total	50%	46%	32%	43%	42%
Total Appellate Proceedings	1067	860	837	797	787

Information about the Court's time goal for the disposition of migration appeals can be found in Part 2 at page 13.

The Court's native title jurisdiction

Seventy-one native title determination applications were finalised during the reporting period. Of these thirty-six involved a determination by the Court as to the existence of native title. Thirty-five claims were otherwise finalised by discontinuance or dismissal. Discontinuance or dismissal of matters may occur at the request of the parties where a matter has been resolved by an agreement that does not include a determination of native title.

These outcomes represent a consolidation of the increased rate at which native title claims are being resolved since the introduction of the 2009 amendments to the *Native Title Act 1993*.

Forty-six new applications were filed during the reporting period.

On 1 July 2012 the Commonwealth Attorney-General's further institutional reforms came into effect, transferring responsibility for mediating claims and associated Indigenous Land Use Agreements (ILUAs) from the National Native Title Tribunal (NNTT) to the Court.

The specialist nature of native title litigation raises unique case management challenges. The Court relies upon the considerable skills and experience of its judges and native title registrars to identify the issues in dispute between the parties and the most effective means of obtaining sustainable outcomes. Several innovative and interacting case management strategies have been employed to achieve the substantial results of this reporting period.

Throughout the reporting year extensive work was undertaken by the Court, in cooperation with the parties, to identify an appropriate case management initiative for each of the 121 claimant applications that were in mediation with the NNTT as at 1 July 2012. Noting the policy intent of the institutional reforms is to support the timely and effective resolution of matters, the approach taken by the Court has been to identify the matters in mediation in which the issues remaining in dispute between the parties have been clearly outlined. These matters are then considered for a further referral to focused mediation by either a registrar of the Court or a mediator from the Court's native title mediator list.

Additionally, those matters in mediation as at 1 July 2012 which require further work to identify the real issues in dispute have been referred to case management by a registrar or judge of the Court. Once the issues in dispute are identified and narrowed through intensive case management further consideration will be given to a referral to mediation or other appropriate assisted dispute resolution process. As at 30 June 2013 thirteen related matters remained in mediation with the NNTT and sixteen matters were in Federal Court mediation. The matters remaining in mediation with the NNTT are located in the south west of Western Australia and are the subject of very advanced, longstanding and complex settlement negotiations.

The Court has continued to draw on the specialist expertise of external mediators from its Native Title Mediator List. During the reporting period the Court's list was substantially revised to ensure that all its mediators have current relevant experience working with Indigenous people in resolving complex land management issues. Thirty per cent of mediators on the Court's list are Indigenous people.

The outcomes achieved by the Court during the reporting period were supported by the identification of matters for inclusion on the Court's Native Title Priority List. The priority list is a national list of those matters that have been identified by the Court and the parties for resolution in the next eighteen to twenty-four months. There are currently 125 matters on the Court's priority list. It is anticipated that approximately half of these matters will be resolved in the period from 1 July to 31 December 2013.

The results achieved in the native title jurisdiction rely upon the cooperation of the parties in identifying the priority matters for resolution, the issues to be resolved and the means by which they will be resolved to provide sustainable outcomes. The Court is confident that through continuing innovative case management approaches and the cooperation of the parties the results achieved since 2009 will continue.

Assisted Dispute Resolution (ADR)

During the reporting period the Court's ADR program continued to be a critical means of facilitating the resolution of disputes quickly, inexpensively and efficiently. Referrals to ADR regularly lead to the resolution of the matter in total or to a narrowing of the issues in dispute between the parties. In this way ADR complements the case management objective of ensuring that matters are resolved at a cost that

THE WORK OF THE COURT IN 2012-13

is proportionate to the importance and complexity of the matters in dispute. The reporting period has seen the Court continue to consolidate ADR as part of the way that cases are managed to resolution with substantial results.

Table 3.5 shows the number of referrals to an ADR process by registry and by ADR type. Consistent with previous years the majority of referrals are made to mediation. The total number of referrals to mediation is very slightly higher than in the previous reporting period; however, there has been a significant increase in the number of referrals to mediation in Victoria and the Australian Capital Territory.

While no matters were referred to mediation in the Northern Territory, two conferences of experts were convened. Conferences of experts have proven very effective in significantly defining and narrowing the issues in dispute in native title matters in particular.

The data on referrals to ADR collected during the reporting period does not include matters where the parties have engaged in private ADR processes prior to filing in the Court or all of the matters where a private mediator is used during the course of the litigation. Similarly, some judges of the Court will order experts to confer with each other to identify areas where their opinions are in agreement and disagreement without the supervision of a registrar. These instances are not caught by the statistics presented below.

Table 3.5 – ADR referrals in 2012-13 by type and Registry

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Mediation	145	278	69	47	–	22	14	27	602
Arbitration	–	–	–	–	–	–	–	–	–
Early neutral evaluation	–	–	–	–	–	–	–	–	–
Conference of Experts	–	–	–	9	2	–	–	–	11
Court appointed experts	–	–	–	–	–	–	–	–	–
Referee	–	–	–	–	–	–	–	–	–
TOTAL	145	278	69	56	2	22	14	27	613

Table 3.6 shows the referrals to mediation by matter type and registry. As in previous years corporations law, industrial, consumer law and intellectual property are the most frequently referred matter types nationally. The type of matters most usually referred to mediation varies according to registry. Industrial matters continue to be the most usual type of matter referred to mediation in Victoria followed by consumer law matters. In New South Wales almost twice as many consumer law matters were referred to mediation as industrial matters.

Table 3.6 – Mediation referrals in 2012-13 by Cause of Action (CoA) and Registry

CoA	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Administrative Law	4	4	1	1	–	–	–	1	11
Admiralty	2	1	4	–	–	–	1	–	8
Appeals	–	2	1	–	–	–	–	–	3
Bankruptcy	4	3	1	–	–	1	–	–	9
Competition Law	–	2	3	–	–	–	–	–	5
Consumer Law	41	49	16	7	–	3	2	18	136
Corporations	24	42	14	2	–	6	6	7	101
Costs	23	3	1	–	–	–	–	–	27
Human Rights	5	19	3	8	–	3	1	–	39
Industrial	21	105	11	9	–	5	4	1	156
Intellectual Property	17	37	4	3	–	3	–	–	64
Migration	–	–	–	–	–	–	–	–	–
Native Title	2	–	6	13	–	–	–	–	21
Taxation	2	11	4	4	–	1	–	–	22
TOTAL	145	278	69	47	–	22	14	27	602

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Table 3.7 shows the number of mediation referrals during the reporting period as a proportion of the total filings in the Court. The percentage of referrals has averaged twelve per cent over the last five reporting periods.

The total filings figure reflects all matters filed in the Court during the reporting period. However, not all matter types are equally likely to be referred to mediation notwithstanding that the Federal Court Act and the Rules do not exclude any matter type from potential referral. In practice the particular characteristics of some matter types mean that referrals to mediation occur only very infrequently if at all. These matter types include migration appeals and applications to wind up corporations that are dealt with by registrars of the Court. The term 'applicable filings' has been used to refer to matter types that are more commonly referred to mediation.

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

	2008-09	2009-10	2010-11	2011-12	2012-13
Referrals	522	476	610	583	602
Total Filings	3862	3646	4941	5277	5802
Proportion %	14%	13%	12%	11%	10%

Table 3.8 shows the applicable filings as a proportion of the total filings in the Court by registry during the reporting period. The proportion of applicable filings referred to mediation nationally was twenty-six per cent (see Table 3.9). This figure is consistent with the rates of referral to mediation in the previous two reporting periods. This figure is likely to under-represent the true proportion of matters that are referred to mediation. This is because some registries only record mediation referrals where the mediation is conducted by a registrar of the Court. This means that those matters that are referred to mediation but where the mediation is conducted by an external mediator may not be recorded.

Table 3.8 – Total filings and suitable filings (excluding non-mediation CoAs, e.g. migration appeals) by Registry in 2012-13

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Applicable Filings	999	617	221	258	26	113	26	90	2350
Total Filings	2563	1316	500	852	27	356	68	120	5802
Proportion %	39%	47%	44%	30%	96%	32%	38%	75%	41%

Table 3.9 – Mediation referrals as a proportion of applicable filings, by Registry in 2012-13

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total Referrals	145	278	69	47	0	22	14	27	602
Applicable Filings	999	617	221	258	26	113	26	90	2350
Proportion %	15%	45%	31%	18%	0%	19%	54%	30%	26%

Table 3.10 shows mediation referrals by matter type to both internal and external mediators. The vast majority of mediations recorded during the reporting period were conducted by registrars of the Court. All registrar mediators are accredited under the Australian National Mediator Accreditation System. Table 3.11 shows internal and external referrals to mediation as a percentage of applicable filings. These figures are consistent with the previous reporting period.

Table 3.10 – Internal and external mediation referrals by CoA in 2012-13

CoA	INTERNAL	EXTERNAL
Administrative Law	11	–
Admiralty	7	1
Appeals	3	–
Bankruptcy	9	–
Competition Law	5	–
Consumer Law	107	29
Corporations	93	8
Costs	27	–
Human Rights	39	–
Industrial	155	1
Intellectual Property	59	5
Migration	–	–
Native Title	20	1
Taxation	22	–
TOTAL	557	45

Table 3.11 – Internal and external mediation referrals as a proportion of applicable filings in 2012-13

	INTERNAL	EXTERNAL
Total Referrals	557	45
Applicable filings	2350	2350
Percentage	24%	2%

THE WORK OF THE COURT IN 2012-13

Mediations held in the reporting period

Table 3.12 shows the outcomes of mediations conducted during the reporting period by registrars of the Court by matter type. Consistent with previous reporting periods the percentage of matters mediated by a registrar of the Court that either settled in full or in part was sixty-one per cent. Table 3.13 shows the outcome of mediations held during the reporting period by registry. Table 3.14 shows mediations held as a proportion of applicable filings. It is important to note that not all matters mediated in the reporting period will have been filed or even referred to mediation during the same reporting period. This reflects the fact that matters may be referred to mediation at any stage of the proceeding. Also matters that are referred to mediation at the end of the reporting period may be mediated in the following reporting period. The proportion of eighteen per cent for this reporting period is slightly higher than the level for the previous reporting period (fifteen per cent).

Table 3.12 – Mediation Outcomes by CoA in 2012-13

CoA	RESOLVED	RESOLVED IN PART	NOT RESOLVED	TOTAL	PROPORTION RESOLVED/IN PART (%)
Administrative Law	5	1	5	11	55%
Admiralty	5	–	1	6	83%
Appeals	–	–	2	2	–
Bankruptcy	7	–	3	10	70%
Competition Law	1	–	2	3	33%
Consumer Law	43	3	53	99	46%
Corporations	43	4	22	69	68%
Costs	15	–	–	15	100%
Human Rights	13	–	17	30	43%
Industrial	71	3	44	118	63%
Intellectual Property	38	2	13	53	75%
Migration	–	–	–	–	–
Native Title	3	1	2	6	67%
Taxation	6	–	5	11	55%
TOTAL	250	14	169	433	61%

Table 3.13 – Mediation outcomes by Registry in 2012-13

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Resolved	52	139	21	13	–	14	6	5	250
Resolved in part	3	5	1	–	–	2	1	2	14
Not Resolved	37	86	9	16	–	3	4	14	169
Total	92	230	31	29	–	19	11	21	433
Proportion Resolved/in part (%)	60%	63%	71%	45%	–	84%	64%	22%	61%

Table 3.14 – Mediations held as a proportion of applicable filings, by Registry in 2012-13

	NSW	VIC	WA	QLD	NT	SA	TAS	ACT	TOTAL
Total held	92	230	31	29	–	19	11	21	429
Applicable filings	999	617	221	258	26	113	26	90	2350
Proportion (%)	9%	37%	14%	11%	0%	17%	42%	23%	18%

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 on page 160.

THE WORK OF THE COURT IN 2012–13

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 utilise technology to maximise the efficient management of cases, by increasing online accessibility for the legal community and members of the public, as well as assisting judges in their task of deciding cases according to law quickly, inexpensively and as efficiently as possible.

The Court has been progressively implementing a series of electronic initiatives to make use of technological opportunities to improve our services to Court users. The primary objective of the Court's eServices strategy is to create an environment where actions are commenced, case managed and heard by filing documents electronically. The result will be that the Court's official record will be an electronic court file.

Paper documents may be relied upon during case management, trials or appeals. But these documents will emanate from an electronic file and they will not form part of the Court Record. Over time it is likely that the extent of paper documents will reduce, with people becoming accustomed to relying on the information in electronic form.

During the reporting period the Court continued to develop the document management system which will form the basis of the Electronic Court File. More information about this project can be found in Part 2 of this Report at page 15.

While developing the Electronic Court File, the Court has continued to promote the use of its electronic filing application, eLodgment. In 2012–13 the number of active users of eLodgment increased by eighty-two per cent to 5474 and over 57 000 documents were electronically lodged. This equates to approximately forty-one per cent of all documents filed during the year in both the Federal Circuit Court and the Federal Court. A milestone was reached in June 2013, when fifty per cent of the documents filed in that month were eLodged.

In line with the take up of eLodgment, activity on eCourtroom has also increased. Since eCourtroom version 2 was implemented just prior to the commencement of the reporting year (1 June 2012) there have been 828 matters commenced in eCourtroom, 275 of which are active. eCourtroom version 2 saw the integration of eCourtroom with eLodgment. Users are able to access both systems through a single sign-on facility and navigate seamlessly between the applications as required.

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:

- ongoing monitoring of the impact of the *Civil Dispute Resolution Act 2011*
- monitoring the impact of the changes to costs for work done and services provided by lawyers introduced in the Federal Court Rules
- considering the 2012 Joint Costs Advisory Committee recommendation to increase the quantum of costs for work done and services provided by lawyers
- compulsory licensing of patents
- communication with the Australian Securities and Investments Commission (ASIC) where the Court desires to hear from ASIC on a particular issue in a proceeding
- ongoing monitoring of the impact of increased filing, setting down and hearing fees, particularly following the introduction of structural and other changes from 1 January 2013.

The Committee also considered proposed legislative changes in the areas of implementation in the federal courts of the Standing Committee on Law and Justice (formerly Standing Committee of Attorneys-General) model laws for suppression and non-publication orders and for vexatious proceedings and recommendations of the Australian Law Reform Commission on discovery, insolvency law reform, intellectual property law reform, including conferring concurrent jurisdiction on the Federal Circuit Court in plant breeder's rights, and public interest disclosure (whistleblowers protection).

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:

- evaluation of the *Civil Dispute Resolution Act 2011*
- a joint 2013 case management workshop and updating the Law Council's Federal Litigation Section's Case Management Handbook
- impact of fee increases/changes in the Federal Court
- Federal Court Rules 2011 – the first twelve months of operation, impact of costs changes and approach to amendment of Rules and approved forms
- changes to the structure of the federal courts and the creation of a new Military Court
- developments with arrangements for providing assistance to self represented litigants in the Court
- review of the national partnership agreement of legal assistance services
- consistency in Federal Court practice.

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.

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Tables 3.15, 3.16 and 3.17 below provide 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 statistics shown in the Tables are indicative only.

In the reporting year, 406 people who commenced proceedings in the Court were identified as self represented. The majority were appellants in migration appeals.

Table 3.15 – Actions commenced by Self Represented Litigants (SRLs) during 2011–12 and 2012–13 by Registry

Note: There was an error in Table 3.15 in the 2011–12 annual report as some column headings were transposed. The 2011–12 information has been reproduced below along with the 2012–13 data.

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
2011–12	8	174	1	27	13	0	61	30	314
% total 2011–12	3%	55%	0%	9%	4%	0%	19%	10%	100%
2012–13	14	212	3	53	19	–	57	48	406
% total 2012–13	3%	52%	1%	13%	5%	0%	14%	12%	100%

The 406 SRLs in 2012–13 were applicants in 343 proceedings, as a proceeding can have more than one applicant. The following table breaks down these proceedings by major CoA.

Table 3.16 – Proceedings commenced by SRLs in 2012–13 by CoA

COA	TOTAL ACTIONS	% OF TOTAL
Administrative Law	47	14%
Admiralty	–	–
Appeals and related actions	198	58%
Bankruptcy	15	4%
Competition Law	–	–
Consumer Law	16	5%
Corporations	12	4%
Fair Work	11	3%
Human Rights	10	3%
Industrial	2	1%

Intellectual Property	-	-
Migration	17	5%
Miscellaneous	5	1%
Native Title	3	1%
Taxation	3	1%
TOTAL	339	100%

Table 3.17 – Appeals commenced by SRLs in 2012-13 by type of appeal

COA	TOTAL ACTIONS	% OF TOTAL
Administrative Law	4	2%
Admiralty	1	1%
Bankruptcy	19	10%
Competition Law	1	1%
Consumer Law	7	4%
Corporations	-	-
Fair Work	2	1%
Human Rights	6	3%
Industrial	-	-
Intellectual Property	1	1%
Migration	154	78%
Miscellaneous	2	1%
Taxation	1	1%
TOTAL	198	100%

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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).

Court fees – reduction and exemption

The Federal Court of Australia Regulations 2004 were repealed on 1 January 2013 and replaced, with effect from that day, by the Federal Court and Federal Circuit Court Regulation 2013 (as it is now named). During the reporting year two systems operated for people seeking a reduction or exemption from paying Court fees.

1 JULY TO 31 DECEMBER 2012

General:

Fees were charged for commencing a proceeding and for setting a matter down for hearing (including a daily hearing fee). A setting down fee was also payable on some matters and the amount of the daily hearing fee varied depending on the length of the hearing.

Specific Exemptions:

Some specific proceedings were exempt from all or some fees. These included:

- human rights applications (other than an initial filing fee of \$54)
- some fair work applications (other than an initial filing fee of \$64.20)
- 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*.

FROM 1 JANUARY 2013

General:

Under the new Regulation fees are charged 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. The rate of fee that is payable depends on whether the party liable to pay is: a publicly listed company; a corporation or public authority; or a person, small business or not-for-profit association.

Specific Exemptions:

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

- human rights applications (other than an initial filing fee of \$54)
- some fair work applications (other than an initial filing fee of \$65.50)
- 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 for an extension of time
- a proceeding in relation to a case stated or a question reserved for the consideration or opinion of the Court
- a proceeding in relation to a criminal matter
- setting-down and hearing fees in proceedings under the *Bankruptcy Act*
- setting-down fees for an interlocutory application.

Fee reduction:

A person was 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 was less than \$100) on the first occasion a full fee would otherwise be payable in a proceeding if that person:

- had been granted Legal Aid
- had been granted assistance by a registered body to bring proceedings in the Federal Court under Part 11 of the *Native Title Act 1993* or had been granted funding to perform some functions of a representative body under s 203FE of that Act
- was the holder of a health care card, a pensioner concession card or a Commonwealth seniors health card
- was 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
- was an inmate of a prison or are otherwise lawfully detained
- was under the age of 18 years
- was in receipt of youth allowance or Austudy or ABSTUDY benefits.

Such a person had, however, to 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.

General exemption:

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* 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 has, however, to 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.

A corporation which had been granted Legal Aid or funding under the *Native Title Act* had 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 detailed information about filing and other fees that are payable, how these are calculated (including definitions used, for example not-for-profit association, public authority, publicly listed company and small business) and the operation of the current fee exemptions is available on the Court's website www.fedcourt.gov.au. Details of the reduced fees and fee exemptions during the reporting year are set out in Appendix 1 on page 131.

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Website

Information about the Court's new website can be found in Part 2 at page 16.

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 range of information 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. This information is downloadable from the Court's website, www.fedcourt.gov.au.

Freedom of Information

Information Publication Scheme

Agencies subject to the *Freedom of Information Act 1982* (FOI Act) are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in an annual report. Each agency must display on its website a plan showing what information it publishes in accordance with the IPS requirements. The Court's plan showing what information is published in accordance with the IPS requirements is accessible from the Court's website at <http://www.fedcourt.gov.au/ips>. The NNTT's plan can be found at <http://www.nntt.gov.au/News-and-Communications/Freedom-of-Information/Pages/Informationpublicationscheme.aspx>.

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 Federal Court and AustLII websites for access by the media and the public. Judgments of public interest are published 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.

As noted in Part 2, the Court's new website includes a complete collection of Federal Court judgments dating back to 1977 which was previously only available to judges and staff of the Court.

Information for the media and televised judgments

The Court's Director Public Information deals with inquiries regarding cases and issues relating to its work from media throughout Australia.

These often relate to the timely provision of published judgments and guidance on how to access court files.

Just before the conclusion of the last reporting year, the Court established an online file in *Ashby v Slipper* on to which material was placed as it became available. The online file was accessed on more than 28 000 occasions during the report year.

An online file has also been established in another high-profile matter, *General Manager of the Fair Work Commission v Thomson*. This matter is at a pre-hearing stage.

In September 2012, Justice Rares permitted ABC News to broadcast delivery of a judgment summary in *Wingecarribee Shire Council v Lehman Brothers Australia*. The feed was shared by other major outlets and received widespread coverage.

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.

The Queensland Registry hosted the following events for the legal profession during the reporting period: a ceremony to unveil a plaque marking the birthplace of Lord Atkin of Aberdovey; an International Chamber of Commerce Arbitration Conference; the Australian Maritime and Transport Arbitration Commission (AMTAC) national address via videoconference from Melbourne; a Bar Association of Queensland Professional Development Seminar 'Top Ten Apps'; a presentation about the Court's eServices; a lecture by Mr Colin Sheehan to mark the 20th Anniversary of the High Court Mabo judgment; and the 2012 Richard Cooper Memorial Lecture, *The Business of Maritime Law*, presented by Mr David Taylor. In addition, the District Registrar attended monthly meetings of insolvency law practitioners.

The Registry's work with schools and universities continued through the year: eight schools visited the Court for educational tours; work experience students were hosted; the registry participated in a LawLink Program for Indigenous students; six university moot competitions were held at the Court along with two events of the Red Cross High School Moot Competition.

In 2012–13 judges and registrars in the New South Wales Registry hosted user group meetings covering general Federal Court practice and procedure and the admiralty and intellectual property jurisdictions. The Registry also held a number of seminars and lectures on constitutional law, practice and procedure,

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arbitration, and hosted law moots and bar reader courses. The District Registrar and Deputy District Registrars delivered an information session for lawyers new to practice and gave presentations to a range of organisations about mediation in the Federal Court. Senior registry staff participated in a migration user group meeting hosted by the Federal Circuit Court. Five work experience students were hosted by the Registry through the year.

The Court's facilities in Sydney were made available for many events during the reporting year including: an International Chamber of Commerce roadshow on 'international arbitration – doing business and resolving disputes with China'; the 2012 John Lehane Memorial Lecture presented by Judge Diane Wood of the United States Seventh Circuit Court of Appeals, *Adrift in a Sea of Information: How Courts Grapple with Electronically Stored Information*; the 2012 Tristan Jepson Memorial Foundation Annual Lecture which was a panel discussion titled 'A Toolkit for Resilience: Exploring real workplace change for the 21st century lawyer'; and the inaugural patron's lecture for the Australian Academy of Law, *Judges and Academics – Dialogue of the Hard of Hearing*, by Chief Justice Robert French AC.

The Victorian Registry hosted a Federal Court user committee meeting and held an information session for the legal profession about the Federal Court's eServices. During the year the Court's facilities in Victoria were used for: a legal drafting lecture by Professor Bryan A Garner, the *Deep Issue*; the AMTAC Annual Address titled the *Prospects for International Arbitration in Australia* presented by Chief Justice Keane; a networking event for Victorian women lawyers and barristers; a seminar on 'Copyright Law' delivered by Professor Jill McKeough and a number of Moot Courts for the Melbourne, LaTrobe, Deakin, Monash and Victoria Universities and Moot Court Competitions for the Victorian Bar Readers.

During the reporting year the Victorian Registry participated in the Indigenous Clerkship Program run by the Victorian Bar and hosted students undertaking Architecture studies at the University of Melbourne and law students from the Australian Catholic University. Activities with school students included the placement of several work experience students in the Registry through the year.

In 2012–13 the Western Australian Registry hosted two intellectual property seminars. Deputy Registrars gave presentations on the Court's use of assisted dispute resolution to the Institute of Arbitrators and Mediators Australia and a Legalwise Seminar on Maritime and Shipping Law. Deputy Registrar Gilich participated as a panel member at the University of Western Australia's mediation and negotiation course. Along with another author, he contributed a chapter on judicial sales of vessels and priority of claims in the 'Maritime Law Handbook' published by Kluwer Law International.

The grand final of the Murdoch Student Law Society Trial Advocacy Competition was held in the Court and was adjudicated by Justice Gilmour.

Judges and staff in South Australia hosted new legal practitioners' information sessions, a presentation about the Court's eServices and a seminar for legal practitioners about federal jurisdiction. Two federal court liaison committee meetings were held during the year along with two bankruptcy user group meetings.

The District Registrar presented a course on bankruptcy for the South Australia Bar Readers program. The Deputy District Registrar presented a paper for the Aurora Project – *Federal Case Management and Court Directed Mediation and Addressing Ethical Tensions in NTRB Legal Practice*; and a paper at the Australian Institute of Aboriginal and Torres Strait Islander Studies conference – *Looking after the Native Title System*.

Three students undertook work experience and courtrooms were used for training of legal graduates for the Graduate Diploma of Legal Practice and the Flinders Law Students' Association Legal Competitions. The Court also hosted a meeting of the Consultative Council of Australian Law Reporting.

The Tasmanian Registry held an information session for practitioners about the Court's jurisdiction, a Federal Court user group meeting and an information session for the Centre for Legal Studies.

In the Northern Territory a presentation on the Court's eServices was given to the legal profession and a Native Title Planning Forum meeting was co-facilitated by Justice Mansfield and the District Registrar. The Australian Capital Territory Registry hosted members from the Legislative and Jurisdiction Committee of the National Assembly of the Republic of Korea.

Complaints about the Court's processes

During the reporting year, ten 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. The Court also revised its judicial complaints protocol following passage of the *Courts Legislation Amendment (Judicial Complaints) Act 2012*.

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

Involvement in legal education programs and legal reform activities

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.

An outline of the judges' work in this area is included in Appendix 8 on page 177.

National Standard on Judicial Education

In late 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
- if applicable, what prevented the Court meeting the Standard (such as judicial officers being unable to be released from court, lack of funding etc)?

The Standard provides that judicial officers identify up to five days a year on which they could participate in professional development activities. During 2012-13 the Court offered the following activities:

- a three day Criminal Procedure Workshop
- an evening information session, conducted by videoconference to each Registry, for the Court's Admiralty judges and marshals entitled 'Safety essentials for Admiralty Marshals'

THE WORK OF THE COURT IN 2012–13

- two education events were scheduled in August 2012 and March 2013 to coincide with the Court's biannual judges' meetings. Education sessions included cross border insolvency; Health & wellbeing – Preventing professional burnout and planning for later in judicial life; a full day taxation law workshop organised in conjunction with the Law Council of Australia; How to use an iPad effectively; Statutory interpretation; national security and the work of the National Security College; Patents; and a joint workshop with the Law Council of Australia on the Law Council's revised, expanded and updated Practitioners Guide to the Federal Court
- judges were also offered the opportunity to attend the Supreme Court and Federal Court Judges' Conference held in Adelaide from 19–23 January 2013.

In addition to the above, judges undertook other education activities through participation in seminars and conferences, details of which can be found in Appendix 8 on page 177. In the period 1 July 2012 to 30 June 2013 on average the Standard was met. Two judges were appointed during the course of the year such that it was not practical for the Standard to be met within the reporting period for those judges.

WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

Through its International Programs Office, the Court collaborates with a number of neighbouring judiciaries, predominantly across the Asia-Pacific region. This collaboration is based on the recognition that long-term links between the Court and judicial systems in other countries are mutually beneficial in enhancing governance, access to rights and the rule of law within our region. In 2012–13 the Court coordinated a number of programs and hosted several official visits from judicial and senior administrative staff from other countries.

Pacific Judicial Development Program (PJDP)

Since mid-2010, the Court has managed the PJDP with funding from the New Zealand Government. The 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 fourteen participating judiciaries are: Cook Islands, Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu.

The Court's assistance through the PJDP focuses on four thematic areas: access to justice; governance; systems and processes; and professional development projects. With the assistance of senior judges, staff, the PJDP team and a number of external technical advisers engaged by the Court, activities have been implemented in and with all participating countries.

Through the PJDP, the Court is taking visible steps to strengthen the mechanisms for judicial leadership, build the capacity of local key people and devolve managerial functions to local stakeholders. Major activities include regular regional leadership meetings of the region's Chief Justices and the mobilisation of a Regional Training Team of qualified local trainers.

In addition, a significant achievement this year was the launch of six toolkits. The toolkits aim to guide partner courts in implementing their development activities locally by providing information and practical resources focussed on what to do and how to do it. Toolkits have, for example, been developed to assist partner courts to develop codes of judicial conduct, produce annual reports and set time standards for case management. The toolkits are designed to support change by promoting the local use, management, ownership and sustainability of judicial development across the region. By developing these resources and making them available on the Court's website (<http://www.fedcourt.gov.au/pjdp/pjdp-toolkits>), the Court aims to build local capacity, enabling partner courts to address local needs and reduce reliance on external donor and adviser support.

Another significant achievement led by Justice Bennett, chair of the Court's International Development and Cooperation Committee, were discussions with the New Zealand Minister for Foreign Affairs which resulted in a further two-year extension to PJDP until 30 June 2015. At the end of that period, the Court will have managed the PJDP for five years.

Pacific Judicial Capacity Building Program

As part of the AusAID funded Pacific Judicial Capacity Building Program 2012–13, a series of activities took place this year.

In July 2012 the Court's Registrar, Warwick Soden, visited Vanuatu at the invitation of Chief Justice Vincent Lunabek to discuss mechanisms through which the Vanuatu judiciary could feasibly implement its judicial reform plan and strategy and how the Federal Court might assist. In addition to meeting with Chief Justice Lunabek, Mr Soden met with a number of key justice sector stakeholders in Port Vila. The visit culminated with the drafting of a Memorandum of Understanding (MoU) between the Supreme Court of Vanuatu and the Federal Court of Australia. The MoU provides a foundation upon which the Courts will collaborate to assist each other over the coming five years. An Annex to the MoU was also developed which covers the specific activities the Courts will collaborate on over the first two years of the MoU. The MoU and its Annex were signed in Sydney in June 2013.

Other activities implemented during the reporting period comprised a series of visits which took place between January and March 2013 to Samoa, Kosrae and Pohnpei (Federated States of Micronesia), Palau, Niue and Nauru by Court registrars and representatives. The activities focused primarily on building skills, knowledge, systems and processes to facilitate the development of court-annexed mediation systems in each country.

Supreme and National Courts of Justice of Papua New Guinea

In November 2012, the Federal Court signed a second Annex to the 2009 Memorandum of Understanding on Judicial Cooperation with the Supreme and National Courts of Papua New Guinea (PNG). The new Annex details areas of collaboration including assisted dispute resolution, general and commercial case management, leadership and change management and support to the PNG Centre for Judicial Excellence.

Judges and staff from PNG visited the Court in December 2012 and March 2013 to gain exposure to and experience of how the Court manages its cases and to learn about assisted dispute resolution processes.

THE WORK OF THE COURT IN 2012–13

Supreme People's Court of Vietnam

In September 2012 Justice Bromberg travelled to Hanoi, Da Nang and Ho Chi Minh City to deliver a series of workshops on Labour Law.

In May 2013, Justices Cowdroy and Katzmann held a workshop on Environmental Law in Hanoi. This followed a similar workshop facilitated by Justice Cowdroy in May 2012. The workshop focussed on the application of Environmental Law and methodologies employed to calculate damages.

Justices Gilmour and the Hon Kevin Lindgren AM QC also flew to Hanoi in late June 2013 to continue discussions with the Supreme People's Court about the development of a system of case precedent appropriate to a civil law jurisdiction. They also delivered a three-day workshop about decision-making and judgment writing.

Supreme Court of Indonesia

On 3 October 2012, the Mahkamah Agung Republik Indonesia (Supreme Court of Indonesia) and the Federal Court signed a further Annex to the Memorandum of Understanding between the Courts. The Annex sets out seven substantive areas where the Federal Court will assist the Mahkamah Agung to achieve its reform objectives. The areas comprise: class actions; mediation; creating a code of ethics for registrars; business process reengineering; developing strategies for changing and improving leadership capacity; improving the capacity of Indonesia's Centre for Research and Development of Law and Justice; and providing an avenue for the exchange of knowledge and experience.

The signing of the Annex took place at the beginning of a ten-day visit by judges and staff of the Supreme Court to the Queensland and Victorian Registries which focused on the range of issues included in the Annex.

In April the Registrar, Warwick Soden, and Victorian District Registrar, Sia Lagos, attended a two-day Australia Indonesia Partnership for Justice (AIPJ) Conference in Jakarta along with a series of meetings with the Mahkamah Agung's Judicial Reform Team Office.

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 are the Supreme Court of Tonga including the Vava'u Court House, the Supreme Court of Vanuatu and the High Court of Kiribati. The Court periodically sends law librarians to these countries to assist with library maintenance, training and advice.

Visitors to the Court

The Court facilitated a number of visits over the year from international delegations and individuals interested in learning about the role of the Court and its systems and processes.

Visitors were welcomed from:

1. Japan: The Court hosted several visits by judges from Japanese courts, including the Supreme Court of Japan, the Tokyo High Court and the Tokyo and Fukuoka District Courts (all to observe case management systems, including assisted dispute resolution), the Nagasaki District Family Court of Japan (to discuss courtroom technology) and the Tokyo Family Court (to discuss women in the workplace and the Court's Enterprise Agreement).
2. China: A delegation from the Shandong High People's Court visited the New South Wales Registry to examine the way client services and fee systems within the registry work.
3. Namibia: Four representatives of the Law Reform and Development Commission and the Ministry of Trade and Industry of the Republic of Namibia visited the Competition Tribunal to discuss the scope of the work undertaken by Tribunal members.
4. Thailand: A group of judges and staff studying at the University of New South Wales Faculty of Law toured the New South Wales Registry and the Court's facilities.
5. Bhutan: A delegation from the Bhutan Judiciary toured the New South Wales Registry while looking at the work of the Federal Circuit Court.
6. Korea: A delegation from the Legislation and Jurisdiction Committee at the National Assembly of the Republic of Korea visited the Australian Capital Territory Registry.
7. Russia: The Hon Anton Ivanov, Chief Justice of the Supreme Commercial Court of the Russian Federation, led a delegation to the New South Wales Registry in February 2013.
8. Singapore: On 1 March 2013 a delegation consisting of members of Singapore's Ministry of Manpower, National Employers' Federation, National Trade Union Congress and Tripartite Alliance for Fair Employment Practices visited the Victorian Registry. They discussed the way Australia deals with employment and industrial disputes, in particular the adjudication and arbitration process.
9. Sri Lanka: In April 2013 the New South Wales Registry hosted a delegation from the Sri Lankan Supreme People's Court.
10. Indonesia: Judges from Indonesia's Industrial Court visited the Victorian Registry on 24 July 2012.
11. Nepal: In November 2012 the Victorian Registry was visited by a delegation from the Nepalese Ministry of Labour and the Chamber of Commerce to study labour law.
12. Vietnam: Members of the Military Court of Vietnam visited the New South Wales Registry in early December 2012 to examine Australia's military justice system.

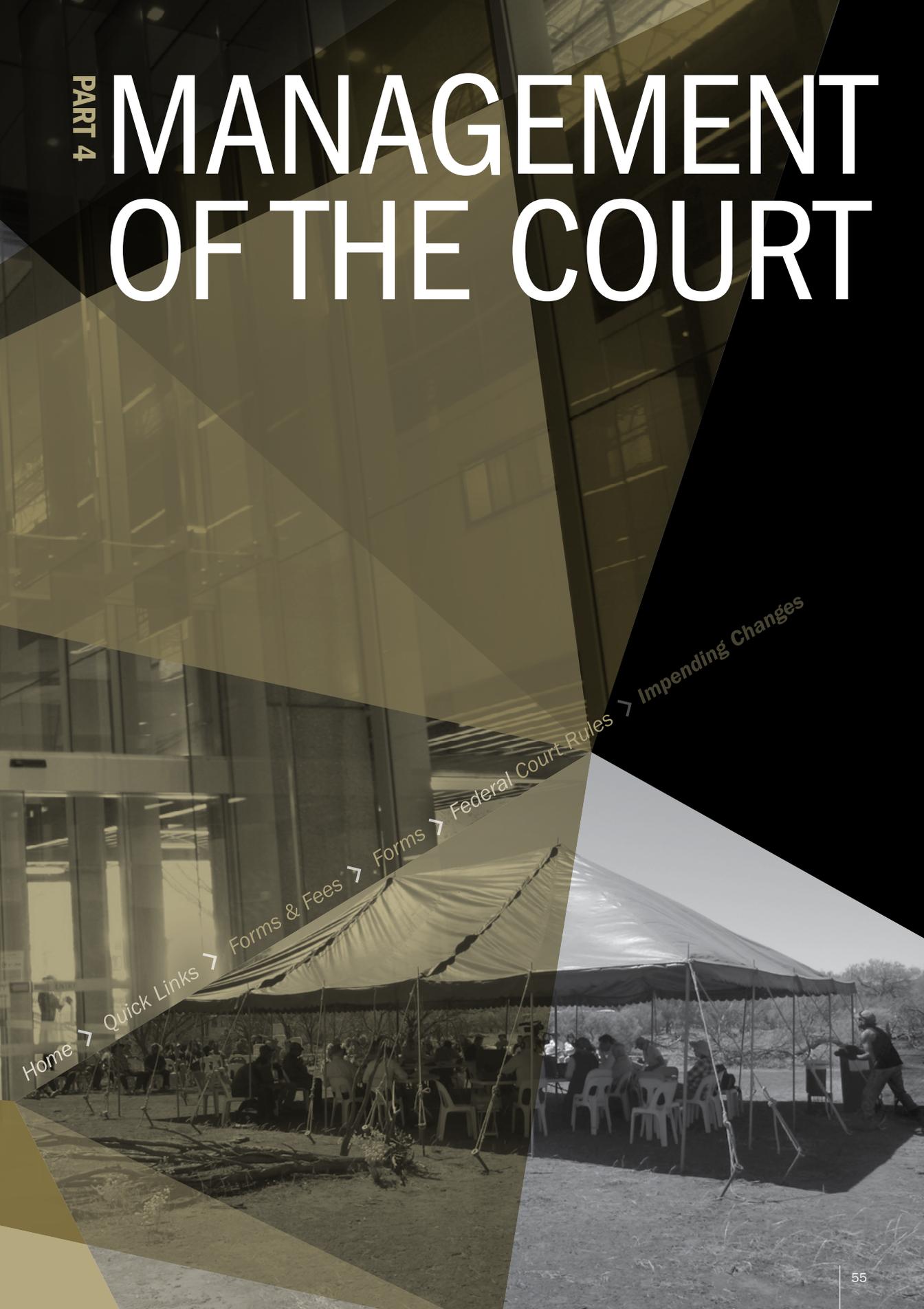


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PART 4

MANAGEMENT OF THE COURT

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MANAGEMENT OF THE COURT

FEDERAL COURT GOVERNANCE

Since 1990 the Court has been self-administering, with a separate budget appropriation and reporting arrangement to the Parliament. Under the Federal Court of Australia Act, the Chief Justice of the Court is responsible for managing the Court's administrative affairs. The Chief Justice is assisted by the Registrar/Chief Executive Officer. The Act also provides that the Chief Justice may delegate any of his or her administrative powers to judges, and that the Registrar may exercise powers on behalf of the Chief Justice in relation to the Court's administrative affairs.

In practice, the Court's governance involves two distinct structures: the management of the Court through its registry structure; and the judges' committee structure which facilitates the collegiate involvement of the judges of the Court. Judges also participate in the management of the Court through formal meetings of all judges. The registries and the judges' committees are discussed in more detail below.

Federal Court registry management structure

As outlined in Part 1 of this report, the Court's administration is supported by a national registry structure, with a Principal Registry responsible for managing national issues and supporting the corporate services functions of the Court, and a District Registry in each State and Territory which supports the work of the Court at a local level. A diagram of the management structure of the Court is set out in Appendix 3 on page 135.

Judges' committees

There are a number of committees of judges of the Court, which assist with the administration of the Court and play an integral role in managing issues related to the Court's administration, as well as its rules and practice.

An overarching Policy and Planning Committee provides advice to the Chief Justice on policy aspects of the administration of the Court. It is assisted by standing committees that focus on a number of specific issues in this area. In addition, other ad hoc committees and working parties are established from time to time to deal with particular issues.

An overarching National Practice Committee provides advice on practice and procedure reform and improvement to the Chief Justice and judges. There are also a small number of standing committees that focus on specific issues within the framework of the Court's practice and procedure.

All of the committees are supported by registry staff. The committees provide advice to the Chief Justice and to all judges at the bi-annual judges' meetings.

Judges' meetings

There were two meetings of all judges of the Court during the year, which dealt with matters such as reforms of the Court's practice and procedure and amendments to the Rules of Court.

CORPORATE FUNCTIONS

The Corporate Services Branch in the Principal Registry is responsible for supporting the Court's national corporate functions. The following outlines the major corporate services issues during the reporting year.

Native title institutional reforms

As noted in Part 2 on page 14, under the Government's institutional reforms to the native title system the corporate functions of the National Native Title Tribunal (NNTT) were transferred to the Court from 1 July 2012. The following information concerning the Court's corporate services should be read to include the NNTT unless otherwise stated. Specific references to the NNTT are also included in individual sections where required.

Financial management

The Finance Committee, which is made up of judges from each of the registries, as well as the Registrar, oversees the financial management of the Court. The Corporate Services Branch supports the Committee. During 2012–13 the Committee met on four occasions.

Financial accounts

During 2012–13 revenues from ordinary activities totalled \$123.262 million. Total revenue, in the main, comprised:

- An appropriation from Government of \$89.020 million
- \$19.719 million of resources received free of charge, including for accommodation occupied by the Court in Sydney
- \$11.182 million of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges
- \$3.341 million from the sale of goods and services.

Pre-depreciation expenses of \$120.582 million in 2012–13 comprised: \$73.236 million in judges' and employees' salaries and related expenses; \$27.195 million in property related expenses; \$19.519 million in other administrative expenses; and \$0.60 million write-down of non-current assets.

- The net operating result from ordinary activities for 2012–13 was a surplus of \$2.680 million prior to depreciation expenses. This was primarily as a result of less than expected expenditure on:
 - judges' remuneration and judges' staff salaries (two judicial positions were vacant for most of the year)
 - native title mediation consultants
 - native title mediation salaries
 - travel
 - court reporting costs
 - technology project costs

When depreciation expenses of \$4.265 million are included, the Court's expenses for 2012–13 totalled \$124.847 million.

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The above result includes a \$1 million surplus in relation to the NNTT, primarily as a result of the reversal of over-provisions by the NNTT in 2011–12.

Equity increased from \$32.687 million in 2011–12 to \$46.743 million in 2012–13.

Table 4.1 – Outcome and Program Statement

	BUDGET EXPENSES 12–13 (\$'000)	ACTUAL EXPENSES 12–13 (\$'000)	VARIATION (\$'000)
Outcome 1: Through its jurisdiction, the Court will 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 well-being of all Australians			
Program 1.1 – Federal Court Business			
Component 1.1.1 Federal Court	78.063	78.048	(0.015)
Component 1.1.2 National Native Title Tribunal	10.972	10.972	0.000
Total revenue from government	89.035	89.020	(0.015)
Revenues from other sources (s 31) for Federal Court	3.033	3.341	0.308
Subtotal for Program 1.1	92.068	92.361	0.293
Total for Outcome 1	92.068	92.361	0.293
Average staffing level (number)		416	

The Court's agency resource statement can be found at Appendix 2 on page 134.

Audit and risk management

The Audit Committee met four times during 2012–13. The committee comprises an independent chairperson, four judges and the NSW District Registrar. The Registrar, the Executive Director, Corporate Services and Chief Financial Officer and representatives from the internal audit service provider and the Australian National Audit Office (ANAO) attend committee meetings as observers.

The Court's internal auditors, O'Connor Marsden and Associates, conducted a compliance with the *Financial Management and Accountability Act 1997* (FMA Act) audit; a review of the transition of the NNTT to the Federal Court; and a work health and safety audit during 2012–13. In addition, the internal auditors undertook a strategic risk and fraud risk assessment.

Staff of the ANAO inspected the Court's 2012–13 financial statements and provided an unqualified audit certificate.

The Chief Executive Officer is satisfied that:

- Fraud control plans and fraud risk assessments have been prepared that comply with the *Commonwealth Fraud Control Guidelines*.
- Appropriate fraud prevention, detection, investigation and reporting procedures and practices that comply with the *Commonwealth Fraud Control Guidelines* are in place.
- There have been no cases of fraud during 2012–13 to be reported to the Australian Institute of Criminology.

External scrutiny

The Court was not the subject of any reports by a Parliamentary committee or the Commonwealth Ombudsman. The Court was not the subject of any judicial decisions or decisions of administrative tribunals.

Purchasing

The Court's procurement policies and procedures, expressed in the Court's Chief Executive Instructions, are based on the *Commonwealth Procurement Guidelines* and best practice guidance documents published by the Department of Finance and Deregulation. The Court achieves a high level of performance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes.

Consultants

During 2012–13, seventeen new consultancy contracts were entered into involving total actual expenditure of \$2 114 473. In addition, two ongoing consultancy contracts were active during the 2012–13 year, involving total actual expenditure of \$268 400.

Table 4.2 below outlines expenditure trends for consultancy contracts over the three most recent financial years.

Table 4.2 – Expenditure trends for consultancy contracts 2010–11 to 2012–13

FINANCIAL YEAR	NEW CONTRACTS – ACTUAL EXPENDITURE	ONGOING CONTRACTS – ACTUAL EXPENDITURE
2012–13	\$ 2 114 473	\$ 268 400
2011–12	\$ 439 015	\$ 88 000
2010–11	\$ 297 278	\$ 193 359

Information on Consultancy Services

The Court's policy on the selection and engagement of all contractors is based on the Australian Government's procurement policy framework as expressed in the *Commonwealth Procurement Guidelines* (December 2008) and associated Finance Circulars and guidance documentation published by the Department of Finance and Deregulation.

The main function for which consultants were engaged related to the delivery of specialist and expert services, primarily in connection with the Court's information technology (IT) infrastructure, finance and business elements of the Court's corporate services delivery.

Selection of consultant services was made in accordance with the Guidelines, and was obtained by way of either Open, Select or Direct Source Tendering, which are defined as follows:

Open tender – a procurement procedure in which a request for tender is published inviting all suppliers that satisfy the conditions for participation to submit tenders.

Select tender – a procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders.

MANAGEMENT OF THE COURT

Direct source tender – refers to a procurement process in which an agency invites a potential supplier or suppliers of its choice to make submissions. Direct sourcing may include a competitive process, for example obtaining quotes. For covered procurements, direct sourcing is permitted only under certain conditions.

Consultancy services are sought where:

- (a) skills are not available in the agency
- (b) specialised or professional skills are needed
- (c) Independent research or assessment is needed.

Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

Competitive tendering and contracting

During 2012–13, there were no contracts let to the value of \$100 000 or more that did not provide for the Auditor-General to have access to the contractor's premises.

During 2012–13, there were no contracts or standing offers exempted by the Chief Executive Officer from publication in the contract reporting section on AusTender.

Advertising and marketing services

A total of \$47 755 was paid for recruitment advertising services in 2012–13. This included \$14 072.38 to Adcorp Australia Pty Ltd for the placement of advertisements for the position of President and Member of the NNTT in various national and Indigenous newspapers. Payments to Adcorp on advertising for notification of native title applications, as required under the Native Title Act, totaled \$168 679.91 over the reporting year.

The Court did not undertake any advertising campaigns or use market research, polling or direct mail organisations or media advertising agencies in 2012–13.

Human resources

During the reporting year, the Court's Human Resources Section continued to provide strategic, policy and operational support to the Court's registries. Human Resources staff supported the Court by providing advice on the full range of human resource activities including:

- managing organisational changes and the implementation of organisational reviews
- recruitment and selection activities
- workforce planning and organisation development
- learning and development
- workplace diversity
- workplace relations
- policy development
- remuneration policy
- payroll services
- workplace health and safety.

Among other initiatives, the Human Resources Section developed the Court's first Workforce Plan which will be implemented from July 2013 to December 2014.

The year also saw the implementation of three Machinery of Government (MOG) processes which resulted in the following transfers of staff to the Court:

- NNTT Corporate Services staff on 1 July 2012
- Family Court of Australia Library staff on 3 January 2013
- all remaining NNTT staff on 12 March 2013.

The Court's approach to human resources issues, including the MOG processes noted above, is characterised by transparency and consultation. To this end, the Court's National Consultative Committee (NCC) continued to operate effectively through the year and will soon have a staff representative from the NNTT. The Court's other consultative forums such as Regional Consultative Committees and the Work Health and Safety Committee also continued to operate, reporting to the NCC. Minutes from all committees are placed on the Court's intranet where they can be readily accessed by staff.

Staffing profile

At 30 June 2013, the Court employed 476 employees under the *Public Service Act 1999*, comprising 287 ongoing full-time employees, thirty-one ongoing part-time employees and 158 non-ongoing employees. These numbers include former NNTT employees. The high number of non-ongoing employees is due to the nature of the employment of judges' associates, who are generally employed for twelve months, as well as casual court officers. The Court had an average staffing level of 416.39 during the reporting period.

More detailed staffing statistics can be found in Appendix 9 on page 191.

Workplace bargaining

During the reporting period, the Court relied on determinations under s 24 of the *Public Service Act* for setting the employment conditions of Senior Executive Service (SES) employees and Flexibility Agreements under the Court's Enterprise Agreement for non-SES employees. The Court now has no employees on Australian Workplace Agreements.

Performance pay

Performance bonus payments were made to two SES staff under their common law contracts previously negotiated with the NNTT. Three staff members were paid a bonus under Individual Flexibility Agreements previously made with the NNTT, upon completion of business critical projects.

Work health and safety

The Court continued to actively promote a proactive approach to work health and safety management including the steps detailed below. Average days of unplanned leave per staff member for 2012–13 was 6.30 days compared with 5.76 days in 2011–12. There was one claim for workers compensation in 2012–13 compared to three in 2011–12.

More generally, Court management actively worked with the Court's Work Health and Safety (WHS) Committee to promote health and safety in the workplace. A particular area of focus was ensuring that the Court complies with its responsibilities under the *Work Health and Safety Act 2011* (WHS Act). Other specific measures included:

- Arranging regular meetings of the National WHS Committee and other consultative forums such as the National Consultative Committee and Regional Consultative Committees, all of which have a significant WHS focus.

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- Consultatively developing a new WHS Audit checklist and process which was implemented in early 2013.
- Making available annual health checks and flu shots for all staff, provided for in the Enterprise Agreement (currently used by forty per cent of staff).
- Providing access to eyesight testing and reimbursement for spectacles where needed for screen-based work.
- Providing access to the Court's Employee Assistance Program.
- Commissioning Noel Arnold and Associates to undertake a WHS review of employees undertaking Admiralty Marshal duties.
- Encouraging health and fitness-related activities by providing funding via the Court's Health and Fitness policy.

During the reporting year no provisional improvement notices were issued under s 90 of the WHS Act nor were any enforcement notices issued under Part 10. There were no incidents under ss 83–86 of the WHS Act whereby any employee ceased to work due to a reasonable concern that to carry out the work would expose the employee to serious risk. There were no notifiable incidents that required the giving of a notice under s 38 of the WHS Act.

The Court continued to manage its workers compensation cases proactively throughout the reporting period.

In addition, following the MOG transfer of NNTT staff in March 2013, the Court commenced arrangements to integrate the NNTT's work health safety arrangements with those of the court. These will be in place by 31 December 2013 and will include consultative mechanisms for NNTT staff and appointment of WHS representatives.

Workplace diversity

The Court remains strongly committed to diversity in the workplace and has developed a wide range of flexible employment conditions with the aim of accommodating the needs of a diverse range of staff.

These conditions have assisted the Court in competing with private sector and other public sector employers in attracting and retaining employees in key areas, for example legal staff. The Court's human resource policies actively foster a workplace that is free from discrimination and harassment and is characterised by high levels of employee engagement and consultation.

The Court continued to build upon strategies in its Workplace Diversity plan. This included developing and finalising an Indigenous Employment Strategy, with the aim of increasing the number of Indigenous employees in the Court.

The Court also continued to participate in the Australian Network on Disability's 'Stepping Into Law' program.

As noted, NNTT staff transferred to the Court in 2012–13. This has seen the continuation of a number of NNTT diversity initiatives within the Court. These include:

- The NNTT's Indigenous Advisory Group. The Tribunal's Indigenous Advisory Group (IAG) is chaired by the Native Title Registrar and comprises Aboriginal and Torres Strait Islander staff of the Tribunal and the Court. Member Dr Valerie Cooms also participates in IAG meetings. During 2012–13 the IAG met quarterly (via teleconference). Members of the IAG also met in Perth for the biennial IAG workshop in March 2013. The IAG provides advice to the Tribunal's Executive on policy issues as they relate to Indigenous staff members and is an important reference point for a broad range of matters within the Tribunal.

- The NNTT's Reconciliation Action Plan 2013–15. During the reporting period the Tribunal reviewed and consolidated its Reconciliation Action Plan and its Indigenous Employment Strategy into a revised Reconciliation Action Plan 2013–15 (the RAP). The RAP was developed by a working group, comprising two members of the IAG, a HR representative and a Tribunal staff member. The RAP was approved by the Tribunal's Executive and the IAG in June 2013. The RAP sets out a range of actions and measurable targets to enhance relationships and cultural understanding and to foster respect for Aboriginal and Torres Strait Islander peoples. Another key focus of the RAP is to provide development and professional opportunities for Indigenous staff members.

Workforce planning

During 2012–13, Human Resources staff finalised a Workforce Plan for implementation by 31 December 2014. Specific areas of focus include ensuring that Court employees, such as casual court officers, have the technological skills needed to work in an eCourt environment and ensuring that the Court's organisational structures and work practices are developed in a way that complements its eServices initiatives.

Retention strategies

The Court has a range of strategies in place to attract and retain staff including flexible employment conditions and flexibility agreements under the Enterprise Agreement. The Court continued to refine and modify these through 2012–13 as required to meet specific issues and cases.

Work life balance

The Court's Enterprise Agreement 2011–14, and a range of other human resources policies, provide flexible working arrangements to help employees balance their work and other responsibilities, including young families and ageing parents. The conditions available include access to part-time work, job sharing, flexible leave arrangements and purchased leave.

The Court also provides a wide range of other family-friendly initiatives including improved parental and adoption leave arrangements and homework rooms or similar appropriate facilities for staff with school-aged children.

Reward and recognition

The Court encourages and recognises exceptional performance through its annual National Excellent Service Award. The award is used to recognise the work of both individual staff and teams and is presented by the Chief Justice each February around the anniversary of the Court's Foundation Day of 7 February 1977. This year's award ceremony took place in the Victorian Registry on 7 February 2013 when Pawel Mazur, a technology service desk support officer and member of the Court's electronic court file project team, was presented with the award.

The NNTT's Rewards and Recognition Program also continued to operate. Through this program, the Tribunal acknowledges and rewards staff who have delivered excellent service during the reporting period. Awards are provided in the following categories:

- exemplifying tribunal values
- service improvement and/or innovation
- new employee
- outstanding team
- outstanding Indigenous employee

MANAGEMENT OF THE COURT

Training and development undertaken and its impact

During 2012–13 the Court offered a range of options to assist employees develop and improve their knowledge and skills, ensuring they have the capabilities needed now and for the future.

More generally, training was carefully targeted towards the development of essential core capabilities, as identified in the Court's capability framework. The Court spent \$346 280 on external training during the reporting period. Other sessions presented internally focused on personal development and included dealing with difficult behaviours, influencing and conflict resolution, relationship building and giving and receiving feedback.

The Court's study assistance policy continued to operate and provided staff with leave and financial assistance to pursue approved tertiary studies. During the reporting period \$47 541 was reimbursed to staff undertaking studies under the policy.

Disability reporting mechanisms

Since 1994, Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010–11, departments and agencies have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy 2010–2020 which sets out a ten-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high level two-yearly report will track progress against each of the six outcome areas of the Strategy and present a picture of how people with disability are faring. The first of these reports will be available in 2014 at www.fahcsia.gov.au.

The Social Inclusion Measurement and Reporting Strategy agreed by the Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency Annual Reports. More detail on social inclusion matters can be found at www.socialinclusion.gov.au.

Property management

The Court occupies law court buildings in every Australian capital city. With the exception of Sydney and Darwin, the purpose-built facilities within these Commonwealth-owned buildings are shared with other Commonwealth Court jurisdictions.

The Federal Court in Sydney is located in the Law Courts Building in Queens Square. This building is owned by a private company (Law Courts Limited), that is jointly owned by the Commonwealth and New South Wales governments. The Court pays no rent, outgoings or utility costs for its space in this building.

The Court's Darwin Registry is co-located in the Northern Territory Supreme Court building under the terms of a Licence to Occupy between the Court and the Territory Government.

From 1 July 2012 the Commonwealth Law Court buildings have been managed under revised 'Special Purpose Property' principles. Leasing arrangements are now governed by whether the space is designated as special purpose accommodation (courtrooms, chambers, public areas) or office accommodation (registry areas). An interim Memorandum of Understanding was signed by the Court with the Department of Finance and Deregulation for 2012–13 to formalise these arrangements, with negotiations continuing for a long-term agreement.

Adelaide jury facilities upgrade

An architect was engaged to undertake a design study to determine options to upgrade jury facilities. The architect's report was presented to the Adelaide judges in early 2013.

Brisbane jury room and Court 1

Modifications to this courtroom to address glare from external windows, update courtroom technology and accommodate the High Court when visiting Brisbane were completed in early 2013.

Brisbane Registry upgrade stage 2

An architect has been engaged to design new registry, mediation, conference/meeting and staff facilities. This project is currently in documentation stage, and is expected to be completed during the 2013–14 financial year.

Brisbane visiting chambers

In a joint project with the Family Court and the Federal Circuit Court (FCC), five new chambers were built of which two are permanently occupied by the FCC and three are available for visiting Federal Court judges. This project was completed in September 2012.

Darwin Registry and mediation

An architect has been engaged to re-design modest new registry, mediation, conference/meeting and staff facilities. This project is currently in documentation stage, and is expected to be completed during the 2013–14 financial year.

Cairns Registry – NNTT

Following the Court assuming responsibility for the financial administration of the NNTT its Cairns tenancy was consolidated. A new lease was negotiated with the building's owner to reflect the NNTT's requirements. Some minor refurbishment work was performed to create more functional spaces for staff. All work was completed in June 2013.

Perth Registry – NNTT

Studies of the space required by the NNTT Registry in Perth have commenced. A consultant has been engaged and it is expected that this work will be completed in the 2013–14 financial year.

Security

In the course of the year the Court continued to develop security policies and other documents that comply with its obligations under the Government's Protective Security Policy Framework. Specific attention has been paid to the Court's information technology security environment and development of a physical security policy.

The Court was also involved in the consultation process for the Court Security Bill 2013. This Bill, which received Royal Assent on 1 July 2013, will on commencement in late 2013 provide a much more comprehensive framework of court security arrangements for federal courts and tribunals than is currently available under existing legislation.

A review of the emergency control arrangements within each Commonwealth Law Court building was also undertaken which took into account the revised special purpose property principles that now apply in those facilities.

MANAGEMENT OF THE COURT

Environmental management

The Court provides the following information as required under s 516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The Court, together with other jurisdictions in shared premises, seeks to reduce the impact of its operations on the environment through the following measures:

- Environmental Management Systems are in place in all buildings to minimise the consumption of energy, water and waste.
- The Court has established a National Environment Committee with sub committees in most registries. The committee seeks to raise staff awareness of workplace environment issues.
- The Court has developed a National Environmental Initiative Policy which encourages staff to adopt water and energy savings practices.

Technology services

During the reporting year, in addition to supporting the Court's current technology environment, the Technology Services team focussed on three project areas. The first was a continuing program of infrastructure and software modernisation. The second was the integration of information technology (IT) infrastructures and support processes as part of the merger with the NNTT. The final stream was the infrastructure preparations to support the Electronic Court File (ECF). More information about the three projects, which are inter-related and will continue through 2013–14, is set out below.

IT Infrastructure Modernisation

The Court continues to modernise its IT environment through normal lifecycle replacement of aged infrastructure as well as new initiatives to improve Court business process efficiency. In 2012–13, these activities included the completion of a project to migrate the Court's wide area network to a new arrangement with AAPT and the migration to Telstra for fixed line voice services. This year also saw the roll out of iPad devices to judges as well as selected senior staff. The current iPad deployment is primarily based around email and access to internet services; however, it will be further expanded in the ECF program. The Court also made significant investments in core data centre infrastructure (servers, storage, and networking equipment). These investments will form the basis of a complete modernisation of the Court's core computing capability in 2013–14.

NNTT Integration

The IT service desks of the NNTT and Court were combined during the reporting year. This resulted in a consistent level of IT support across both agencies. Some best practice aspects of the NNTT's IT support environment were adopted and the location of IT staff in Perth enabled the Court to extend its service desk hours of operation. Detailed planning for the integration of the Court and NNTT's Local Area and Wide Area Networks has been completed. The NNTT's Wide Area Network will be integrated with the Court over the coming months.

ECF preparations

Technology services has established the core computing infrastructure in preparation for the launch of the ECF in 2013–14. The first set of platforms deployed into service will support application development and testing. Work through the remainder of 2013 will focus on establishing further test environments and a production environment. A key prerequisite to the ECF program is the relocation of the Casetrack application from the Family Court's Canberra data centre to the Court's Sydney data centre. Planning for this project commenced in June with project completion scheduled for October 2013.

IT security

Technology Services are currently implementing the Australian Signals Directorate's Top Four strategy to mitigate Cyber Intrusions. The Cyber Security Operations Centre estimates that at least eighty-five per cent of cyber intrusion techniques could be mitigated by implementing this strategy.

Business continuity is an essential component of good public sector governance, and it is part of the Court's overall approach to effective risk management. As such, in 2012–13 the Court developed a Business Continuity Framework and Policy with each Registry developing Crisis Management and Business Continuity Plans.

The Court is currently undertaking an annual security assessment against the mandatory requirements detailed within the Protective Security Policy Framework (PSPF), and will report against these requirements to the Attorney-General.

During the reporting year an IT Security Web Page was created for the Court's Intranet. It includes presentations given to staff by the Court's IT security manager, security awareness newsletters and brief videos about IT security.

Library and information services

The Court continued to maintain a national library network, which provides a comprehensive library service to judges and staff of the Federal Court.

Following a series of reports and recommendations to the Heads of Jurisdiction Consultative Committee this service was expanded from January 2013 to include the Family Court of Australia and the Federal Circuit Court of Australia.

This necessitated the transfer of Family Court Library staff and associated funding to the Federal Court under Machinery of Government (MOG) arrangements.

A Memorandum of Understanding was developed and signed by both Courts. This allows for a review of the effectiveness of the new arrangements to be undertaken in the first quarter of 2014 and a report provided to the Chief Executive Officers of the three courts.

Library Databases

Following the transfer of the NNTT's Corporate Services functions to the Federal Court from 1 July 2012, the NNTT library collection has been combined with the Federal Court collection. This involved migration of all related data, including the catalogue to the Federal Court's integrated library management system (ILMS).

Planning and preliminary work for the migration of the Family Court ILMS is in the final stages with completion scheduled for July 2013.

Corrections to errors

The following information in the Federal Court of Australia's 2011–12 Annual Report was identified as incorrect:

- On page 41, in table 3.15 Actions Commenced by Self Represented Litigants (SRLs) during 2011–12 by Registry, the names of the registries were transposed. The following table provides the correct information:

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
2011–12	8	174	1	27	13	0	61	30	314
% total 2011–12	3%	55%	0%	9%	4%	0%	19%	10%	100%

- On page 147, the number of Copyright Tribunal matters finalised during 2011–12 was reported as one and matters pending as three. The correct figures are two and two.



National
Native Title
Tribunal



PART 5

NATIONAL NATIVE TITLE TRIBUNAL REPORT

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NATIONAL NATIVE TITLE TRIBUNAL REPORT

OVERVIEW OF THE TRIBUNAL

Roles and functions

The National Native Title Tribunal (the Tribunal) was established in 1994 by the *Native Title Act 1993* (Cth) (the Act). The Act was the Australian Parliament's response to the 1992 High Court of Australia's decision in *Mabo v Queensland (No 2)* (1922) 175 CLR1. The Preamble to the Act describes it, along with other initiatives, as a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders (Indigenous Australians). The Act is intended to further advance the process of reconciliation among all Australians.

The Act creates an Australia-wide native title scheme, the objectives of which include:

- (a) to provide for the recognition and protection of native title
- (b) to establish a mechanism for determining claims to native title
- (c) to establish ways in which future dealings affecting native title (future acts) may proceed.

The Act established the Tribunal as an independent body which, in carrying out its functions, may take account of the cultural and customary concerns of Indigenous Australians.

Under the Act, as amended, the Tribunal, comprising the President and Members, presently has specified functions in relation to:

- upon referral by the Federal Court of Australia (Federal Court), undertaking the mediation of Federal Court proceedings
- arbitrating objections to the expedited procedure in the future act scheme
- mediating in relation to certain proposed future acts on areas where native title exists or might exist
- where parties cannot agree, arbitrating applications for a determination of whether a future act can be undertaken and, if so, whether any conditions will apply
- assisting people to negotiate Indigenous Land Use Agreements (ILUAs), and helping to resolve any objections to area or alternative procedure ILUAs
- assisting with negotiations to settle applications, and with statutory access agreement negotiations
- providing assistance under s 203BK of the Act to representative bodies in performing their dispute resolution functions
- reconsidering decisions of the Native Title Registrar (Registrar), or of the Registrar's delegate, not to accept a claimant application for registration
- conducting reviews on whether there are native title rights and interests upon referral from the Federal Court
- conducting native title application inquiries as directed by the Federal Court
- conducting special inquiries under Ministerial direction.

The President is responsible for managing the administrative affairs of the Tribunal, with the assistance of the Registrar. The President may delegate to a Member (or Members) all or any of the President's powers, and may engage consultants in relation to any assistance, mediation or review that the Tribunal provides.

The Act gives the Registrar specific responsibilities, including:

- assisting people at any stage of any proceedings under the Act, including in the preparation of applications
- assessing native title determination applications for registration against the conditions of the registration test, and registering those applications which meet those conditions on the Register of Native Title Claims
- giving notice of applications to individuals, organisations, governments and the public in accordance with the Act
- registering ILUAs that meet the registration requirements of the Act
- maintaining the Register of Native Title Claims, the National Native Title Register (the register of determinations of native title) and the Register of Indigenous Land Use Agreements.

The Registrar may delegate to one or more Deputy Registrars, or to the members of the staff assisting the Tribunal, all or any of the Registrar's powers.

Native title institutional reform

Over time, the division of responsibilities between the Tribunal and Federal Court has changed in certain respects. Those changes responded to decisions of the High Court of Australia, or were changes of administrative policy or of other policy and legislation.

The most recent changes had their genesis in the *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*, conducted by Mr Stephen Skehill SC during 2011 (Skehill Review). A number of significant reforms to native title functions and administration, consistent with recommendations of the Skehill Review were announced by the Commonwealth Attorney-General on 8 May 2012 and came into effect on 1 July 2012.

On that date, the Tribunal's corporate services functions (human resources, finance, property management and information technology) and certain corporate and operational staff members transferred to the Federal Court. From that date, the Tribunal has been funded as a dedicated sub-program of the Federal Court. The Tribunal and the Federal Court entered into a Permanent Memorandum of Understanding which, among other things, preserves the operational independence of the Tribunal.

On 12 March 2013 the *Courts and Tribunals Amendment (Administration) Act 2013* (Cth) (the Amendment Act) came into operation. The Amendment Act, among other things, facilitated the transfer of the Tribunal's appropriation, its staff and some of its administrative functions to the Federal Court. It also amended the Act to reflect that the Tribunal was no longer a statutory agency for the purposes of either the *Financial Management and Accountability Act 1997* (Cth) or the *Public Service Act 1999* (Cth).

The purpose of the Amendment Act was to enable the Tribunal and the Federal Court to achieve savings and to operate more efficiently and effectively into the future. The Amendment Act also expressly built upon the Commonwealth Government's 2009 reforms to the Act. These reforms gave the Federal Court greater control of native title claims mediation, although the Act continues to provide for referral to Tribunal mediators.

The Tribunal continues to operate as an independent statutory authority undertaking the native title statutory functions outlined earlier.

NATIONAL NATIVE TITLE TRIBUNAL REPORT

President, Members and Native Title Registrar

The Tribunal farewelled President Graeme Neate on 31 March 2013, following almost nineteen years with the Tribunal, the last thirteen years as President. The Tribunal also farewelled Member Gaye Sculthorpe on 2 February 2013. Ms Raelene Webb QC was appointed President for a five-year term from 1 April 2013. During the reporting period Dr Valerie Cooms was appointed a full-time Member for a term of five years from 4 February 2013. Member Dan O’Dea and Member Helen Shurven were both reappointed as full-time Members for terms of five years from 9 December 2013 and 3 November 2013 respectively and Stephanie Fryer-Smith remained the Native Title Registrar.

Organisational structure

On 1 July 2012 the Tribunal adopted a new, simplified organisational structure, consistent with the transfer of functions from the Tribunal to the Federal Court as outlined above.

National Native Title Tribunal High-Level Organisational Chart (Commencing 1 July 2012)



Tribunal offices

The Tribunal has five city-based offices located in four States. The Tribunal's Operations East division has offices in Sydney, Melbourne, Brisbane and Cairns. Tribunal staff in Operations East also provide a range of native title related services for clients and stakeholders in South Australia and the Northern Territory. The Tribunal's Operations West division is located in Perth, providing services and native title assistance across the state of Western Australia. The President's and the Registrar's offices, and the Registrar's Directorate are also located in Perth.

Governance arrangements

On 18 August 2012 the Tribunal adopted a simplified governance framework consistent with its new organisational structure. The Tribunal's governance framework consists of:

- The Strategic and Expenditure Advisory Group
- The Members Meeting
- The Executive
- The Offices and Sections (Managers) Group
- The Delegates (Claims and Indigenous Land Use Agreements) Group
- The Consultative Forum
- The Indigenous Advisory Group

Strategic directions

In January 2013, following internal consultation, the *Strategic Plan 2013–14* was launched. In late 2012 the Tribunal's *Strategic Plan 2012–14* was reviewed and revised to create the *Strategic Plan 2013–14*, with a view to reflecting more appropriately the institutional changes which had commenced on 1 July 2012.

The Tribunal's Vision is 'Timely, effective native title related outcomes' and its Mission is to:

- facilitate the achievement of timely and effective outcomes
- carry out our functions in a fair, just, economical, informal and prompt way.

In the *Strategic Plan 2013–14* the Tribunal affirms the values of the Australian Public Service which include professionalism, integrity, impartiality and responsive service. The Tribunal recognises and respects cultural and other diversity. In particular, the Tribunal acknowledges the richness of Indigenous Australian cultures and their importance to Australian society.

In addition, the Tribunal expressly values excellence, fairness, collegiality, collaboration and innovation.

The Tribunal's eight strategic priorities were developed in accordance with the 'balanced scorecard' strategic management methodology and are set out in the matrix below:

CLIENTS AND STAKEHOLDERS	SERVICES
1. Engage effectively with our clients and stakeholders	3. Continuously strive for excellence in our services
2. Develop, implement and evaluate innovative ways of enhancing our value to clients and stakeholders	4. Deliver high-quality future act mediation and ILUA agreement-making services; arbitral decisions; and claims and ILUA registration decisions
WORKPLACE CULTURE	ACCOUNTABILITY
5. Foster a culture of achievement and high performance	7. Manage our resources strategically and effectively, and account for our work
6. Maintain a working environment that attracts and retains quality employees and in which diversity is respected	8. Ensure open and transparent processes and consistent approaches to decision-making

In May 2013 all senior managers (members of the Offices and Sections Group) met with the Registrar and Deputy Registrars in Perth for their annual three-day Workshop. During the Workshop, managers engaged in a range of activities, including a reflection on the implementation of the institutional reforms and the scope for re-imagining the Tribunal's Vision and Mission following the appointment of President Webb.

For 2013–14 the strategic direction of the Tribunal will be to work in harmony with the Federal Court to assist with the resolution of native title claims, and to otherwise work with representative bodies to assist with resolution of disputes both prior to the making of a native title claim, and after determination. As well, the Tribunal will continue with its mediation and arbitration work in dealing with future acts over land where native title will be affected and also with its registration and assistance functions. In that way, the Tribunal is working with governments, native title groups and other parties towards a shared country, and a shared future.

NATIONAL NATIVE TITLE TRIBUNAL REPORT

Client satisfaction survey 2013

In March 2013 the Tribunal commissioned consultants, Sweeny Research, to undertake research into the satisfaction levels of its clients and stakeholders with the delivery of native title related services.

The survey results indicate overall satisfaction with the Tribunal and its services have improved since 2010, with forty-two per cent of survey respondents rating the Tribunal's services either nine or ten out of a score of ten. This was an increase from twenty-eight per cent compared with the 2010 survey. Seventy-nine per cent of survey respondents rated their overall satisfaction with the Tribunal's services as seven out of ten or higher. The survey results included the following:

- the Tribunal performed well across the various areas of service delivery, with provision of maps and other geospatial products receiving the highest degree of approval from clients; more than half of respondents rating this service as highly satisfactory. Eighty-seven per cent gave a rating of seven out of ten or higher.
- forty-eight per cent of respondents rated the provision of other forms of Tribunal assistance (e.g. searches, information sessions and products) as highly satisfactory. Eighty-three per cent gave a rating of seven out of ten or higher.
- client satisfaction towards the notification and registration of ILUAs has increased, with eighty-one per cent of respondents giving a rating of seven out of ten or higher.

Review of the Tribunal's discretionary functions

The Tribunal participated (and continues to participate) in a working group comprising senior representatives from the Tribunal, the Federal Court, the Department of Families, Housing, Community Services and Indigenous Affairs and the Attorney-General's Department (AGD). The working group is reviewing the Tribunal's exercise of its statutory discretionary functions (Review). The Review responds to Recommendations 6.5 and 6.6 of the Skehill Review, which proposed a range of initiatives in respect of the Tribunal's discretionary functions. The working group's focus is on developing a Plan to Government which will include recommendations for future expenditure on the Tribunal's discretionary functions, and the efficiency or otherwise of pursuing options for full or partial cost recovery. In December 2012, the AGD conducted an online survey as part of targeted stakeholder consultation to assist with developing the proposed Plan to Government and with a view to ensuring that stakeholder needs are taken into account in developing that Plan.

Reconciliation Action Plan 2013–15

During the reporting period the Tribunal reviewed and revised its first Reconciliation Action Plan (RAP), and consolidated it with the Tribunal's Indigenous Employment Strategy, which had been developed in 2010. The consolidated, updated document (the Tribunal's *Reconciliation Action Plan 2013–15*) is intended to ensure a more effective implementation of the Tribunal's reconciliation targets and the efficient monitoring of outcomes.

The RAP commits the Tribunal to:

- building relationships with Aboriginal and Torres Strait Islander peoples
- engendering respect for Aboriginal and Torres Strait Islander culture and identity in the Tribunal and across the wider community
- providing opportunities for its Aboriginal and Torres Strait Islander staff.

STATE-BY-STATE ACTIVITY

Key aspects of Tribunal activity during the reporting period are set out below by reference to the various Australian States and the Northern Territory.

Western Australia

Claims and ILUA Registration and Notification

Ten new or amended native title determination applications were filed during the reporting period. The Registrar considered each of these applications for registration pursuant to s 190A of the Act. Five of the applications were also notified in the same period.

Ten ILUAs were registered during the reporting period comprising four body corporate agreements, and six area agreements.

Future Acts Mediation

During the reporting period the Perth Office established a Future Act Working Group (FA Working Group) in conjunction with the Western Australian Department of Mines and Petroleum (DMP). The purpose of the FA Working Group is to identify ways in which the Tribunal might assist the DMP to progress a backlog of tenements. The FA Working Group met bi-monthly to plan the management of the backlog and to deal with any other issues which may have emerged in relation to arbitration or mediation.

During this reporting period, sixty-seven new referrals were made to the Tribunal for future act mediation.

Future Act Arbitration

In January 2013 the Tribunal introduced measures to increase the efficiency of processing applications objecting to the expedited procedure (Objection Applications). As a result, the number of Objection Applications which progressed to an inquiry before a Member more than doubled since the beginning of 2013. The number of Objection Applications lodged each year remains high in Western Australia with, on average, approximately 900 matters being on foot. In the reporting period 1441 new Objection Applications were lodged and 1310 Objection Applications were finalised. In addition, eleven future act determination applications were lodged pursuant to s 35 of the Act.

Queensland

Cairns Office

The Cairns Office provides Tribunal services in northern Queensland, Cape York, Gulf of Carpentaria and Torres Strait regions.

Ten new or amended native title determination applications and one non-claimant application were filed in the region during the reporting period. The Registrar considered all the native title determination applications pursuant to s 190A of the Act and notified three of those applications during the period.

ILUA-related activity remains high in northern Queensland. During the reporting period fifty-seven applications to register ILUAs were lodged in the Cairns Office; fifty-six agreements were registered and entered on the Register of Indigenous Land Use Agreements. This represents about half the total number of applications to register ILUAs which were processed by the Tribunal during the reporting period. A number of those ILUAs deal with the exercise of native title rights and interests over pastoral leases. Other ILUAs deal with native title related matters in connection with local government matters, State-protected areas, mining and community infrastructure.

NATIONAL NATIVE TITLE TRIBUNAL REPORT

Throughout the reporting period the Cairns Office provided assistance to parties, including a range of mapping products and pre-lodgment comments on draft ILUAs. Dispute resolution assistance was provided to an Aboriginal/Torres Strait Islander Representative Body pursuant to s 203BK of the Act. The Cairns Office also provided ILUA negotiation assistance and future act mediation assistance to parties during the reporting period.

Brisbane Office

The Brisbane Office provides Tribunal services in the Brisbane and south-west Queensland region.

Eighteen new or amended native title determination applications were filed in this region during the reporting period. The Registrar considered each of these applications for registration pursuant to s 190A of the Act and notified three of those applications during the period.

Thirty-eight ILUAs were registered during the reporting period. Most of the ILUA-related activity in the region involved pastoral agreements linked to native title determinations. In addition, as in previous years, some gas project ILUA activity took place.

The provision of assistance pursuant to s 78 of the Act was high, particularly in the form of mapping assistance for new native title determination applications and ILUAs, and compliance checking of maps and descriptions prior to filing or lodgment (as relevant).

Ninety-one Objection Applications were lodged during the reporting period. In addition, seven future act determination applications and 11 referrals to mediation were made in respect of proposed future acts.

New South Wales

Eight native title determination applications were filed during this period, seven of which were filed in response to future act notices issued pursuant to s 29 of the Act. In particular, native title determination applications were filed in the Central Coast and Blue Mountains regions of New South Wales in response to s 29 notices. This resulted in a number of future act determination applications being lodged pursuant to s 35 of the Act.

A steady stream of non-claimant activity continues in New South Wales, in particular the filing of non-claimant applications by Local Aboriginal Land Councils. *The Aboriginal Land Rights Act 1983* (NSW) mandates that a determination of native title be obtained prior to Councils being able to undertake certain dealings with land granted under the State's land rights regime.

The Registrar considered eight native title determination applications pursuant to s 190A of the Act and notified one claimant application and four non-claimant applications within the reporting period.

The Tribunal has provided extensive assistance to a broad range of stakeholders, including tenure mapping for proposed consent determinations, and assistance in the form of ILUA-related mapping and pre-lodgment comments upon draft ILUAs.

South Australia

During the reporting period the delivery of Tribunal services in South Australia was provided through the Sydney Office.

Eight new or amended native title determination applications and one compensation application were filed during the period. The Registrar considered eight native title determination applications, pursuant to s 190A of the Act and notified three native title determination applications and one compensation application.

During this period eleven ILUAs were registered, comprising eight body corporate agreements, and three area agreements.

The Tribunal has provided regular assistance to stakeholders, primarily in terms of the provision of mapping assistance and/or pre-lodgment comments for both claimant applications and proposed ILUAs.

Victoria/Tasmania/Northern Territory

One native title determination application was filed in Victoria during the reporting period, which the Registrar considered for registration pursuant to s 190A of the Act.

Five ILUAs lodged in Victoria were registered during the reporting period, all of which were area agreements.

In May 2013, the Registrar notified an ILUA which forms part of a settlement agreement between native title parties and the Victorian Government. The settlement agreement, formed under the Victorian Traditional Owners Settlement Act 2010 (Vic), formally recognised the Dja Dja Wurrung as the traditional owners of their lands and required the discontinuance of the four Dja Dja Wurrung native title determination applications.

The Melbourne Office delivers Tribunal services as required in the Northern Territory and in Tasmania.

During the reporting period four new or amended native title determination applications were filed in the Northern Territory and the Registrar considered them for registration pursuant to s 190A of the Act.

Two ILUAs lodged in the Northern Territory were registered during the reporting period, both of which were area agreements.

SECTION ACTIVITIES

National Registration Team

The National Registration Section of the Tribunal is responsible for decisions about whether to register details of a native title determination application on the Register of Native Title Claims and whether to register an ILUA on the Register of Indigenous Land Use Agreements.

Under the Act, the Registrar must consider all new, and most amended, native title determination applications for registration. In general, the Registrar will apply the full registration test comprised of a series of merit and procedural conditions for registration. In some circumstances, claims made in an amended application will have a more limited test applied to them (see s 190A(6A) of the Act). Further, in the event that the Registrar decides that the native title determination application does not meet all the conditions for registration, the applicant may request that a Tribunal Member reconsider whether the application meets the conditions for registration or the applicant may seek a review of the decision in the Court.

During the reporting period, a total of fifty-nine registration decisions were made. Thirteen applications were amended applications to which the more limited s 190A(6A) registration test was applied; all of which were accepted for registration. Of the forty-six applications to which the full s 190A registration test was applied, thirty were accepted for registration. One request to reconsider a registration test decision was received and actioned in the reporting period. The native title determination application in question had been filed in South Australia.

NATIONAL NATIVE TITLE TRIBUNAL REPORT

Under the Act, parties to an ILUA must apply to the Registrar in order to register their agreements on the Register of Indigenous Land Use Agreements. Each registered ILUA, in addition to taking effect as if it were a contract among the parties, binds all persons who hold native title for the area to the terms of the agreement, whether or not they are parties to the ILUA.

On receipt of an ILUA application the Registrar must: check for compliance against the registration requirements of the Act and the regulations; notify organisations and individuals with an interest in the area; notify the public (except for a body corporate agreement); and consider any objections or other potential bars to registration of the ILUA.

During the reporting period 122 ILUAs were registered. The Registrar considered two ILUAs that had been lodged in Queensland and were not accepted for registration. Most of the ILUA registration activity occurred in Queensland (ninety-four ILUAs), South Australia (eleven ILUAs) and Western Australia (ten ILUAs).

A number of ILUA registration milestones occurred during the reporting period, as follows:

- the 100th body corporate agreement was registered in October 2012
- the 700th ILUA was registered in December 2012
- the 400th ILUA in Queensland was registered in January 2013.

During the reporting period there was a marked increase in the number of body corporate agreements. A total of forty-eight body corporate agreements were registered, more than twice the number of the previous reporting period. All the other ILUAs registered in the reporting period were area agreements. During the reporting period, an objection or adverse information was received in respect of seven of the 124 ILUAs which were considered for registration. Of the remaining 117 ILUAs, 100 per cent of the registration decisions were made within six months.

Geospatial services

There is a continuing high demand across the country for geospatial products and services. A significant number of external users access Native TitleVision (NTV), the Tribunal's online mapping and visualisation tool: currently there are approximately 3800 registered NTV user accounts. Of these, forty-two per cent (approximately 1600) were new subscriptions registered within the reporting period.

Geospatial Services was closely involved in the development and completion of the Tribunal's flagship systems initiative, the Integrated Case and Future Act Management System (ICaFAMS). Geospatial Services also successfully integrated its spatial datasets with attribute information from the Tribunal's statutory registers.

Operations Section

The Operations Section provided leadership and a dedicated staff cohort to ensure the completion of ICaFAMS, the Tribunal's major systems initiative during the reporting period. The development and implementation of ICaFAMS permitted the retirement of seven of the Tribunal's legacy systems. The ICaFAMS project involved high-level and extensive collaboration across the Tribunal and the Court. The Operations Section is continuing to refine ICaFAMS in collaboration with the Court's Information Services and during 2013 is delivering specialised training on relevant procedures and practice.

Legal Services

The Native Title Unit of the AGD sought the assistance of a Tribunal Senior Legal Officer in October 2012 in respect of technical drafting issues (these related to the Native Title Amendment Bill 2012 and the associated Explanatory Memorandum). Legal Services made substantial contributions to the Tribunal's submissions on this and other proposed legislation, such as the Tax Laws Amendment Bill 2012, and also assisted the Australian Taxation Office to identify potential issues at the drafting stage. Legal Services also provided substantial assistance and support in relation to the institutional changes which commenced on 1 July 2012.

Legal Services delivered two external programs in May 2013: a three-day Native Title Law program for the Aurora Project and a two-day future act program for native title representatives in the Kimberley region. A Senior Legal Officer co-presented a paper on ILUAs at the Native Title Conference in Alice Springs in June 2013. Legal Services also assisted in the delivery of future act training for Members and Tribunal staff in July 2012, and supported external stakeholder information programs delivered in Brisbane in August 2012 and April 2013.

Legal Services provides regular updates to external stakeholders on the development of native title law through the Judgments and Information Alert Service Newsletter.

Registrar's Directorate

The Registrar's Directorate undertakes a range of functions to assist the Registrar and President to manage the Tribunal's organisational governance, compliance requirements, communications and strategic management. During the reporting period, these functions included providing project support on a number of key strategic initiatives such as, the Client Satisfaction Survey 2013 and the *Reconciliation Action Plan 2013-15*. The Registrar's Directorate commenced two key projects for 2013-14: the redevelopment of the Tribunal's website and an information governance and management initiative.

The Registrar's Directorate manages the Tribunal's internal and external communications (including media) and liaises with external governmental stakeholders. In addition, it provides secretariat support to the Strategic and Expenditure Advisory Group and ad hoc support to the Registrar and President.

OUTCOMES

Future Acts

Future act mediation

During the reporting period there were twenty-three future act agreements which fully resolved future act applications. All of those agreements were made in Western Australia.

Future act determination applications

A total of forty-six tenements, subject to a future act determination application, were finalised in the reporting period. The table below sets out the basis on which each of these tenements were finalised.

Seventy-one per cent of future act determination applications were finalised within six months of the application being made.

NATIONAL NATIVE TITLE TRIBUNAL REPORT

Table 5.1 – Future Act Determination Application Outcomes by Tenement

TENEMENT OUTCOME	NSW	QLD	WA	TOTAL
Application not accepted	–	–	7	7
Application withdrawn	–	4	5	9
Consent determination—future act can be done	–	–	3	3
Consent determination—future act can be done subject to conditions	–	1	–	1
Determination—future act can be done	3	2	3	8
Determination—future act can be done subject to conditions	–	–	2	2
Dismissed—s 148(a) no jurisdiction	–	–	16	16
TOTAL	3	7	36	46

Objection Applications (Expedited Procedure)

An increase in the number of Objection Applications occurred nationally during the reporting period. A total of 1532 Objection Applications were lodged, most of which were made in response to s 29 notices issued by the Government of Western Australia.

During the reporting period the Tribunal dealt with 1373 objections, 786 of which were finalised by Tribunal decisions.

Table 5.2 – Objection Application Outcomes by Tenement

TENEMENT OUTCOME	QLD	WA	TOTAL
Consent determination – expedited procedure does not apply*	–	1	1
Determination—expedited procedure applies*	–	42	42
Determination—expedited procedure does not apply*	–	6	6
Dismissed—s 148(a) no jurisdiction	1	135	136
Dismissed—s 148(a) tenement withdrawn	1	327	328
Dismissed—s 148(b)*	–	21	21
Expedited procedure statement withdrawn*	–	4	4
Expedited procedure statement withdrawn—s 31 agreement lodged*	12	–	12
Objection not accepted*	2	20	22
Objection withdrawn—agreement*	31	470	501
Objection withdrawn—external factors*	4	26	30
Objection withdrawn—no agreement*	11	99	110
Objection withdrawn prior to acceptance*	1	36	37
Tenement withdrawn	–	39	39
Tenement withdrawn prior to objection acceptance	–	84	84
TOTAL	63	1310	1373

*Note: Tenement finalised by Tribunal decisions

Registration of Indigenous Land Use Agreements

During the reporting period registration decisions were made in respect of 124 ILUAs; as indicated earlier, a total of 122 ILUAs were registered. An objection or adverse information was received in respect of seven of the 124 ILUAs considered for registration. Of the remaining 117 applications, 100 per cent of the registration decisions were made within six months.

Table 5.3 – Number of ILUAs Lodged or Registered by State and Territory

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	TOTAL
ILUAs lodged	–	–	2	101	12	–	9	13	137
ILUAs registered	–	–	2	94	11	–	5	10	122

Registration Test Decisions

As indicated earlier, a total of fifty-nine registration test decisions were made during the reporting period. That total includes:

- twenty-one registration tests made on native title determination applications for the second, third, fourth or fifth time;
- thirteen amended native title determination applications accepted for registration following the more limited s 190A(6A) test being applied. Thirty of the forty-six applications to which the full registration test was applied were accepted for registration.

Excluding s 190A(6A) decisions, ninety-six per cent of the other forty-six applications were tested within a six-month time frame. The average time taken to test an application was less than three months.

Table 5.4 – Number of Registration Test Decisions by State and Territory

STATE / TERRITORY	ACCEPTED	ACCEPTED—S 190A(6A)	NOT ACCEPTED	TOTAL
ACT	–	–	–	–
NSW	7	–	1	8
NT	2	1	1	4
Qld	13	8	7	28
SA	2	3	3	8
Tas	–	–	–	–
Vic	1	–	–	1
WA	5	1	4	10
TOTAL	30	13	16	59

NATIONAL NATIVE TITLE TRIBUNAL REPORT

Statutory assistance

During the reporting period requests for Tribunal assistance remained strong (a total of 442 requests were made). Consistent with previous years the majority of requests (348 requests) were for the provision of geospatial products, including geospatial mapping relating to native title determination applications and proposed ILUAs. Demand for geospatial services was highest in Queensland, where demand was linked to a high volume of ILUA activity. The Tribunal also continued to assist parties by providing preliminary comments on draft native determination applications and draft ILUAs.

During the reporting period the Tribunal engaged in a range of stakeholder capacity-building activities in Western Australia, Queensland and South Australia.

Table 5.5 – Number of Assistance Services or Products Provided

	ACT	NSW	NT	QLD	SA	VIC	WA	TOTAL
Number of assistance services or products provided by the Tribunal	1	39	2	249	19	21	111	442

The Registers

Table 5.6 below provides an overview of the number of entries on the three Registers which the Registrar maintains pursuant to the Act. Table 5.7 provides an overview of the number of native title determination applications as at 30 June 2013.

Table 5.6 – Snapshot of the Three Statutory Registers at 30 June 2013

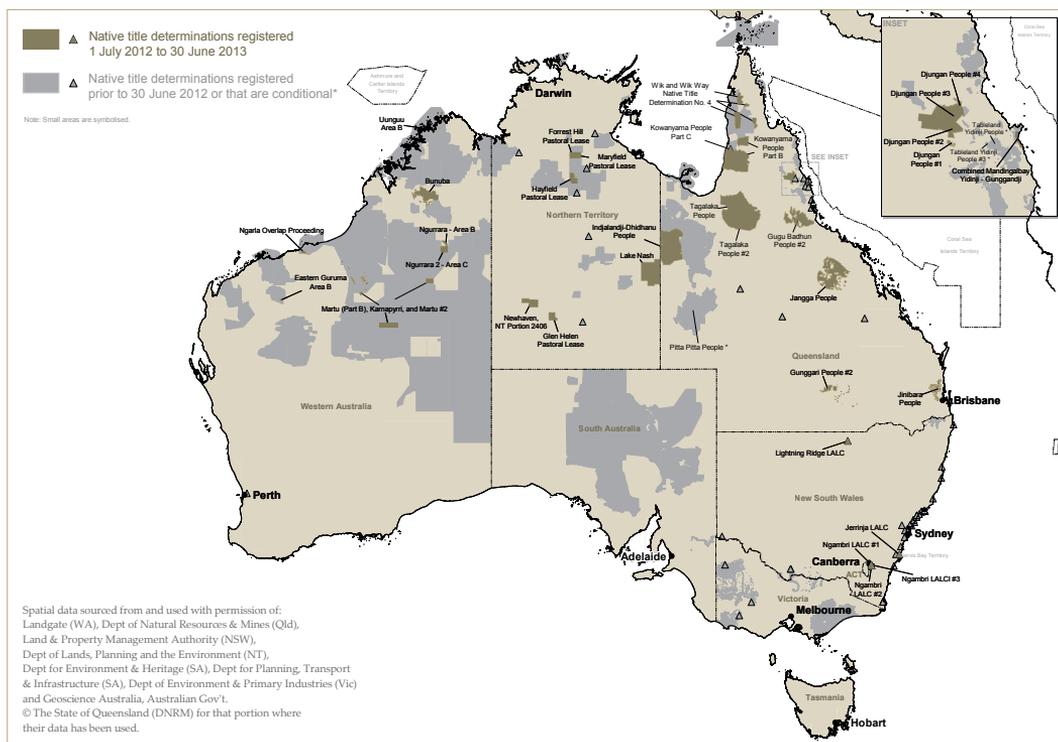
REGISTER	NUMBER
National Native Title Register—native title determinations	227
Register of Native Title Claims—native title determination applications accepted for registration	325
Register of Indigenous Land Use Agreements—ILUAs accepted for registration	768

National Native Title Register

During the reporting period the Registrar registered thirty-three determinations of native title, fifteen of which were in Queensland. Twenty-eight of these determinations are that native title exists in relation to specific areas of land or waters. Five determinations that native title does not exist were made in respect of non-claimant applications.

At 30 June 2013 there were 227 registered determinations of native title, including 178 determinations that native title exists. The registered determinations covered a total area of about 1 609 034 sq km or 20.9 per cent of the land mass of Australia. Four conditional consent determinations (three in Queensland and one in Western Australia) were still awaiting registration at 30 June 2013, as was one unopposed non-claimant determination. Upon registration, these applications will increase the area to about 1 650 505 sq km or 21.4 per cent of the land area.

Map 5.1 – Map of Registered Native Title Determinations at 30 June 2013



Register of Native Title Claims

This Register records the native title determination applications that have met the statutory requirements for registration.

During the reporting period thirty-one native title determination applications were registered (another twenty-eight were not accepted for registration). At 30 June 2013 the total number of native title determination applications on the Register of Native Title Claims was 325.

Register of Indigenous Land Use Agreements

As indicated earlier, during the reporting period 122 new ILUAs were registered, bringing the total number accepted for registration on the Register of Indigenous land Use Agreements at 30 June 2013 to 768 ILUAs. Registered ILUAs covered about 1 822 821 sq km or 23.7 per cent of the land mass of Australia and approximately 5987 sq km of sea (below the high water mark).

NATIONAL NATIVE TITLE TRIBUNAL REPORT

Map 5.2 – Map of ILUAs as per the Register of Indigenous Land Use Agreements at 30 June 2013

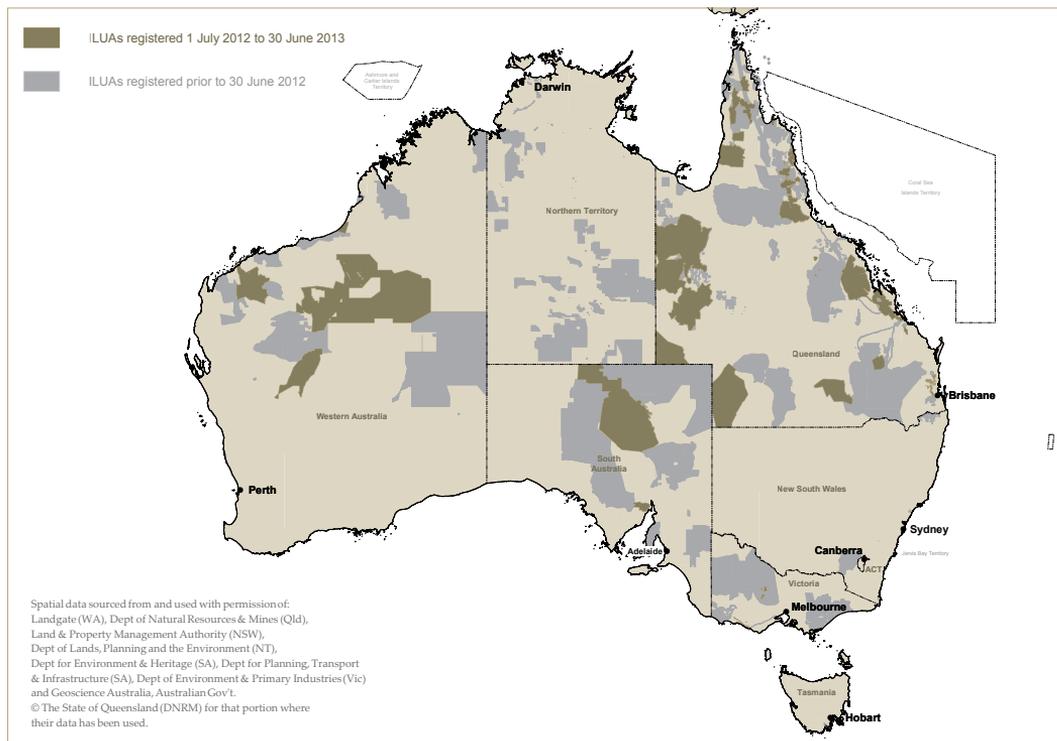


Table 5.7 – Current applications as at 30 June 2013

NATIVE TITLE APPLICATIONS	FUTURE ACT APPLICATIONS		INDIGENOUS LAND USE AGREEMENTS		
Claimant	436	FA determinations (s 35)*	8	Lodged	3
Compensation	7	FA mediation (s 31)	75	Accepted for notification	11
Non-claimant	14	FA objection*	1002	In notification	21
Revised Native Title Determination	0			Notification ended	2
TOTAL	457			TOTAL	37

* Counted by tenement

EXTERNAL SCRUTINY

Judicial decisions

During the reporting period there were no judicial decisions, decisions of administrative tribunals, or decisions by the Australian Information Commissioner, that have had, or may have, a significant impact on the operation of the Registrar's responsibilities or on the Tribunal.

Freedom of information

During the reporting period one formal request was made under the *Freedom of Information Act 1982* (Cth) (FOI Act) for access to a document. The Tribunal complies with FOI Act requirements by publishing a disclosure log on its website. The disclosure log sets out the information which was released in response to the FOI access request.

Accountability to clients

The Tribunal maintains a Client Service Charter to ensure that service standards meet client needs. No complaints requiring action under the Charter were received during the reporting period.

Members' code of conduct

Members of the Tribunal are subject to various statutory provisions relating to behaviour and capacity. Tribunal Members are not subject to the APS Code of Conduct, except where they may be, directly or indirectly, involved in the supervision of staff. Tribunal Members have voluntarily adopted a code of conduct, procedures for dealing with alleged breaches of the members' voluntary code of conduct and an expanded conflict of interest policy. During the reporting period, there were no complaints under either document.

Online services

The Tribunal maintains a website at www.nntt.gov.au

Australian Human Rights Commission

For this reporting period, the Commissioner has requested the Tribunal to provide data regarding:

- The number of ILUAs concluded and registered in each State/Territory, and nationally
- In relation to the number of native title and related agreements made within the reporting period:
 - agreements that fully resolve native title determination applications, including consent determinations
 - agreements on issues leading towards the resolution of native title determination applications
 - process/framework agreements
 - future act agreements.

In addition, the Tribunal has been asked to comment on any noticeable trends in agreement-making over the past five years or any other issues it considers relevant for inclusion in the Social Justice and Native Title Report 2013.

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PART 6

APPENDICES



INDEPENDENT AUDITOR'S REPORT



INDEPENDENT AUDITOR'S REPORT

To the Attorney-General

I have audited the accompanying financial statements of the Federal Court of Australia for the year ended 30 June 2013, which comprise: a Statement by the Registrar and Chief Finance Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Administered Schedule of Comprehensive Income; Administered Schedule of Assets and Liabilities; Administered Reconciliation Schedule; Administered Cash Flow Statement; Schedule of Administered Commitments; Schedule of Administered Contingencies; and Notes comprising a Summary of Significant Accounting Policies and other explanatory information.

Registrar's Responsibility for the Financial Statements

The Registrar of the Federal Court of Australia is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as is necessary to enable the preparation of the financial statements that give a true and fair view and are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Federal Court of Australia's preparation of the financial statements that give a true and fair view in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Federal Court of Australia's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Registrar of the Federal Court of Australia, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

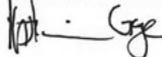
In conducting my audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Opinion

In my opinion, the financial statements of the Federal Court of Australia:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Federal Court of Australia's financial position as at 30 June 2013 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



Kristian Gage
Audit Principal

Delegate of the Auditor-General

Canberra

13 September 2013

STATEMENT BY THE REGISTRAR AND CHIEF FINANCIAL OFFICER

FEDERAL COURT OF AUSTRALIA

STATEMENT BY THE REGISTRAR AND CHIEF FINANCE OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2013 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

Signed 

Warwick Soden
Registrar and Chief Executive Officer

13 September 2013

Signed 

Peter Bowen
Chief Finance Officer

13 September 2013

STATEMENT OF COMPREHENSIVE INCOME

FOR THE PERIOD ENDED 30 JUNE 2013

	NOTES	2013 \$'000	2012 \$'000
EXPENSES			
Judge benefits	3A	29,926	30,126
Employee benefits	3A	43,872	32,100
Suppliers	3B	46,714	49,892
Depreciation and amortisation	3C	4,265	3,148
Finance costs	3D	72	85
Write-down and impairment of assets	3E	560	11
Loss on sale of assets	3F	-	-
Total Expenses		125,409	115,362
LESS: OWN-SOURCE INCOME			
Own-source revenue			
Sale of goods and rendering of services	4A	3,341	4,566
Total own-source revenue		3,341	4,566
GAINS			
Other gains	4B	30,901	20,420
Total gains		30,901	20,420
Total own-source income		34,242	24,986
Net cost of services		91,167	90,376
Revenue from Government	4C	89,020	86,116
(Deficit) attributable to the Australian Government		(2,147)	(4,260)
OTHER COMPREHENSIVE INCOME			
Total comprehensive income		-	-
Total comprehensive income attributable to the Australian Government		(2,147)	(4,260)

The above statement should be read in conjunction with the accompanying notes.

BALANCE SHEET

AS AT 30 JUNE 2013

	NOTES	2013 \$'000	2012 \$'000
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	279	1,353
Trade and other receivables	5B	47,702	30,846
Total financial assets		47,981	32,199
Non-Financial Assets			
Land and buildings	6A	11,999	11,590
Property, plant and equipment	6B	7,966	6,530
Intangibles	6C	2,851	2,611
Other non-financial assets	6E	522	543
Total non-financial assets		23,338	21,274
Total Assets		71,319	53,473
LIABILITIES			
Payables			
Suppliers	7A	(1,895)	(808)
Other Payables	7B	(2,269)	(1,726)
Total payables		(4,164)	(2,534)
Interest Bearing Liabilities			
Leases	8	(812)	(1,183)
Total interest bearing liabilities		(812)	(1,183)
Provisions			
Judge and employee provisions	9A	(19,910)	(17,069)
Other provisions	9B	(252)	–
Total provisions		(20,162)	(17,069)
Total Liabilities		(25,138)	(20,786)
Net Assets		46,181	32,687
EQUITY			
Contributed equity		35,368	19,727
Reserves		1,584	1,584
Retained surplus		9,229	11,376
Total Equity		46,181	32,687

The above statement should be read in conjunction with the accompanying notes.

STATEMENT OF CHANGES IN EQUITY

FOR THE PERIOD ENDED 30 JUNE 2013

	RETAINED EARNINGS		ASSET REVALUATION SURPLUS		CONTRIBUTED EQUITY/CAPITAL		TOTAL EQUITY	
	2013 \$'000	2012 \$'000	2013 \$'000	2012 \$'000	2013 \$'000	2012 \$'000	2013 \$'000	2012 \$'000
Opening balance	11,376	15,636	1,584	1,584	19,727	16,325	32,687	33,545
Comprehensive Income								
Other Comprehensive Income	-	-	-	-	-	-	-	-
(Deficit) for period	(2,147)	(4,260)	-	-	-	-	(2,147)	(4,260)
Total comprehensive income	(2,147)	(4,260)	-	-	-	-	(2,147)	(4,260)
Transactions with owners								
Contributions by owners								
Restructuring	-	-	-	-	11,972	-	11,972	-
Departmental Capital Budget	-	-	-	-	3,669	3,402	3,669	3,402
Sub-total transactions with owners	-	-	-	-	15,641	3,402	15,641	3,402
Closing balance as at 30 June	9,229	11,376	1,584	1,584	35,368	19,727	46,181	32,687
Closing balance attributable to the Australian Government	9,229	11,376	1,584	1,584	35,368	19,727	46,181	32,687

The above statement should be read in conjunction with the accompanying notes.

CASH FLOW STATEMENT

FOR THE PERIOD ENDED 30 JUNE 2013

	NOTES	2013 \$'000	2012 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		3,441	4,344
Appropriations		89,880	89,160
Refunds credited		48	43
Net GST received		-	189
Total cash received		93,369	93,736
Cash used			
Judges and employees		(64,197)	(49,796)
Suppliers		(26,161)	(39,021)
Borrowing costs		(72)	(85)
Net GST paid		(510)	-
Section 31 receipts transferred to OPA		(3,596)	(4,170)
Total cash used		(94,536)	(93,072)
Net cash from / (used by) operating activities	11	(1,167)	664
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		-	2
Total cash received		-	2
Cash used			
Purchase of property, plant and equipment		(2,267)	(2,047)
Purchase of intangibles		(1,020)	(1,354)
Total cash used		(3,287)	(3,401)
Net cash (used by) investing activities		(3,287)	(3,399)
FINANCING ACTIVITIES			
Cash received			
<i>Appropriations – contributed equity</i>		3,756	3,602
Total cash received		3,756	3,602
Cash used			
Payment of finance lease liabilities		(376)	(324)
Total cash used		(376)	(324)
Net cash from financing activities		3,380	3,278
Net increase / (decrease) in cash held		(1,074)	543
Cash at the beginning of the reporting period		1,353	810
Cash at the end of the reporting period	5A	279	1,353

The above statement should be read in conjunction with the accompanying notes.

SCHEDULE OF COMMITMENTS

AS AT 30 JUNE 2013

	2013 \$'000	2012 \$'000
BY TYPE		
Commitments receivable		
Net GST recoverable on commitments	176	2,473
Total commitments receivable	176	2,473
Commitments payable		
Capital commitments		
Property, plant and equipment ¹	(10)	(1,045)
Total capital commitments	(10)	(1,045)
Other commitments		
Operating leases ²	(1,830)	(24,110)
Other ³	(92)	(2,042)
Total other commitments	(1,922)	(26,152)
Net commitments by type	(1,756)	(24,724)
BY MATURITY		
Commitments receivable		
One year or less	118	567
From one to five years	58	1,906
Total commitments receivable	176	2,473
Capital commitments		
One year or less	(10)	(1,045)
Total capital commitments	(10)	(1,045)
Operating lease commitments		
One year or less	(1,189)	(4,851)
From one to five years	(641)	(19,259)
Total operating lease commitments	(1,830)	(24,110)
Other commitments		
One year or less	(92)	(340)
From one to five years	-	(1,702)
Total other commitments	(92)	(2,042)
Net Commitments by Maturity	(1,756)	(24,724)

NB: Commitments are GST inclusive where relevant.

SCHEDULE OF COMMITMENTS

FOR THE PERIOD ENDED 30 JUNE 2013

1. Plant and equipment commitments are primarily contracts for the purchase of furniture and fittings.

Nature of leases/General description

2. Operating leases included are effectively non-cancellable and comprise:

Leases for judicial and other accommodation.

These commitments are mainly for rental of special purpose court buildings which are occupied by the Court's registries. The court buildings are owned by the Commonwealth of Australia, except for the New South Wales court building, which is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments. In the Northern Territory, space is leased from the Northern Territory Government. The Court also leases commercial premises in Brisbane and Cairns for the National Native Title Tribunal.

As at 30 June 2013, the Court had no signed leases for the Commonwealth Law Courts Buildings and therefore has no commitment for future expenditure for these premises.

Agreements for the provision of motor vehicles to judges and senior officers.

The Court leased motor vehicles from Lease Plan under the terms of a contract that was operative until January 2013. From February 2013 vehicles are leased from sgFleet under contractual terms. These vehicles are leased under individual operating leases.

3. Other commitments – The Court has entered into commitments for the provision of information technology and library goods and services.

The above schedule should be read in conjunction with the accompanying notes.

SCHEDULE OF CONTINGENCIES

AS AT 30 JUNE 2013

There were no contingent losses or gains as at 30 June 2013 (2012: nil).

The above schedule should be read in conjunction with the accompanying notes.

ADMINISTERED SCHEDULE OF COMPREHENSIVE INCOME

FOR THE PERIOD ENDED 30 JUNE 2013

	NOTES	2013 \$'000	2012 \$'000
EXPENSES			
Fees and fines – provision for doubtful debts	16	180	(310)
Total expenses administered on behalf of Government		180	(310)
LESS:			
OWN SOURCE INCOME			
Own-Source Revenue			
Non Taxation Revenue			
Fees (filing and hearing fees)	17	16,966	10,446
Fines	17	147	536
Other revenue	17	125	79
Total non-taxation revenue		17,238	11,061
Total own-source revenue administered on behalf of Government		17,418	11,061
Net cost of (contribution by) services		(17,418)	(10,751)
OTHER COMPREHENSIVE INCOME			
Total comprehensive income		17,418	10,751

This schedule should be read in conjunction with the accompanying notes.

ADMINISTERED SCHEDULE OF ASSETS AND LIABILITIES

AS AT 30 JUNE 2013

	NOTES	2013 \$'000	2012 \$'000
ASSETS			
Financial assets			
Cash and cash equivalents	18A	40	30
Receivables	18B	2,903	539
Total assets administered on behalf of Government		2,943	569
LIABILITIES			
Payables			
Other payables	19A	(304)	–
Total payables		(304)	–
Total liabilities administered on behalf of Government		(304)	–
Net assets		2,639	569

ADMINISTERED RECONCILIATION SCHEDULE

	NOTES	2013 \$'000	2012 \$'000
Opening net administered assets		569	825
Plus: Administered income		17,238	11,061
Less: Administered expenses		180	(310)
Administered transfers to/from Australian Government:			
Administered assets and liabilities appropriations		290	315
Transfers to OPA		(15,638)	(11,322)
Closing net administered assets		2,639	569

This schedule should be read in conjunction with the accompanying notes.

ADMINISTERED CASHFLOW STATEMENT FOR THE PERIOD ENDED 30 JUNE 2013

	NOTES	2013 \$'000	2012 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees		15,371	10,694
Fines		147	536
Other		130	79
Total cash received		15,648	11,309
Cash used			
Refund of court fees and fines		(290)	(295)
Total cash used		(290)	(295)
Net cash flows from operating activities		15,358	11,014
Net Increase in cash held	20	15,358	11,014
Cash at the beginning of the reporting period		30	23
Cash from Official Public Account for:			
– Appropriations		290	315
		290	315
Cash to Official Public Account		(15,638)	(11,322)
		(15,638)	(11,322)
Cash at the end of the reporting period	20	40	30

SCHEDULE OF ADMINISTERED COMMITMENTS AS AT 30 JUNE 2013

There were no Administered commitments as at 30 June 2013. (2012: nil)

SCHEDULE OF ADMINISTERED CONTINGENCIES AS AT 30 JUNE 2013

There were no Administered contingent losses or gains as at 30 June 2013. (2012: nil)

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 1	Summary of Significant Accounting Policies
Note 2	Events After the Reporting Period
Note 3	Expenses
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Note 7	Payables
Note 8	Interest Bearing Liabilities
Note 9	Provisions
Note 10	Restructuring
Note 11	Cash Flow Reconciliation
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Note 23	Appropriations
Note 24	Special Accounts and FMA Section 39
Note 25	Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund
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NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the Court

The Federal Court of Australia is an Australian Government controlled entity. The Court is a not for profit entity. The objectives of the Court are to:

- decide disputes according to law promptly, courteously and effectively; and in so doing to interpret the statutory law and develop the general law of the Commonwealth, so as to fulfil the role of a court exercising the judicial power of the Commonwealth under the Constitution;
- provide an effective registry service to the community; and
- manage the resources allotted by Parliament efficiently.

The Court is structured to meet one Outcome:

Outcome: 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 well-being of all Australians.

The Court's activities contributing toward this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, revenue and expenses controlled or incurred by the Court in its own right. Administered activities involve the management or oversight by the Court, on behalf of the Government, of items controlled or incurred by the Government.

The Court conducts the following administered activity on behalf of the Government: The collection of fees and fines.

The continued existence of the Court in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the Court's administration and programs.

The Australian Government continues to have regard to developments in case law, including the High Court's most recent decision on Commonwealth expenditure in *Williams v Commonwealth (2012) 288 ALR 410*, as they contribute to the larger body of law relevant to the development of the Commonwealth's programs. In accordance with its general practice, the Government will continue to monitor and assess risk and decide on any appropriate actions to respond to risks of expenditure not being consistent with constitutional or other legal requirements.

1.2 Basis of Preparation of the Financial Statements

The financial statements are general purpose financial statements and are required by section 49 of the *Financial Management and Accountability Act 1997*.

The financial statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs), for reporting periods ending on or after 1 July 2011; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial statements are presented in Australian dollars and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless alternative treatment is specifically required by an Accounting Standard or the FMOs, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the Court and the amounts of assets or liabilities can be reliably measured. However, assets and liabilities arising under executor contracts are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

Unless alternative treatment is specifically required by an accounting standard, revenues and expenses are recognised in the Statement of Comprehensive Income only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for departmental items.

1.3 Significant Accounting Judgements and Estimates

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 Changes in Australian Accounting Standards

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. No new accounting standards, amendments to standards and interpretations issued by the Australian Accounting Standards Board that are applicable in the current period have had a material financial effect on the Court.

Future Australian Accounting Standard requirements

New standards, amendments to standards, and interpretations that are applicable to future periods have been issued by the Australian Accounting Standards Board. It is estimated that adopting these pronouncements, when effective, will have no material impact on future reporting periods.

1.5 Revenue

Revenue from the sale of goods is recognised when:

- (a) the risks and rewards of ownership have been transferred to the buyer;
- (b) the entity retains no managerial involvement or effective control over the goods;
- (c) the revenue and transaction costs incurred can be reliably measured; and
- (d) it is probable that the economic benefits associated with the transaction will flow to the Court.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- (a) The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- (b) The probable economic benefits associated with the transaction will flow to the Court.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at the balance date. Allowances are made when collection of the debt is no longer probable.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the Court gains control of the appropriation, except for certain amounts that relate to activities which are reciprocal in nature, in which case revenue has been recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of these resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government entity as a consequence of a restructure of administrative arrangements.

Resources received free of charge are recognised as either revenue or gains depending on their nature.

Sale of Assets

Gains from disposal of non-current assets are recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner

Equity Injections

Amounts appropriated which are designated as 'equity injections' (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Other Distributions to owners

The FMO require that distributions to owners be debited to contributed equity unless it is in the nature of a dividend.

1.8 Judge and Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other judge and employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by judges and employees up to the reporting date.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Court is estimated to be less than the annual entitlement for sick leave.

The long service leave provision is based on the Court's estimated liability at balance date. Court staff employed under the *Public Service Act 1999* accrue 3 months long service leave after 10 years service, and proportionally thereafter. The estimate of the present liability takes into account attrition rates and pay

increases through promotion and inflation. Judges accrue 6 months long leave after 5 years of service. In recognition of the nature of Judges' tenure, a provision is accrued from the first year of service.

The leave liabilities are calculated on the basis of employees' remuneration at the estimated salary rates that applied at the time the leave is taken. This includes the Court's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

Superannuation

Staff of the Court are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap). Some staff members elect to have contributions made to another superannuation fund of their choice.

The CSS and PSS are defined benefit schemes for the Commonwealth. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Court makes employer contributions to the employee superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government of the superannuation entitlements of the Court's employees. The Court accounts for the contributions as if they were contributions to defined contribution plans. For those staff members who have elected to have contributions made to a scheme of their choice, the Court makes payments of the amount required under Commonwealth legislation.

The liability for superannuation recognised as at 30 June represents outstanding contributions for the final fortnight of the year.

Judges' Pension

Under the *Judges' Pension Act 1968*, Federal Court Judges are entitled to a non-contributory pension upon retirement after 6 years service. Where entitlements are not available under the *Judges Pension Act 1968*, entitlements are available under the *Superannuation (Productivity Benefit) Act 1988*. As the liability for these pension payments is assumed by the Australian Government, the Court has not recognised a liability for unfunded superannuation liability. The Court does, however, recognise an expense and a corresponding revenue item, "Liabilities assumed by other agencies", in respect of the notional amount of the employer contributions to Judges' pensions for the reporting period amounting to \$11,181,782 (2011-12: \$11,112,406). The contribution rate has been provided by the Australian Government Actuary.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Cash

Cash means notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.11 Financial Assets

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non-current assets. The Court does not have any loans at the balance sheet date.

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial assets carried at cost* – If there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.12 Financial Liabilities

Supplier and other payables

Supplier and other payables are recognised at nominal cost. Liabilities are recognised to the extent that the goods or services have been received, irrespective of having been invoiced.

1.13 Contingent Liabilities and Contingent Assets

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.14 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

1.15 Property, Plant and Equipment

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases of:

- assets other than information technology equipment costing less than \$2,000; and
- information technology equipment costing less than \$1,500

which are expensed in the year of acquisition other than where they form part of a group of similar items, which are significant in total.

Revaluations

Fair values for each class of asset are determined as shown below:

<i>Asset class</i>	<i>Fair value measured at:</i>
Buildings	Market selling price
Leasehold improvements	Depreciated replacement cost
Plant & Equipment	Market selling price

Following initial recognition at cost, buildings, infrastructure, plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class previously recognised in the surplus / (deficit). Revaluation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the valuation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation

Depreciable property plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Court using, in all cases, the straight-line method of depreciation. Leasehold improvements are depreciated over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Depreciation and amortisation rates for each class of depreciable asset are based on the following useful lives:

	2013	2012
Leasehold improvements	10 years or Lease term	10 years or Lease term
Plant and equipment – excluding library materials	3 to 250 years	3 to 250 years
Plant and equipment – library materials	5 to 10 years	5 to 10 years

Impairment

All assets are assessed for impairment at 30 June. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the Court were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no future economic benefits are expected from its use or disposal.

1.16 Intangibles

The Court's intangibles comprise externally and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment loss.

Software is amortised on a straight line basis over its anticipated useful life of 5 years (2011–12: 5 years).

All software assets were assessed for indications of impairment at 30 June 2013.

1.17 Taxation

The Court is exempt from all forms of taxation except fringe benefits tax (FBT) and goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australia Taxation Office; and
- for receivables and payables.

1.18 Resources Provided Free of Charge

For the period 1 July 2012 to 30 June 2013, the Court provided \$8.072m worth of resources free of charge to the Federal Circuit Court. (2012: \$8.855m).

1.19 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where stated below, administered items are accounted for on the same basis and using the same policies as the Court, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from Official Public Account (OPA)

Revenue collected by the Court for use by the Government rather than the Court is administered revenue. Collections are transferred to the Official Public Account maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Court on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

Revenue

All administered revenues are revenues relating to the course of ordinary activities performed by the Court on behalf of the Australian Government.

Fees are charged for services provided by the Court to litigants under the Federal Court and Federal Circuit Court Regulation 2012.

Revenue from fees is recognised at the time the services are performed. The services are performed at the same time as, or within two days of, the fees becoming due and payable. It is recognised at its nominal amount due less any provision for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Impairment allowances are made when collectability of the debt is judged to be less, rather than more, likely. Revenue from fines is recognised in the period in which the invoice for the fine is raised.

Note 2: Events after the reporting period

Departmental

There was no subsequent event that had the potential to significantly affect the ongoing structure and financial activities of the Court.

Administered

There was no subsequent event that had the potential to significantly affect the ongoing structure and financial activities of the Court.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 3: Expenses

Note 3A: Judge and Employee benefits

	2013 \$'000	2012 \$'000
Judge remuneration	18,744	19,014
Judge notional superannuation	11,182	11,112
	29,926	30,126
Employee wage & salaries	34,005	27,704
Employee superannuation	5,469	4,146
Leave and other entitlements	3,720	–
Employee separation and redundancies	678	250
	43,872	32,100
Total Judge and employee benefits	73,798	62,226

Note 3B: Suppliers

	2013 \$'000	2012 \$'000
Goods and Services		
Property operating costs	2,480	7,219
Library purchases	2,873	2,898
Information technology expenditure	3,980	3,502
Travel expenditure	3,402	3,768
Contractors and consultants	2,555	1,777
Other goods and services	3,848	3,073
Total goods and services	19,138	22,237
Goods and services are made up of:		
Provision of goods – external parties	2,148	2,001
Rendering of services – related entities	796	1,130
Rendering of services – external parties	16,194	19,106
Total goods and services	19,138	22,237
Other supplier expenses		
Operating lease rentals:		
Minimum Lease Payments	27,195	27,460
Workers compensation premiums	381	195
Total other supplier expenses	27,576	27,655
Total supplier expenses	46,714	49,892

Note 3C: Depreciation and Amortisation

	2013 \$'000	2012 \$'000
Depreciation:		
Buildings	1,954	1,641
Property, plant and equipment ¹	1,324	804
Total depreciation	3,278	2,445
Amortisation:		
Intangibles:		
Computer Software	599	340
Leased plant and equipment	388	363
Total amortisation	987	703
Total depreciation and amortisation	4,265	3,148

1. Depreciation expenses for finance leases are included in the line 'Leased plant and equipment' above.

Note 3D: Finance costs

	2013 \$'000	2012 \$'000
Finance leases	72	85
Total finance costs	72	85

Note 3E: Write-down and impairment of assets

	2013 \$'000	2012 \$'000
Financial assets		
Doubtful debts expense	2	5
Non-financial assets		
Impairment of intangibles	553	–
Impairment of plant & equipment	5	6
Total write-down and impairment of assets	560	11

Note 3F: Sale of Assets

	2013 \$'000	2012 \$'000
Infrastructure, plant and equipment:		
Proceeds from sale	–	2
Carrying value of assets sold	–	2
Net gain (loss) from sale of assets	–	–

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 4: Income

Own-Source Revenue

Note 4A: Sale of goods and rendering of services

	2013 \$'000	2012 \$'000
Rendering of services – related entities	1,060	1,250
Rendering of services – external entities	2,281	3,316
Total sale of goods and rendering of services	3,341	4,566

Gains

Note 4B: Other gains

	2013 \$'000	2012 \$'000
Liabilities assumed by other agencies	11,182	11,112
Resources received free of charge	19,719	9,308
	30,901	20,420

Resources received free of charge includes an amount of \$9,197,990 (2011–12: \$9,197,990) in respect of rent and outgoings associated with the accommodation occupied by the Court in the Law Courts Building located in Sydney, New South Wales. This building is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments.

It also includes an amount in respect of rent and outgoings for Commonwealth Law Courts Buildings throughout Australia. The Court receives free rental and some outgoings for areas in Commonwealth Law Courts Buildings occupied by court rooms and judicial accommodation. These resources are provided by the Department of Finance and Deregulation. This arrangement commenced on 1 July 2012.

Revenue From Government

Note 4C: Revenue from Government

	2013 \$'000	2012 \$'000
Appropriations:		
Departmental appropriations	89,020	86,116
Total revenue from Government	89,020	86,116

Note 5: Financial Assets

Note 5A: Cash and cash equivalents

	2013 \$'000	2012 \$'000
Cash on hand or on deposit	279	1,353
Total cash and cash equivalents	279	1,353

Note 5B: Trade and other receivables

	2013 \$'000	2012 \$'000
Goods and services – external parties	583	913
Appropriations receivable:		
for existing programs – operating	43,637	27,507
for existing programs – capital	2,587	2,211
GST receivable from the Australian Taxation Office	898	220
Total trade and other receivables (gross)	47,705	30,851
Less impairment allowance account		
Goods and Services	3	5
Total trade and other receivables (net)	47,702	30,846
Receivables are aged as follows:		
Not overdue	47,678	30,647
Overdue by:		
Less than 30 days	15	190
31 to 60 days	8	2
61 to 90 days	1	1
More than 90 days	3	11
	27	204
Total receivables (gross)	47,705	30,851
All receivables are current. Credit terms are net 30 days (2012: 30 days).		
Reconciliation of the impairment allowance account:		
Opening balance	5	–
Amounts recovered and reversed	(4)	–
Increase recognised in net surplus	2	5
Closing balance	3	5

The impairment allowance is all aged over 90 days.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 6: Non-Financial Assets

Note 6A: Land and buildings

	2013 \$'000	2012 \$'000
Leasehold improvements		
Fair value	16,064	13,552
Accumulated depreciation	(4,065)	(1,962)
Total leasehold improvements	11,999	11,590
Total land and buildings	11,999	11,590

No indications of impairment were found for land and buildings.

Note 6B: Property, plant and equipment

	2013 \$'000	2012 \$'000
Property, plant and equipment		
Fair value	11,396	8,290
Accumulated depreciation	(3,430)	(1,760)
Total property, plant and equipment	7,966	6,530
Total property, plant and equipment	7,966	6,530

All revaluations are conducted in accordance with the valuation policy stated in Note 1.
In 2010–11, formal valuations were conducted by an independent valuer, the Australian Valuation Office.

No indications of impairment were found for infrastructure, plant and equipment.

Note 6C: Intangible Assets

	2013 \$'000	2012 \$'000
Computer software at cost		
Internally developed – in progress	604	866
Internally developed – in use	2,763	2,026
Purchased – in use	1,378	1,013
Total Computer Software	4,745	3,905
Accumulated amortisation	(1,894)	(1,294)
Total intangibles (non-current)	2,851	2,611

No indication of impairment was found for intangibles.

Note 6D: Analysis of infrastructure, property, plant, and equipment**TABLE A – Reconciliation of the opening and closing balances of property, plant, and equipment (2012-13)**

ITEM	LEASEHOLD IMPROVEMENT – TOTAL LAND AND BUILDINGS \$'000	PROPERTY PLANT AND EQUIPMENT \$'000	COMPUTER SOFTWARE – INTANGIBLES \$'000	TOTAL \$'000
As at 1 July 2012				
Gross book value	13,552	8,290	3,905	25,747
Accumulated depreciation/amortisation	(1,962)	(1,760)	(1,294)	(5,016)
Net book value 1 July 2012	11,590	6,530	2,611	20,731
Additions:				
By purchase	575	1,647	1,020	3,242
By purchase – finance lease	–	5	–	5
Received from restructuring	1,788	1,543	372	3,703
Depreciation/amortisation expense	(1,954)	(1,712)	(599)	(4,265)
Impairments recognised in the operating result	–	(5)	(553)	(558)
Disposals:				
Other disposals	–	(42)	–	(42)
Net book value 30 June 2013	11,999	7,966	2,851	22,816
Net book value as of 30 June 2013 represented by:				
Gross book value	16,064	11,396	4,745	32,205
Accumulated depreciation/amortisation	(4,065)	(3,430)	(1,894)	(9,389)
	11,999	7,966	2,851	22,816

TABLE A – Reconciliation of the opening and closing balances of property, plant, and equipment (2011-12)

ITEM	LEASEHOLD IMPROVEMENT – TOTAL LAND AND BUILDINGS \$'000	INFRASTRUCTURE, PLANT AND EQUIPMENT \$'000	COMPUTER SOFTWARE – INTANGIBLES \$'000	TOTAL \$'000
As at 1 July 2011				
Gross book value	12,594	6,801	3,828	23,223
Accumulated depreciation/amortisation	(321)	(956)	(2,232)	(3,509)
Net book value 1 July 2011	12,273	5,845	1,596	19,714
Additions:				
By purchase	958	1,088	1,355	3,401
By purchase – finance lease	–	772	–	772
Depreciation/amortisation expense	(1,641)	(1,167)	(340)	(3,148)
Disposals:				
Other disposals	–	(8)	–	(8)
Net book value 30 June 2012	11,590	6,530	2,611	20,731
Net book value as of 30 June 2012 represented by:				
Gross book value	13,552	8,290	3,905	25,747
Accumulated depreciation/amortisation	(1,962)	(1,760)	(1,294)	(5,016)
	11,590	6,530	2,611	20,731

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 6E: Other non-financial assets

	2013 \$'000	2012 \$'000
Prepayments	522	543
Total other non-financial assets	522	543
Total other non-financial assets are expected to be recovered in:		
No more than 12 months	522	534
Total other non-financial assets	522	534
More than 12 months	-	9
Total other non-financial assets	-	9

No indicators of impairment were found for other non-financial assets.

Note 7: Payables

Note 7A: Suppliers

	2013 \$'000	2012 \$'000
Trade creditors and accruals	(1,895)	(808)
Total supplier payables	(1,895)	(808)

All supplier payables are expected to be settled within 12 months
Settlement is usually made net 30 days.

Note 7B: Other Payables

	2013 \$'000	2012 \$'000
Salaries and wages	(1,005)	(724)
Unearned Income	(219)	(377)
Separation and redundancies	(185)	-
Superannuation	(860)	(625)
Total other payables	(2,269)	(1,726)

All other payables are expected to be settled within 12 months.

Note 8: Interest Bearing Liabilities

Note 8: Leases

	2013 \$'000	2012 \$'000
Finance leases	(812)	(1,183)
Total finance leases	(812)	(1,183)
Payable:		
Within one year:		
Minimum lease payments	(448)	(447)
Deduct: future finance charges	45	72
In one to five years:		
Minimum lease payments	(427)	(871)
Deduct: future finance charges	18	63
Finance leases recognised on the balance sheet	(812)	(1,183)

Finance leases are for certain major IT equipment assets and some office equipment. The leases are non-cancellable and for fixed terms averaging four years, with a maximum of five years. The interest rate implicit in the leases averaged 4.31% (2012: 4.39%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

Note 9: Provisions

Note 9A: Judge & Employee provisions

	2013 \$'000	2012 \$'000
Long Leave (Judges)	(9,918)	(9,764)
Leave	(9,992)	(7,305)
Total Judge and employee provisions	(19,910)	(17,069)
Employee provisions are expected to be settled in:		
No more than 12 months	(4,916)	(3,531)
More than 12 months	(14,994)	(13,538)
Total Judge and employee provisions	(19,910)	(17,069)

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 9B: Other provisions

	2013 \$'000	2012 \$'000
Provision for restoration obligations	(252)	–
Total other provisions	(252)	–
Other provisions are expected to be settled in:		
No more than 12 months	–	–
More than 12 months	(252)	–
Total other	(252)	–
Provision for Restoration		
Carrying Amount 1 July 2012	–	
Additional Provisions Made	(252)	
Closing Balance 30 June 2013	(252)	

Note 10: Restructuring

	2013 NATIONAL NATIVE TITLE TRIBUNAL \$'000	2012 \$'000
FUNCTIONS ASSUMED		
Assets Recognised		
Appropriations Receivable	13,599	–
Trade and other receivables	129	–
Cash	259	–
Property, Plant and Equipment	3,330	–
Intangibles	373	–
Prepayments	120	–
Total assets recognised	17,810	
Liabilities recognised		
Suppliers	(436)	–
Wages and salaries	(435)	–
Superannuation	(64)	–
Separations and redundancies	(974)	–
Other Payables	(141)	–
Leave	(3,436)	–
Other Provisions	(352)	–
Total liabilities recognised	(5,838)	–
Net assets assumed	11,972	–

The Federal Court assumed responsibility for the operation of the National Native Title Tribunal from 1 July 2012.

The net assets assumed from the Tribunal were \$11,972,000.

All assets and liabilities were assumed from the Tribunal for no consideration.

Note 11: Cash flow reconciliation

	2013 \$'000	2012 \$'000
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash Flow Statement	279	1,353
Balance Sheet	279	1,353
Difference	-	-
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(91,167)	(90,376)
Add revenue from Government	89,020	86,116
Adjustments for non-cash items		
Depreciation/amortisation	4,265	3,148
Net write down of non-financial assets	558	6
(Gain)/Loss on disposal of assets	-	-
Net Assets received from restructuring	8,269	-
Changes in assets/liabilities		
(Increase)/decrease in net operating receivables	(16,857)	(1,455)
(Increase)/decrease in prepayments	21	1,282
Increase/(decrease) in suppliers payables	1,088	245
Increase/(decrease) in judge and employee provisions	2,841	1,264
Increase/(decrease) in other provisions	252	-
Increase/(decrease) in other payables	543	434
Net cash from/(used by) operating activities	(1,167)	664

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 12: Senior Executive Remuneration

Note 12A: Senior Executive Remuneration expense for the reporting period

	2013 \$	2012 \$
Short term employee benefits:		
Salary (including annual leave taken)	2,806,678	2,501,796
Annual Leave accrued	228,847	181,019
Performance Bonus	6,200	–
Motor Vehicle and other allowances	244,123	110,283
Total Short-term employee benefits	3,285,848	2,793,098
Post-employment benefits:		
Superannuation	539,632	334,842
Total Post-employment benefits	539,632	334,842
Other long term benefits		
Long Service leave	73,229	58,248
Total other long term benefits	73,229	58,248
Termination benefits		
Redundancy Payments	248,338	–
Total Termination Benefits	248,338	–
Total employment benefits	4,147,047	3,186,188

Note 12A is prepared on an accrual basis.

Note 12A excludes acting arrangements and part-year service where total remuneration expensed for a senior executive was less than \$180,000.

Note 12B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives During the Reporting Period

2013

AVERAGE ANNUAL REPORTABLE REMUNERATION	NO OF SENIOR EXECUTIVES	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	BONUSES PAID	TOTAL \$
Total remuneration (including part-time arrangements):						
Less than \$180,000	1	40,800	4,498	-	-	45,298
\$180,000 to \$209,999	2	170,053	25,235	3,723	3,100	202,111
\$210,000 to \$239,999	3	191,476	30,371	12,074	-	233,921
\$240,000 to \$269,999	1	223,968	29,580	2,352	-	255,900
\$270,000 to \$299,999	6	233,260	36,781	13,618	-	283,659
\$480,000 to \$509,999	1	283,100	143,283	61,115	-	487,498
Total	14					

2012

AVERAGE ANNUAL REPORTABLE REMUNERATION	NO OF SENIOR EXECUTIVES	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$
Total remuneration (including part-time arrangements):					
\$210,000 to \$239,999	3	197,940	25,726	-	223,666
\$240,000 to \$269,999	2	220,902	29,094	-	249,996
\$270,000 to \$299,999	5	248,448	32,385	-	280,833
\$360,000 to \$389,999	1	274,883	37,555	59,334	371,772
Total	11				

Notes:

- This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.
- 'Reportable salary' includes the following:
 - gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
 - reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
 - salary sacrificed benefits.
- The 'contributed superannuation' amount is the average cost to the Court for the provision of superannuation benefits to substantive senior executives in that reportable remuneration band during the reporting period.
- 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
- Bonuses paid represents average actual bonuses paid during the reporting year in that remuneration band. The bonus paid within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the Court during the financial year.

Note 12C: Other Highly paid Staff

2013

AVERAGE ANNUAL REPORTABLE REMUNERATION	NO OF STAFF	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$
Total remuneration (including part-time arrangements):	10	161,953	24,716	0	186,669
\$180,000 to \$209,999					
Total	10				

2012

AVERAGE ANNUAL REPORTABLE REMUNERATION	NO OF STAFF	REPORTABLE SALARY \$	CONTRIBUTED SUPERANNUATION \$	REPORTABLE ALLOWANCES \$	TOTAL \$
Total remuneration (including part-time arrangements):	1	158,295	21,717	-	180,012
\$180,000 to \$209,999					
Total	1				

Notes:

1. This table reports staff:

- (a) who were employed by the Court during the reporting period;
- (b) whose reportable remuneration was \$180,000 or more for the financial period; and
- (c) were not required to be disclosed in Table B or director disclosures.

Each row is an averaged figure based on headcount for individuals in the band.

2. 'Reportable salary' includes the following:

- (a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
- (b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits).

3. The 'contributed superannuation' amount is the average cost to the Court for the provision of superannuation benefits to other highly paid staff in that reportable remuneration band during the reporting period.

4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.

Note 13: Remuneration of Auditors

	2013 \$	2012 \$
Financial statement audit services are provided free of charge to the Court by the Australian National Audit Office (ANAO).		
The fair value of the services provided was:	104,000	104,000

Note 14: Financial Instruments

Note 14A Categories of financial instruments

	2013 \$'000	2012 \$'000
Loans and receivables		
Loans and receivables		
Cash on hand or on deposit	279	1,353
Trade receivables	580	913
Carrying amount of financial assets	859	2,266
Financial Liabilities		
At amortised cost:		
Finance leases	(812)	(1,183)
Trade creditors	(1,895)	(1,185)
Carrying amount of financial liabilities	(2,707)	(2,368)

Note 14B Fair value of financial instruments

	CARRYING AMOUNT 2013 \$'000	FAIR VALUE 2013 \$'000	CARRYING AMOUNT 2012 \$'000	FAIR VALUE 2012 \$'000
FINANCIAL LIABILITIES				
Other Liabilities				
Finance leases	(812)	(812)	(1,183)	(1,183)
Total	(812)	(812)	(1,183)	(1,183)

Fair value for Finance leases which was determined for disclosure purposes was calculated based on the present value of future principal and interest cash flows, discounted at 4.31% at the reporting date. (2012: 4.39%)

Note 14C Credit Risk

The Court is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2013: \$583,000 and 2012: \$913,000). The Court has assessed the risk of default on payment and has allocated \$3,000 in 2013 (2012: \$5,000) to an impairment allowance account.

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

The Court manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Court has policies and procedures that are to be applied by employees who perform debt recovery duties.

The Court holds no collateral to mitigate credit risk.

Credit quality of financial instruments not past due or individually determined as impaired.

	NOT PAST DUE NOR IMPAIRED 2013 \$'000	NOT PAST DUE NOR IMPAIRED 2012 \$'000	PAST DUE OR IMPAIRED 2013 \$'000	PAST DUE OR IMPAIRED 2012 \$'000
Loans and receivables				
Cash	279	1,353	-	-
Trade receivables	556	709	27	204
Total	835	2,062	27	204

Ageing of financial assets that are past due but not impaired for 2013

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Trade receivables	15	8	1	-	24
Total	15	8	1	-	24

All amounts assessed as impaired are aged greater than 90 days.

Ageing of financial assets that are past due but not impaired for 2012

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Trade receivables	190	2	1	5	198
Total	190	2	1	5	198

Note 14D Liquidity Risk

The Court's financial liabilities are payables, loans from government, finance leases and other interest bearing liabilities. The exposure to liquidity risk is based on the notion that the Court will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely as the Court is appropriated funding from the Australian Government and the Court manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Court has policies in place to ensure timely payments were made when due and has no past experience of default.

Maturities for non-derivative financial liabilities 2013

	WITHIN 1 YEAR 2013 \$'000	1 TO 5 YEARS 2013 \$'000	TOTAL 2013 \$'000
Other liabilities			
Payables – Suppliers	1,895	–	1,895
Finance leases	403	409	812
Total	2,298	409	2,707

Maturities for non-derivative financial liabilities 2012

	WITHIN 1 YEAR 2012 \$'000	1 TO 5 YEARS 2012 \$'000	TOTAL 2012 \$'000
Other liabilities			
Payables – Suppliers	808	–	808
Finance leases	375	808	1,183
Total	1,183	808	1,991

This note also applies to the Court's administered financial instruments and is therefore not reproduced at Note 21.

Note 14E Market risk

The Court holds basic financial instruments that do not expose the Court to certain market risks. The Court is not exposed to currency risk or other price risk.

Interest Rate Risk

The only interest-bearing item on the balance sheet is the 'Finance lease'. All bear interest at a fixed interest rate and will not fluctuate due to changes in the market interest rate.

Note 15: Financial Assets Reconciliation

	2013 \$'000	2012 \$'000
Total financial assets as per balance sheet	47,981	32,199
Less: non-financial instrument components		
Appropriations receivable	46,224	29,718
GST receivable	898	220
Carrying amount of financial assets	47,122	29,938
Total financial assets as per financial instruments note	859	2,261

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 16: Administered – Expenses	2013	2012
	\$'000	\$'000
EXPENSES		
Fees and fines – provision for doubtful debts	(180)	310
Total expenses administered on behalf of government	(180)	310

Note 17: Administered – Income	2013	2012
	\$'000	\$'000
Non-Taxation revenue		
Fees (filing and hearing fees)	16,966	10,446
Fines	147	536
Other	125	79
Total liabilities administered on behalf of Government	17,238	11,061

Note 18: Administered – Financial Assets	2013	2012
	\$'000	\$'000
Note 18A: Cash and cash equivalents		
Cash on hand or on deposit	40	30
Total cash and cash equivalents	40	30
Note 18B: Receivables		
Fees (filing and hearing fees)	2,983	868
Less: Impairment allowance account	(80)	(329)
Total receivables (net)	2,903	539
All receivables are expected to be recovered within 12 months.		
Receivables are aged as follows:		
Not overdue	1,270	183
Overdue by:		
– Less than 30 days	931	198
– 30 to 60 days	320	95
– 60 to 90 days	82	63
– More than 90 days	380	329
Total receivables (gross)	2,983	868
The total of the impairment allowance is aged over 90 days.		
Receivables are with entities external to the Australian Government. Credit terms are net 30 days (2012: 30 days).		
Reconciliation of the impairment allowance account:		
Opening balance	329	98
Increase/decrease recognised in net surplus	(180)	310
Amounts written off	(69)	(79)
Closing balance	80	329

Note 19: Administered – Payables	2013 \$'000	2012 \$'000
Note 19A: Suppliers		
Other payables	304	–
Total suppliers	304	–

Note 20: Administered – Cash Flow Reconciliation	2013 \$'000	2012 \$'000
Reconciliation of cash and cash equivalents as per Administered Schedule of Assets and Liabilities to Administered Cash Flow Statement		
Cash and cash equivalents as per:		
Schedule of administered cash flows	40	30
Schedule of administered assets and liabilities	40	30
Difference	–	–
Reconciliation of net cost of services to net cash from operating activities:		
Net contribution by services	17,418	10,751
Changes in assets/liabilities		
(Increase)/decrease in net receivables	(2,364)	264
Increase/(decrease) in payables	304	(1)
Net cash from operating activities	15,358	11,014

Note 21: Administered Financial Instruments	2013 \$'000	2012 \$'000
Note 21A Categories of financial instruments		
Financial Assets		
Loans and receivables		
Cash	40	30
Trade receivables	2,903	539
Carrying amount of financial assets	2,943	569

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 21B Credit Risk

The administered activities of the Court are not exposed to a high level of credit risk as the majority of financial assets are receivables. The Court has policies and procedures that guide employees who perform debt recovery functions.

The maximum exposure to credit risk is outlined in the table below.

	2013 \$'000	2012 \$'000
Financial Assets		
Loans and Receivables		
Receivables	2,983	868
Total	2,983	868

The Court has assessed the risk of default on payment and has allocated the following amounts to an allowance for doubtful debts account:

Receivables \$79,755 in 2013 (2012: \$328,614)

Credit quality of financial instruments not past due or individually determined as impaired

	NOT PAST DUE NOR IMPAIRED 2013 \$'000	NOT PAST DUE NOR IMPAIRED 2012 \$'000	PAST DUE OR IMPAIRED 2013 \$'000	PAST DUE OR IMPAIRED 2012 \$'000
Loans and receivables				
Cash	40	30	–	–
Trade receivables	1,270	183	1,713	685
Total	1,310	213	1,713	685

Ageing of financial assets that are past due but not impaired for 2013

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Trade receivables	931	320	82	300	1,633
Total	931	320	82	300	1,633

All amounts assessed as impaired are aged greater than 90 days.

Ageing of financial assets that are past due but not impaired for 2012

	0 TO 30 DAYS \$'000	31 TO 60 DAYS \$'000	61 TO 90 DAYS \$'000	90+ DAYS \$'000	TOTAL \$'000
Loans and receivables					
Receivables	198	95	63	0	356
Total	198	95	63	0	356

Note 22: Administered Financial Assets Reconciliation

	2013 \$'000	2012 \$'000
Total financial assets as per balance sheet	2,943	569
Less: non-financial instrument components	–	–
Carrying amount of financial assets	2,943	569
Total financial assets as per financial instruments note	2,943	569

Note 23: Appropriations

Table A: Annual Appropriations ('Recoverable GST exclusive')

	2013 APPROPRIATIONS						APPROPRIATION APPLIED IN 2013 (CURRENT & PRIOR YEARS) \$'000	TOTAL APPROPRIATION \$'000	VARIANCE \$'000
	APPROPRIATION ACT		FMA ACT		SECTION 32 \$'000	SECTION 31 \$'000			
	ANNUAL APPROPRIATION \$'000	APPROPRIATIONS REDUCED (a)	SECTION 30 \$'000	SECTION 30 \$'000					
DEPARTMENTAL									
Ordinary Annual Services	92,689	-	48	3,441	13,579		109,757	15,701	
Other Services									
Equity	-	-	-	-	19		19	19	
Total departmental	92,689	-	48	3,441	13,598		109,776	15,720	

Notes:

(a): Appropriations reduced under *Appropriation Act (No 1) 2012-13*: section 10. Departmental appropriations do not lapse at year end. However, the responsible minister may decide that part or all of an appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

	2012 APPROPRIATIONS						APPROPRIATION APPLIED IN 2012 (CURRENT & PRIOR YEARS) \$'000	VARIANCE \$'000
	APPROPRIATION ACT		FMA ACT		SECTION 31 \$'000	TOTAL APPROPRIATION \$'000		
	ANNUAL APPROPRIATION \$'000	APPROPRIATIONS REDUCED (a)	SECTION 30 \$'000	SECTION 30 \$'000				
DEPARTMENTAL								
Ordinary Annual Services	89,739	-	43	4,344		94,126	(92,539)	1,587
Other Services								
Equity	-	-	-	-	-	-	(88)	(88)
Total departmental	89,739	-	43	4,344		94,126	(92,627)	1,499

Notes:

(a): Appropriations reduced under *Appropriation Act (No 1) 2011-12*: section 10. Departmental appropriations do not lapse at year end. However, the responsible minister may decide that part or all of an appropriation is not required and request that the Finance Minister reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

Table B: Departmental Capital Budgets ('Recoverable GST exclusive')

		2013 CAPITAL BUDGET APPROPRIATIONS		CAPITAL BUDGET APPROPRIATIONS APPLIED IN 2013 (CURRENT AND PRIOR YEARS) \$'000	
		APPROPRIATION ACT			
	ANNUAL CAPITAL BUDGET \$'000	APPROPRIATIONS REDUCED	TOTAL CAPITAL BUDGET APPROPRIATIONS \$'000	PAYMENTS FOR NON-FINANCIAL ASSETS ² \$'000	VARIANCE \$'000
DEPARTMENTAL					
Ordinary Annual Services					
Departmental Capital Budget ¹	3,669	–	3,669	3,663	6

Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Payments made on non-financial assets include purchase of assets, expenditure on assets which have been capitalised, and the capital repayment component of finance leases.

		2012 CAPITAL BUDGET APPROPRIATIONS		CAPITAL BUDGET APPROPRIATIONS APPLIED IN 2012 (CURRENT AND PRIOR YEARS) \$'000	
		APPROPRIATION ACT			
	ANNUAL CAPITAL BUDGET \$'000	APPROPRIATIONS REDUCED	TOTAL CAPITAL BUDGET APPROPRIATIONS \$'000	PAYMENTS FOR NON-FINANCIAL ASSETS ² \$'000	VARIANCE \$'000
DEPARTMENTAL					
Ordinary Annual Services					
Departmental Capital Budget ¹	3,402		3,402	(3,637)	(235)

Notes:

1. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Payments made on non-financial assets include purchase of assets, expenditure on assets which have been capitalised, and the capital repayment component of finance leases.

Table C: Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')

	2013 \$'000	2012 \$'000
Appropriation Act (No 1) 2010–11	598	1,844
Appropriation Act (No 1) 2011–12	–	28,394
Appropriation Act (No 3) 2011–12	–	832
Appropriation Act (No 1) 2012–13	43,418	–
Appropriation Act (No 2) 2012–13	19	–
Appropriation Act (No 3) 2012–13	2,468	–
Total	46,503	31,070

Note 24: Special Accounts and FMA Act Section 39**Note 24A: Special Accounts (Recoverable GST exclusive)**

	SERVICES FOR OTHER ENTITIES AND TRUST MONEYS SPECIAL ACCOUNT ¹		FEDERAL COURT OF AUSTRALIA LITIGANTS FUND ²	
	2013 \$'000	2012 \$'000	2013 \$'000	2012 \$'000
Balance brought forward	12	19	2,258	4,325
Increases:				
Other receipts	434	623	3,928	38,210
Total increases	434	623	3,928	38,210
Available for payments	446	642	6,186	42,535
Decreases:				
Special Public Money				
Payments made to others	398	630	3,102	40,277
Total special public money decreases	398	630	3,102	40,277
Total decreases	398	630	3,102	40,277
Total balance carried to the next period	48	12	3,084	2,258

1. Appropriation: *Financial Management and Accountability Act, 1997*, section 20

Establishing Instrument: FMA Determination 2012/11

Purpose: To disburse amounts held on trust or otherwise for the benefit of a person other than the Commonwealth.

2. Appropriation: *Financial Management and Accountability Act, 1997*, section 20

Establishing Instrument: FMA determination 2004/07

Purpose: The purposes of the Federal Court of Australia Litigant's Fund Special Account, in relation to which amounts may be debited from the Special Account are:

(a) In accordance with:

(i) An order of the Federal Court of Australia or a Judge of that Court under Order 63 rule 4 of the Federal Court Rules; or

(ii) A direction of a Registrar under that Order; and

(b) In any other case in accordance with the order of the Federal Court of Australia or a Judge of that Court.

Note 24B: Investments made under Section 39 of the FMA Act (Recoverable GST exclusive)

	BALANCE BROUGHT FORWARD FROM PREVIOUS PERIOD \$'000	INVESTMENTS MADE \$'000	INVESTMENT INCOME \$'000	TRANSACTIONAL CHARGES \$'000	INVESTMENTS REALISED \$'000	TOTAL BALANCE CARRIED TO THE NEXT PERIOD \$'000
2013						
Federal Court of Australia Litigants Fund	6,111	40,567	393	1	12,415	34,655
Total	6,111	40,567	393	1	12,415	34,655

Moneys held in the special account are invested in interest-bearing bank accounts by order of a judge of the Federal Court of Australia.

Note 24B: Investments made under Section 39 of the FMA Act (Recoverable GST exclusive)

	BALANCE BROUGHT FORWARD FROM PREVIOUS PERIOD \$'000	INVESTMENTS MADE \$'000	INVESTMENT INCOME \$'000	TRANSACTIONAL CHARGES \$'000	INVESTMENTS REALISED \$'000	TOTAL BALANCE CARRIED TO THE NEXT PERIOD \$'000
2012						
Federal Court of Australia Litigants Fund	25,607	2,027	1,460	2	22,981	6,111
Total	25,607	2,027	1,460	2	22,981	6,111

Moneys held in the special account are invested in interest-bearing bank accounts by order of a judge of the Federal Court of Australia.

Note 25: Compliance with Statutory Conditions for Payments from the Consolidated Revenue Fund

Section 83 of the Constitution provides that no amount may be paid out of the Consolidated Revenue Fund except under an appropriation made by law. The Department of Finance and Deregulation provided information to all agencies in 2011 regarding the need for risk assessments in relation to compliance with statutory conditions on payments from special appropriations, including special accounts.

During 2011–12, the Court developed a plan to review exposure of risks of not complying with statutory conditions on payments from appropriations. The plan involved:

- identifying each special appropriation and special account; and
- determining the risk of non-compliance by assessing the difficulty of administering the statutory conditions and assessing the extent to which existing payment systems and processes satisfy those conditions. This risk was determined to be low.

The Court identified 2 accounts involving statutory conditions for payment, comprising 2 special accounts.

The work conducted has identified no issues of non-compliance with Section 83.

During 2012–13 additional legal advice was received by the Government that indicated there could be breaches of Section 83 under certain circumstances with payments for long service leave, goods and services tax and payments under determinations of the Remuneration Tribunal. The Court will review its processes and controls over the payments for these items in 2013–14. The Court is not aware of any specific breaches of Section 83 in respect of these items.

Note 26: Compensation and Debt Relief

	2013	2012
No Act of Grace expenses were incurred during the reporting period under subsection 33(1) of the <i>Financial Management and Accountability Act 1997</i> (2012: nil)	-	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> (2012: nil)	-	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period (2012: nil)	-	-
No ex-gratia payments were provided for during the reporting period (2012: nil)	-	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the <i>Public Service Act 1999</i> (PS Act) during the reporting period (2012: nil)	-	-
ADMINISTERED	2013	2012
	\$	\$
No Act of Grace expenses were incurred during the reporting period under subsection 33(1) of the <i>Financial Management and Accountability Act 1997</i> . (2012: nil)	-	-
No payments were waived during the reporting period under subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> . (2012: nil).	-	-
976 exemptions and waivers of amounts owing to the Commonwealth were made pursuant to sub-regulations 2(4)(a-c), 2A(2)(e-g), 2AA(2)(f-h) of the Federal Court and Federal Circuit Court Regulation 2012. (2012: 1,121)	1,578,561	1,623,802

Note 27: Reporting of Outcomes

Note 27A: Net Cost of Outcome Delivery

The Court has one Output and Outcome:

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 well-being of all Australians.

	OUTCOME 1	
	2013	2012
	\$'000	\$'000
Expenses		
Administered	-	310
Departmental	125,409	115,362
Total	125,409	115,672
Income from non-government sector		
Administered	17,418	11,061
Departmental	2,281	3,316
Total	19,699	14,377
Other own-source income		
Administered	-	-
Departmental	1,060	1,250
Total	1,060	1,250
Net cost/(contribution) of outcome delivery	104,651	100,045

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 27B: Major Classes of Departmental Expenses, Income, Assets and Liabilities by Outcome

	OUTCOME 1	
	2013 \$'000	2012 \$'000
Departmental Expenses		
Judges and Employees	73,798	62,226
Suppliers	46,714	49,892
Depreciation and Amortisation	4,265	3,148
Finance costs	72	85
Other Expenses	560	11
Total	125,409	115,362
Departmental income		
Income from government	119,921	106,536
Sale of goods and services	3,341	4,566
Total	123,262	111,102
Departmental assets		
Cash and cash equivalents	279	1,353
Trade and other receivables	47,702	30,846
Property, plant and equipment	19,965	18,120
Intangibles	2,851	2,611
Other non-financial assets	522	543
Total	71,319	53,473
Departmental liabilities		
Suppliers	1,895	1,185
Leases	812	1,183
Judge and employee provisions	19,910	17,069
Other payables and provisions	2,521	1,349
Total	25,138	20,786

Note 27C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcome

	OUTCOME 1	
	2013 \$'000	2012 \$'000
Administered expenses		
Doubtful debts expense	(180)	310
Total	(180)	310
Administered income		
Non-taxation revenue	17,238	11,061
Total	17,238	11,061
Administered assets		
Cash and cash equivalents	40	30
Trade and other receivables	2,903	539
Total	2,943	569
Administered liabilities		
Other payables	304	–
Total	304	–

Note 28: Net Cash Appropriation Arrangements

	2013 \$'000	2012 \$'000
Total Comprehensive Income attributable to the Court		
Total comprehensive income (loss) less depreciation / amortisation expenses previously funded through revenue appropriation	2,118	(1,112)
Plus non-appropriated expenses		
Depreciation and amortisation expenses	(4,265)	(3,148)
Total comprehensive income (loss) attributable to the Court	(2,147)	(4,260)

APPENDIX 2

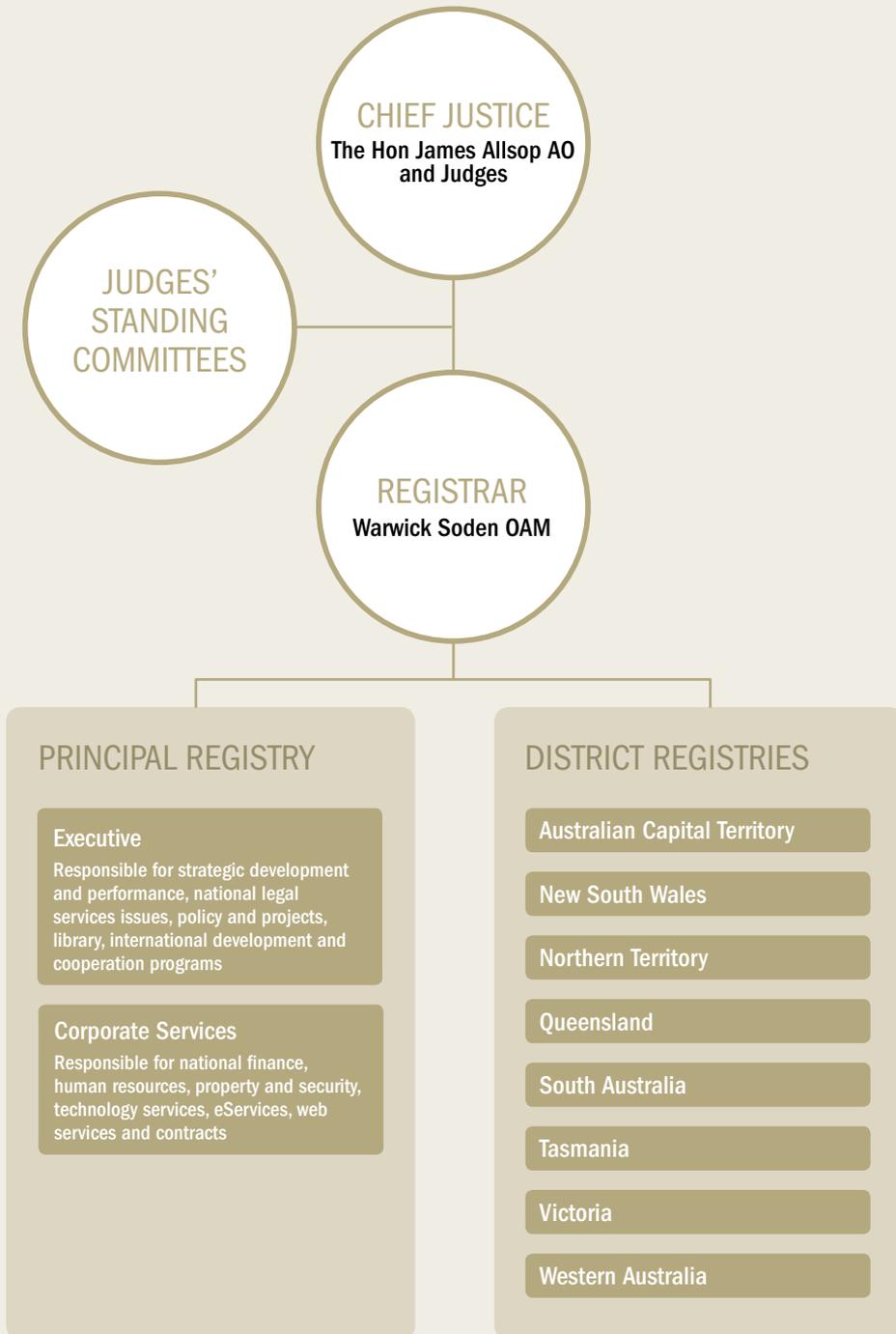
AGENCY RESOURCE STATEMENT

	ACTUAL AVAILABLE APPROPRIATIONS FOR 2012-13 \$'000	PAYMENTS MADE 2012-13 \$'000	BALANCE REMAINING \$'000
ORDINARY ANNUAL SERVICES¹			
Departmental appropriation			
Prior year departmental appropriation	29 718	29 718	–
Departmental appropriation ²	106 288	60 063	46 225
s 31 relevant agency receipts	3 341	3 341	–
Total	139 347	93 122	46 225
Total ordinary annual services	139 347	93 122	46 225
OTHER SERVICES			
Departmental non-operating			
Previous year's outputs			–
Total			–
Total other services			–
Total available annual appropriations	139 347	93 122	46 225
Total appropriations excluding special accounts	139 347	93 122	46 225
Total resourcing	122 876	93 158	29 718
Total net resourcing for Court	122 876	93 158	29 718

¹ Appropriation Bill (No. 1) 2012–13 and Appropriation Bill (No. 2) 2012–13.

² Includes a Departmental Capital Budget of \$3.669m and a s 32 transfer to the Court of \$13.599m. The s 32 transfer is of prior year appropriations of the National Native Title Tribunal.

APPENDIX 3 FEDERAL COURT MANAGEMENT STRUCTURE



APPENDIX 4

REGISTRARS OF THE COURT

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
PRINCIPAL REGISTRY		
Registrar	Warwick Soden OAM	
Deputy Registrars	John Mathieson	Sheriff A Registrar, Federal Circuit Court A Deputy Sheriff, Federal Circuit Court
	Angela Josan	
	Ian Irving (Based in Sydney)	A Registrar, Federal Circuit Court
	Russell Trott (Based in Perth)	A Registrar, Federal Circuit Court
	Christine Fewings (Based in Brisbane)	
	Ann Daniel (Based in Perth)	A Registrar, Federal Circuit Court
	Nicola Colbran (Based in Brisbane)	
NSW SOUTH WALES		
District Registrar	Michael Wall	Registrar, Copyright Tribunal A Registrar, Federal Circuit Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
Deputy District Registrars	Geoffrey Segal	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero	A Registrar, Federal Circuit Court
	Kim Lackenby (Based in Canberra)	A Registrar, Federal Circuit Court
	Paddy Hannigan	A Registrar, Federal Circuit Court
	Chuan Ng	A Registrar, Federal Circuit Court Deputy Registrar, Supreme Court of Norfolk Island
	Thomas Morgan	A Registrar, Federal Circuit Court

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
VICTORIA		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrars	Daniel Caporale	A Registrar, Federal Circuit Court Deputy Registrar, Supreme Court of Norfolk Island
	Timothy Luxton	A Registrar, Federal Circuit Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Julian Hetyey	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Rupert Burns	A Registrar, Federal Circuit Court
	Phillip Allaway	A Registrar, Federal Circuit Court
	David Pringle	A Registrar, Federal Circuit Court
	David Priddle	A Registrar, Federal Circuit Court
QUEENSLAND		
District Registrar	Heather Baldwin	Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrars	Murray Belcher	A Registrar, Federal Circuit Court
	Katie Lynch	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
WESTERN AUSTRALIA		
District Registrar	Martin Jan PSM	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrars	Elizabeth Stanley	A Registrar, Federal Circuit Court
	Rainer Gilich	A Registrar, Federal Circuit Court

APPENDIX 4

REGISTRARS OF THE COURT

REGISTRY	NAME	APPOINTMENTS UNDER OTHER ACTS
SOUTH AUSTRALIA		
District Registrar	Patricia Christie	Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court
Deputy District Registrar	Katrina Bochner	A Registrar, Federal Circuit Court
TASMANIA		
District Registrar	Catherine Scott	District Registrar, Administrative Appeals Tribunal A Registrar, Federal Circuit Court
AUSTRALIAN CAPITAL TERRITORY		
District Registrar	Michael Wall (Based in Sydney)	Registrar, Copyright Tribunal A Registrar, Federal Circuit Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
Deputy District Registrars	Geoffrey Segal (Based in Sydney)	A Registrar, Federal Circuit Court Deputy Registrar, Australian Competition Tribunal
	Anthony Tesoriero (Based in Sydney)	A Registrar, Federal Circuit Court
	Kim Lackenby	A Registrar, Federal Circuit Court
	Paddy Hannigan (Based in Sydney)	A Registrar, Federal Circuit Court
	Chuan Ng (Based in Sydney)	A Registrar, Federal Circuit Court Deputy Registrar, Supreme Court of Norfolk Island
	Thomas Morgan (Based in Sydney)	A Registrar, Federal Circuit Court
NORTHERN TERRITORY		
District Registrar	Patricia Christie (Based in Adelaide)	Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Circuit Court

APPENDIX 5

WORKLOAD STATISTICS

The statistics in this appendix provide comparative historical information on the work of the Court, including in certain areas of the Court's jurisdiction.

When considering the statistics it is important to note that matters vary according to the nature and complexity of the issues in dispute.

It should also be noted that the figures reported in this report may differ from figures reported in previous years. The variations have occurred through refinements or enhancements to the Casetrack database which necessitated the checking or verification and possible variation of data previously entered.

Casetrack records matters in the Court classified according to sixteen main categories, described as 'causes of action' (CoA). The Court presently reports on filings by major CoA. This is an under representation of the workload as it does not include filings of supplementary CoAs (cross appeals and cross claims), interlocutory applications or Native Title joinder of party applications. In 2007–08 the Court started to count and report on interlocutory applications (including interim applications and notices of motion) in appellate proceedings in order to provide the most accurate possible picture of the Court's appellate workload. From 2008–09 the Court has counted all forms of this additional workload in both its original and appellate jurisdictions.

Table A5.4 on pages 143–144 provides a breakdown of these matters. At this stage it is not possible to obtain information about finalisations of interlocutory applications (because they are recorded in the Court's case management system as a document filed rather than a specific CoA). Because of this, detailed reporting of these matters has been restricted to the information about appeals in Part 3 and Table A5.4. All other tables and figures in this Appendix and through the Report are based on major CoA.

APPENDIX 5

WORKLOAD STATISTICS

Table A5.1 – Summary of Workload Statistics – Original and Appellate Jurisdictions Filings of Major CoAs (including Appellate and Related Actions)

CAUSE OF ACTION	2008-09	2009-10	2010-11	2011-12	2012-13
Total CoAs (inc. Appeals & Related Actions)					
Filed	3862	3646	4942	5279	5802
FINALISED	4120	3523	4610	5787	5557
Current	2692	2815	3147	2639	2884
Corporations (inc. Appeals & Related Actions)					
Filed	1674	1678	2839	3328	3896
FINALISED	1738	1400	2533	3772	3511
Current	475	753	1059	615	1000
Bankruptcy (inc. Appeals & Related Actions)					
Filed	208	188	217	185	216
FINALISED	235	169	206	193	217
Current	78	97	108	100	99
Native Title (inc. Appeals & Related Actions)					
Filed	42	36	83	98	61
FINALISED	92	67	83	107	84
Current	504	473	473	464	441
Total CoAs (inc. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	1938	1744	1803	1668	1629
FINALISED	2055	1887	1788	1715	1745
Current	1635	1492	1507	1460	1344

Table A5.2 – Summary of Workload Statistics – Excluding Appeals and related actions Filings of Major CoAs

CAUSE OF ACTION	2008-09	2009-10	2010-11	2011-12	2012-13
Total CoAs (ex. Appeals & Related Actions)					
Filed	2988	2951	4304	4664	5169
FINALISED	3196	2774	4006	5116	4923
Current	2333	2510	2808	2356	2602
Corporations (ex. Appeals & Related Actions)					
Filed	1636	1642	2798	3284	3849
FINALISED	1710	1371	2492	3719	3474
Current	456	727	1033	598	973
Bankruptcy (ex. Appeals & Related Actions)					
Filed	148	127	144	131	174
FINALISED	171	128	133	132	165
Current	61	60	71	70	79
Native Title (ex. Appeals & Related Actions)					
Filed	37	33	73	87	50
FINALISED	87	62	74	93	78
Current	498	469	468	462	434
Total CoAs (ex. Appeals & Related Actions & excluding Corporations, Bankruptcy & Native Title)					
Filed	1167	1149	1289	1162	1096
FINALISED	1228	1213	1307	1172	1206
Current	1318	1254	1236	1226	1116

APPENDIX 5

WORKLOAD STATISTICS

Table A5.3 – Summary of Workload Statistics – Appeals and Related Actions only
Filings of Appeals and Related Actions

CAUSE OF ACTION	2008-09	2009-10	2010-11	2011-12	2012-13
Total Appeals & Related Actions					
Filed	874	695	638	615	633
FINALISED	924	749	604	671	634
Current	359	305	339	283	282
Corporations Appeals & Related Actions					
Filed	38	36	41	44	47
FINALISED	28	29	41	53	37
Current	19	26	26	17	27
Migration Appeals & Related Actions					
Filed	515	376	253	243	315
FINALISED	615	420	266	240	324
Current	140	96	83	86	109
Native Title Appeals & Related Actions					
Filed	5	3	10	11	11
FINALISED	5	5	9	14	6
Current	6	4	5	2	7
Total Appeals & Related Actions (ex. Corporations, Migration & Native Title Appeals & Related Actions)					
Filed	316	280	334	317	260
FINALISED	276	295	288	364	267
Current	194	179	225	178	139

Table A5.4 – Summary of supplementary workload statistics

CAUSE OF ACTION	2008-09	2009-10	2010-11	2011-12	2012-13
Total CoAs (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	5	6	3	0	0
Cross Claims	190	205	242	186	165
Interlocutory Applications	1619	1608	1892	1693	1673
Native Title (NT) Joinder of party applications	482	364	628	405	982
Appeals & Related Actions					
Cross Appeals	21	15	38	11	16
Interlocutory Applications	234	220	247	179	138
Total Actions (including Appeals & Related Actions)					
Cross Appeals	26	21	41	11	16
Cross Claims	190	205	242	186	165
Interlocutory Applications	1853	1828	2139	1872	1811
NT Joinder of party applications	482	364	628	405	982
TOTALS	2551	2418	3050	2474	2974

APPENDIX 5

WORKLOAD STATISTICS

FINALISATIONS OF SUPPLEMENTARY CAUSES OF ACTION	2008-09	2009-10	2010-11	2011-12	2012-13
Total Actions (excluding Appeals & Related Actions)					
Cross Appeals (original jurisdiction)	1	5	7	1	2
Cross Claims	174	173	169	165	205
NT Joinder of party applications	482	364	628	405	982
Appeals & Related Actions					
Cross Appeals	23	9	25	35	5
Total Actions (including Appeals & Related Actions)					
Cross Appeals	24	14	32	36	7
Cross Claims	174	173	169	165	205
NT Joinder of party applications	482	364	628	405	982
TOTALS	680	551	829	606	1194

CURRENT CROSS APPEALS & CROSS CLAIMS AT 30 JUNE 2013	
Appeals & Related Actions	
Cross Appeals	21
Total Supplementary CoAs (excluding Appeals & Related Actions)	
Cross Appeals (original jurisdiction)	1
Cross Claims	312
Total Supplementary CoAs (including Appeals & Related Actions)	
Cross Appeals	22
Cross Claims	312
TOTALS	334

Figure A5.1 – Matters filed over the last five years

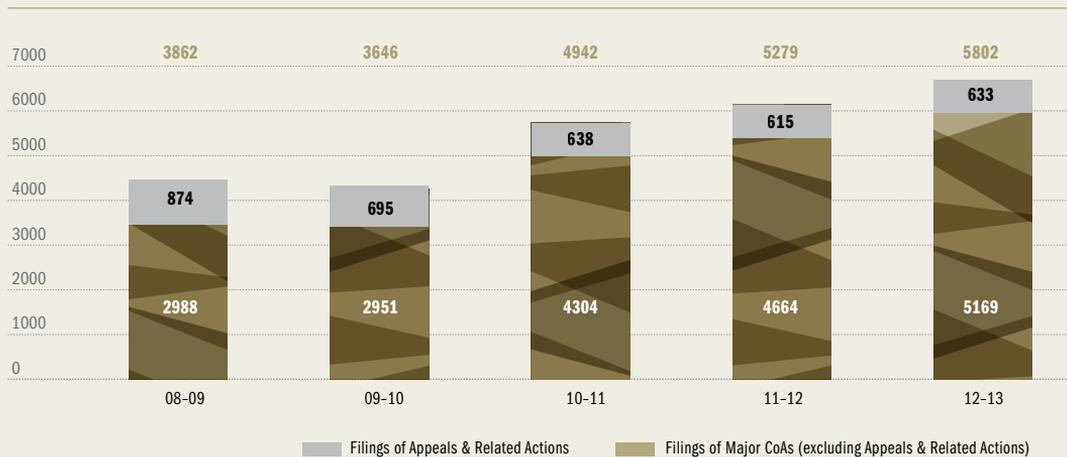
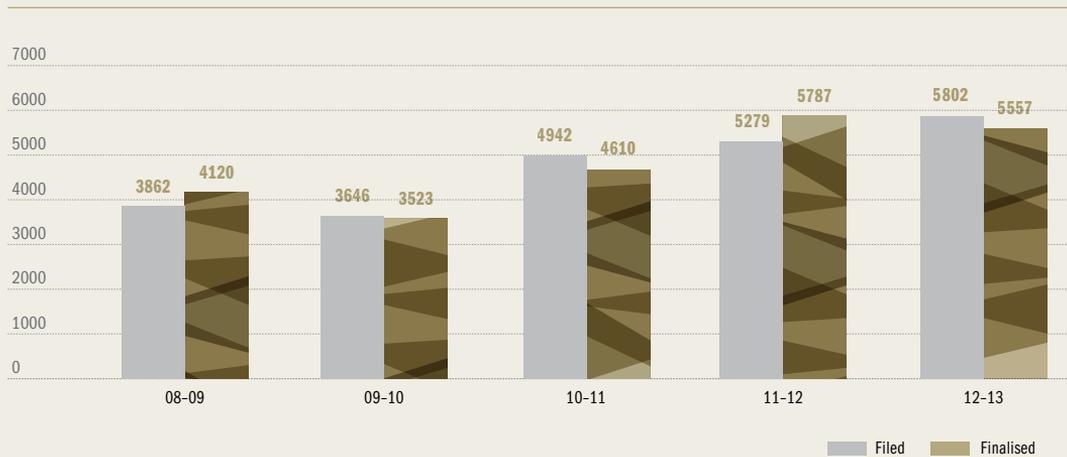


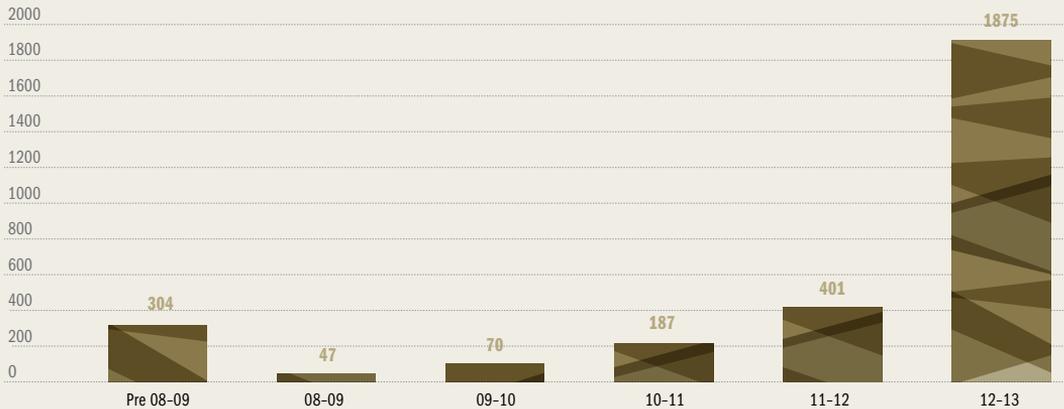
Figure A5.2 – Matters filed and finalised over the last five years



The number finalised refers to those matters finalised in the relevant financial year, regardless of when they were originally filed.

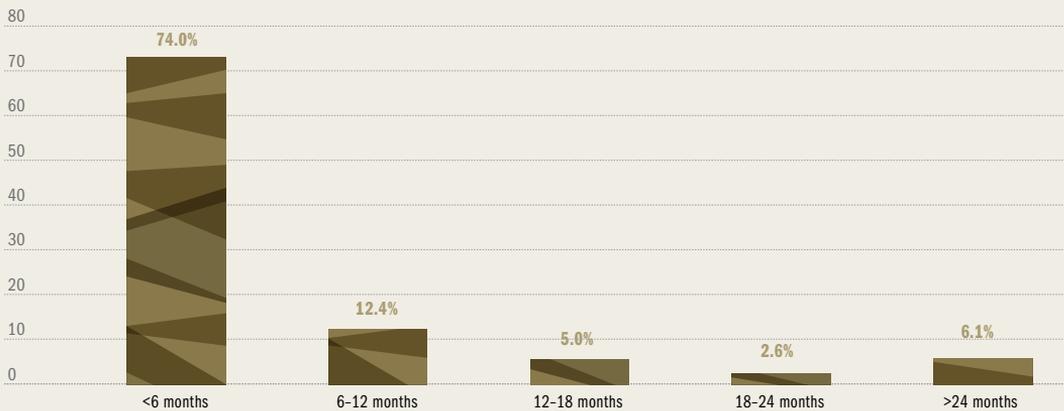
APPENDIX 5 WORKLOAD STATISTICS

Figure A5.3 – Age and number of current matters at 30 June 2013



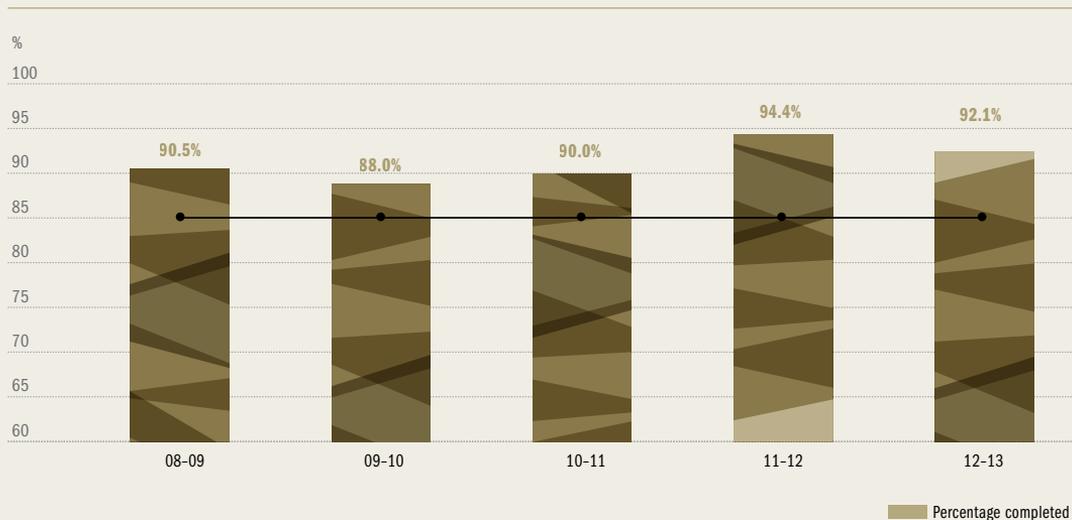
A total of 2884 matters remain current at 30 June 2013. There were 304 applications still current relating to periods before those shown in Figure A5.3. Over eighty-nine per cent of cases prior to 2009 are native title matters.

Figure A5.4 – Time span to complete – Matters completed (excl. native title) over the last five years



A total of 23 203 matters were completed during the five year period ending 30 June 2013, excluding native title matters. The time span, from filing to disposition of these matters, is shown in Figure A5.4 above.

Figure A5.5 – Time span to complete against the benchmark (excl. native title) over the last five years



The Court has a benchmark of eighty-five per cent of cases (excluding native title) being completed within eighteen months of commencement. Figure A5.5 sets out the Court’s performance against this time goal over the last five years. The total number of matters (including appeals but excluding Native Title) completed for each of the last five years and the time span for completion are shown below in Table A5.5.

Table A5.5 – Finalisation of major CoAs in accordance with 85% benchmark (including appeals and related actions and excluding native title matters)

PERCENTAGE COMPLETED	2008-09	2009-10	2010-11	2011-12	2012-13
Under 18 months	3648	3044	4082	5373	5048
% of Total	90.5%	88.0%	90.0%	94.4%	92.1%
Over 18 months	385	417	454	321	431
% of Total	9.5%	12.0%	10.0%	5.6%	7.9%
Total CoAs	4033	3461	4536	5694	5479

APPENDIX 5 WORKLOAD STATISTICS

Figure A5.6 – Bankruptcy Act matters (excl. appeals) filed over the last five years

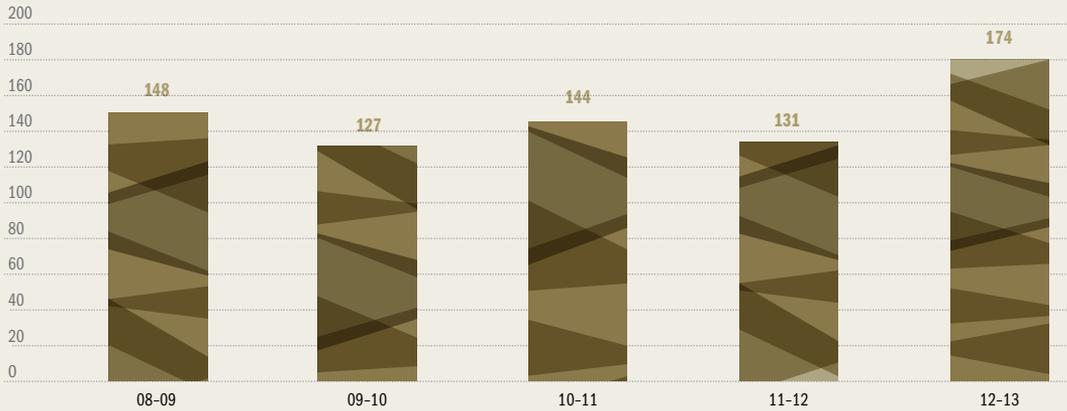
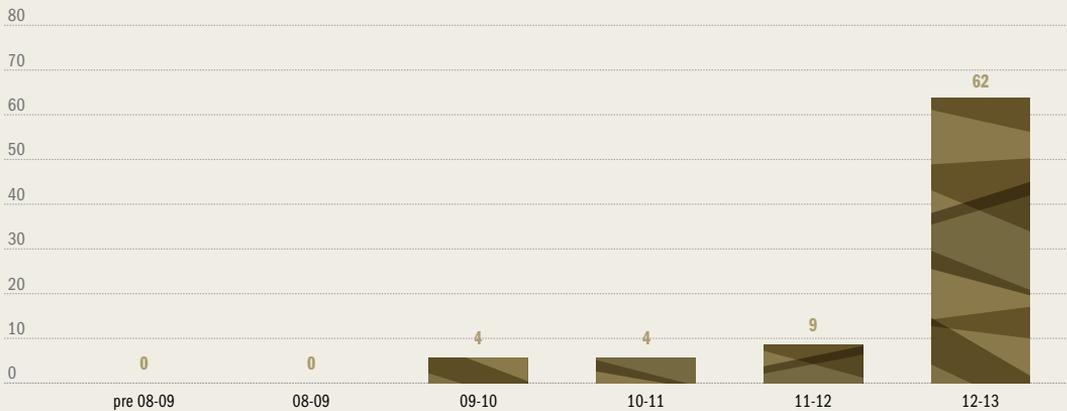


Figure A5.6.1 – Current Bankruptcy Act matters (excl. appeals) by year of filing



A total of 79 Bankruptcy Act matters remain current as at 30 June 2013.

Figure A5.7 – Corporations Act matters (excl. appeals) filed over the last five years

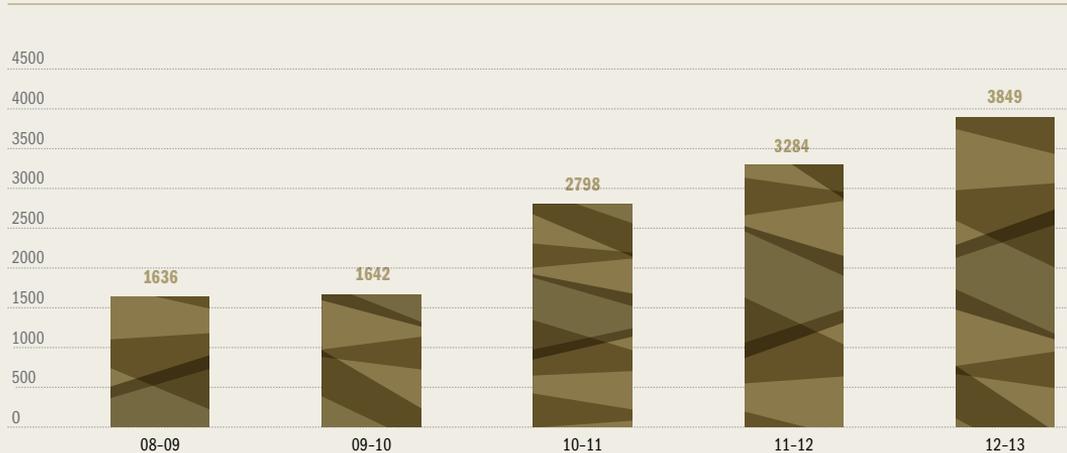
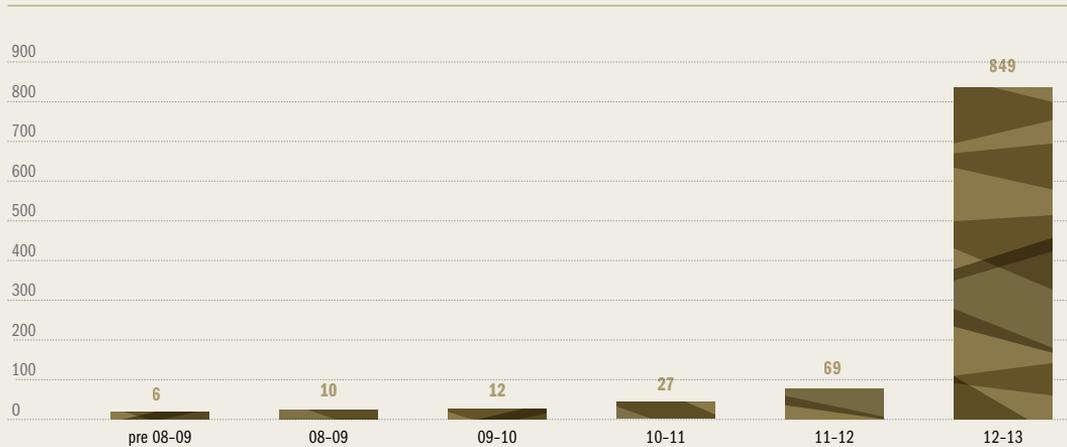


Figure A5.7.1 – Current Corporations Act matters (excl. appeals) by year of filing



A total of 973 Corporations Act matters remain current as at 30 June 2013.

APPENDIX 5 WORKLOAD STATISTICS

Figure A5.8 – Consumer Law matters (excl. competition law and appeals) filed over the last five years

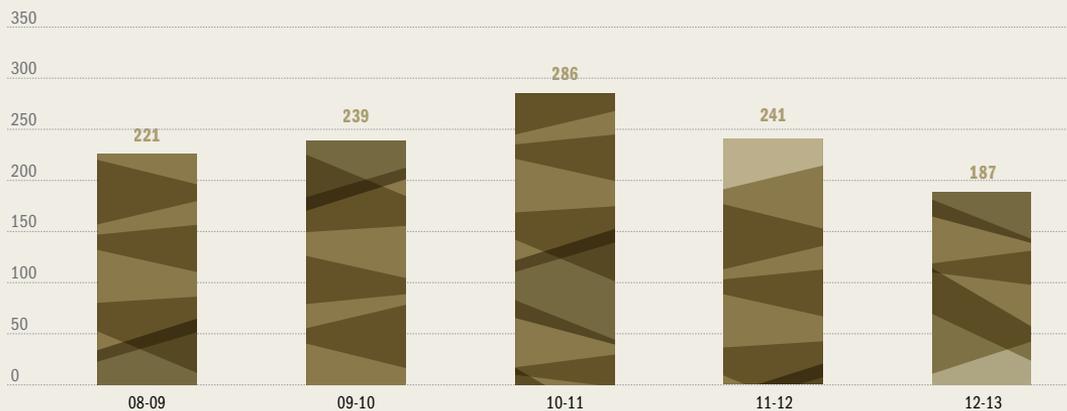
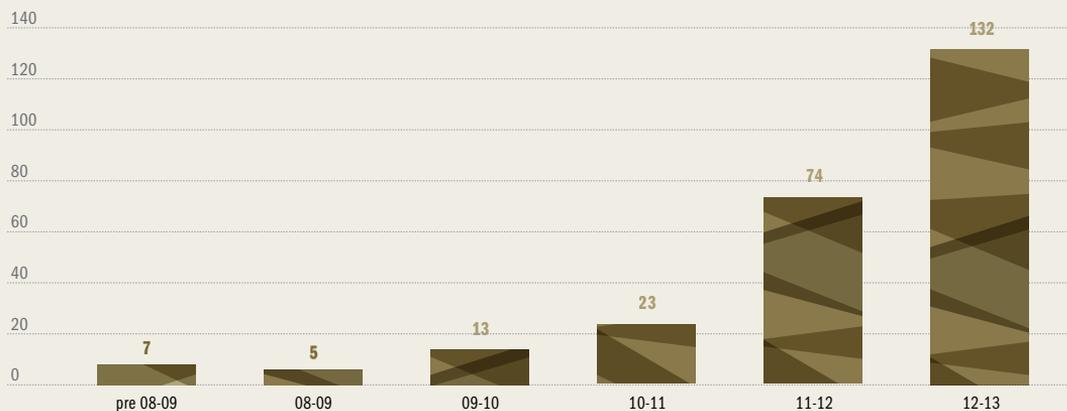
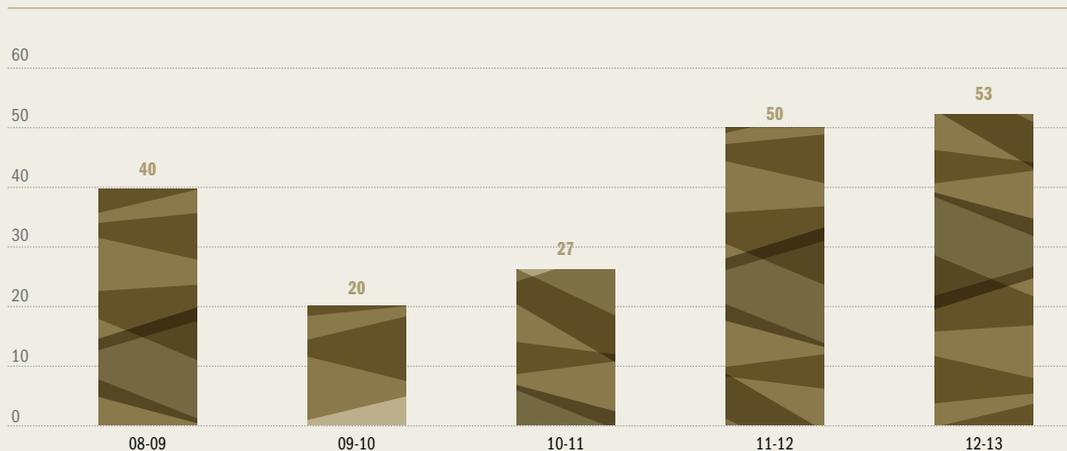


Figure A5.8.1 – Current Consumer Law matters (excl. competition law and appeals) by year of filing



A total of 254 Consumer Law matters remain current as at 30 June 2013.

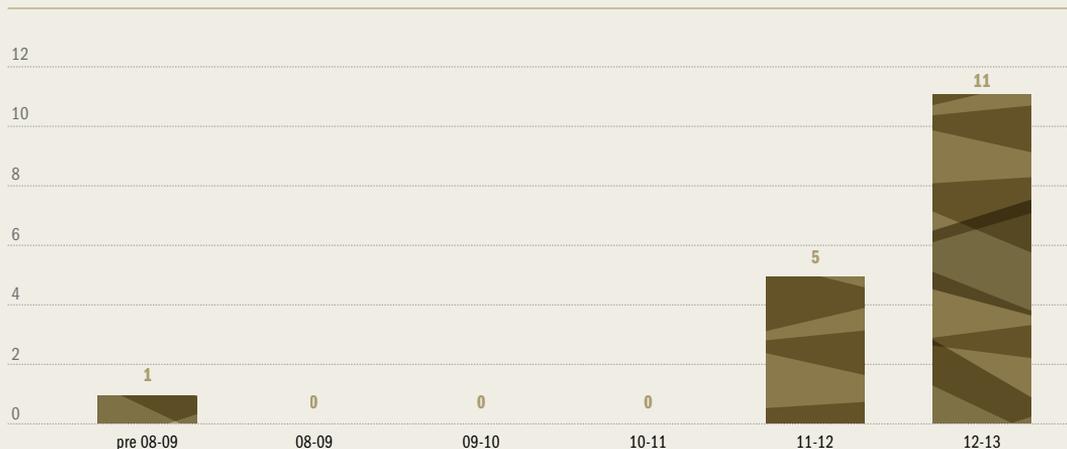
Figure A5.9 – Migration Act matters (excl. appeals) filed over the last five years



These figures include migration applications filed under the Judiciary Act, Administrative Decisions (Judicial Review) Act and Migration Act.

Since 1 December 2005, when the Migration Litigation Reform Act commenced, almost all first instance migration cases have been filed in the Federal Circuit Court.

Figure A5.9.1 – Current Migration Act matters (excl. appeals) by year of filing



A total of 17 Migration Act matters remain current as at 30 June 2013.

APPENDIX 5 WORKLOAD STATISTICS

Figure A5.10 – Admiralty Act matters (excl. appeals) filed over the last five years

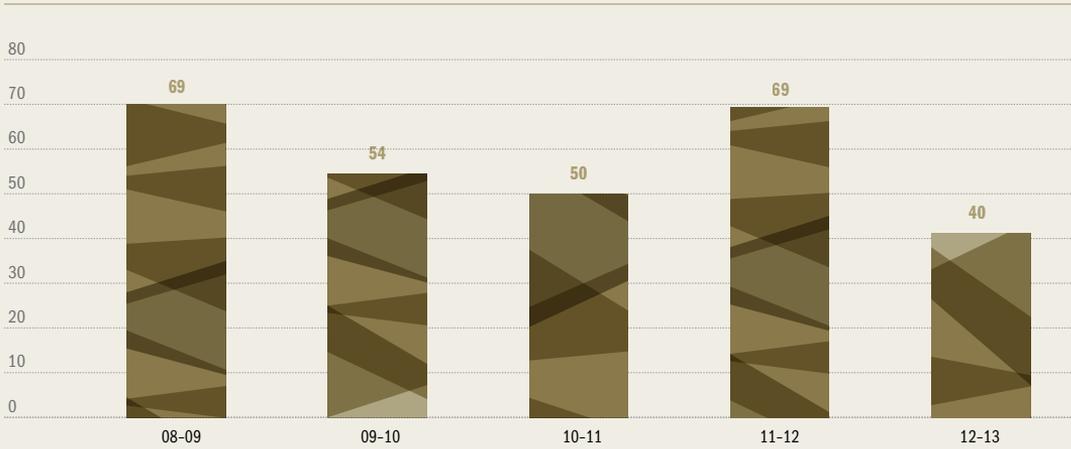
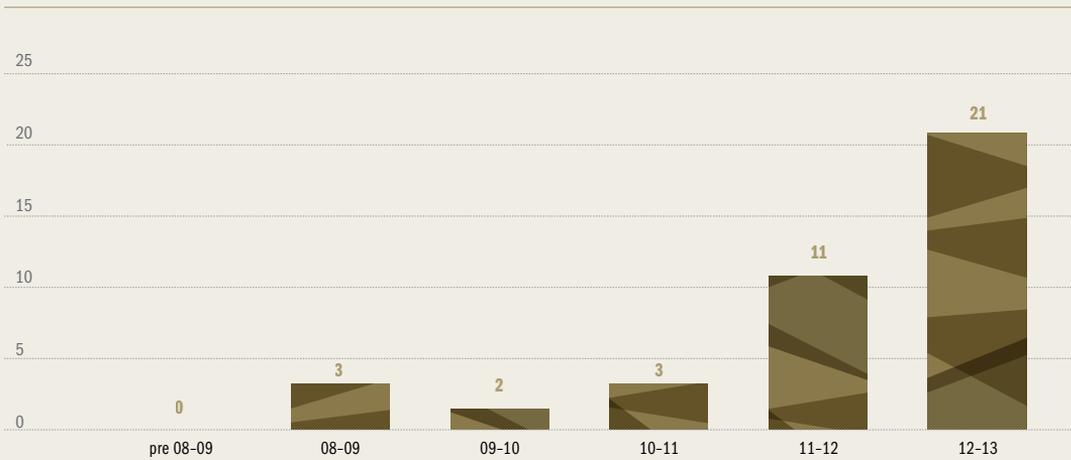


Figure A5.10.1 – Current Admiralty Act matters (excl. appeals) by year of filing



A total of 40 Admiralty Act matters remain current as at 30 June 2013.

Figure A5.11 – Native Title Act matters (excl. appeals) filed over the last five years

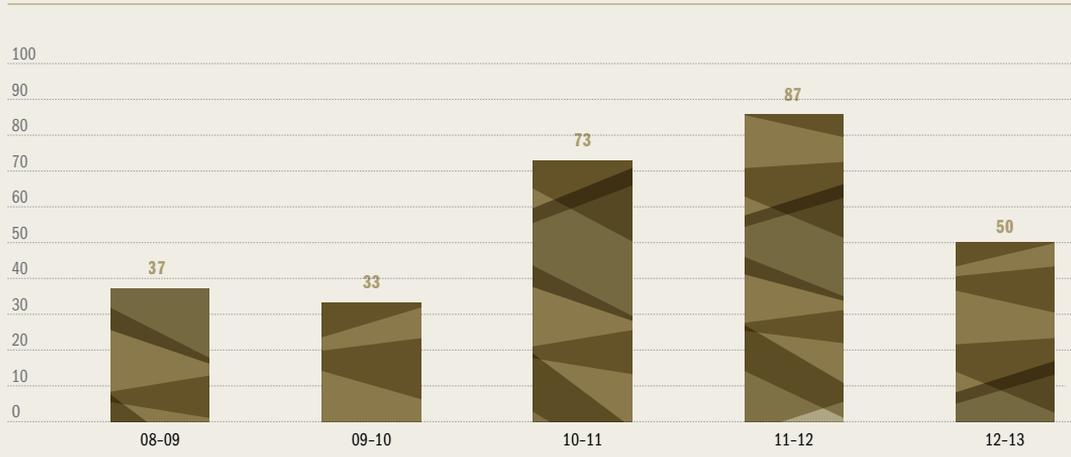
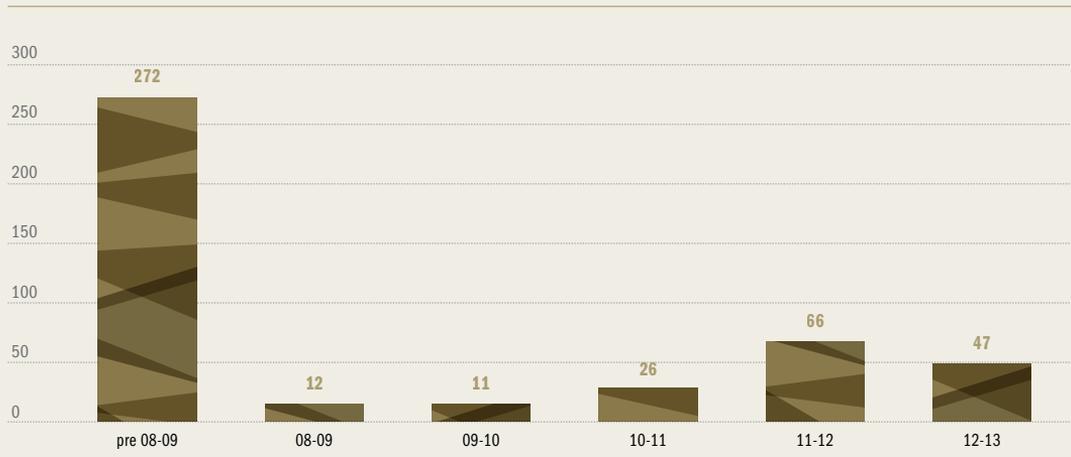


Figure A5.11.1 – Current Native Title Act matters (excl. appeals) by year of filing



A total of 434 Native Title matters remain current as at 30 June 2013.

APPENDIX 5 WORKLOAD STATISTICS

Figure A5.12 – Workplace Relations/Fair Work matters (excl. appeals) filed over the last five years

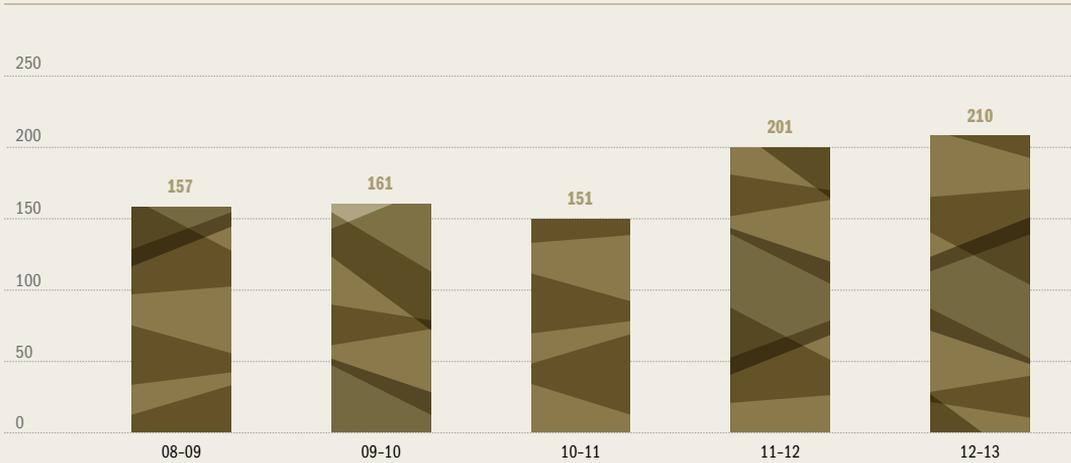
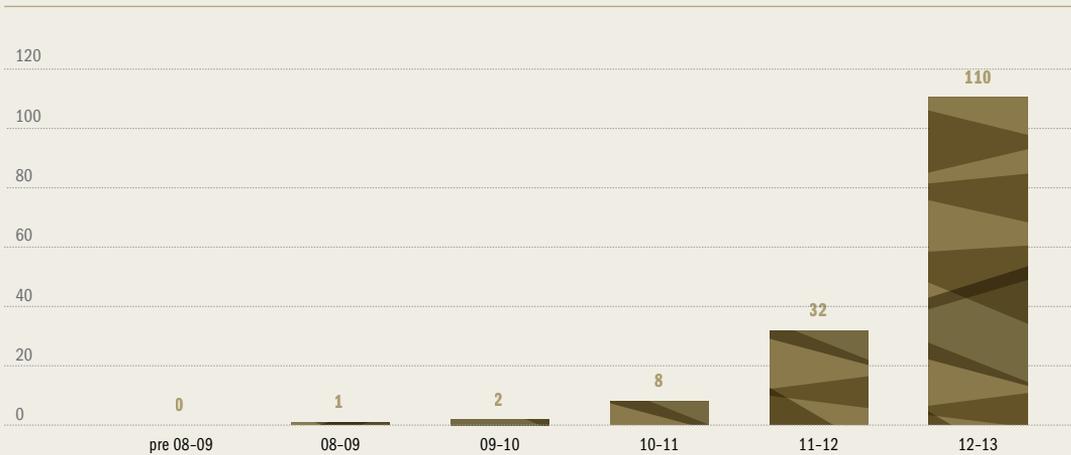


Figure A5.12.1 – Current Workplace Relations/Fair Work matters (excl. appeals) by year of filing



A total of 153 Workplace Relations/Fair Work cases remain current as at 30 June 2013.

Figure A5.13 – Taxation matters (excl. appeals) filed over the last five years

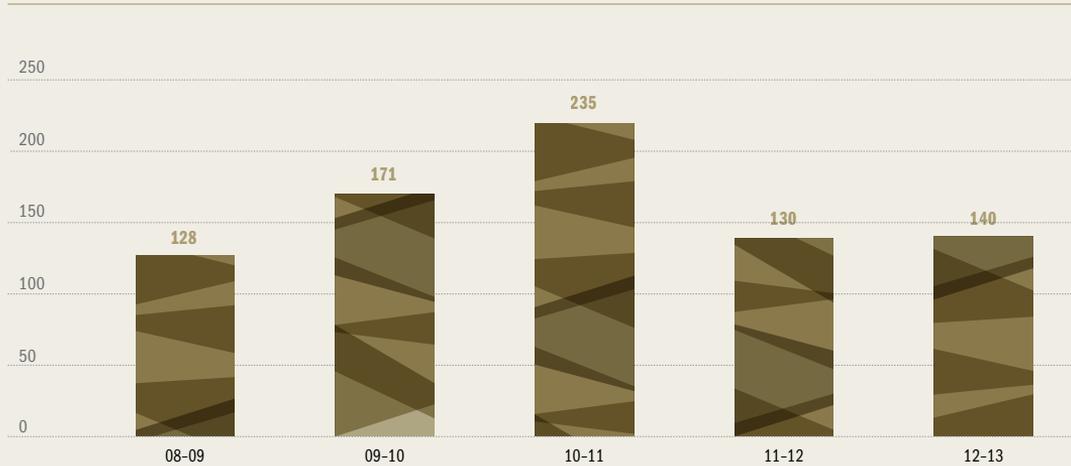
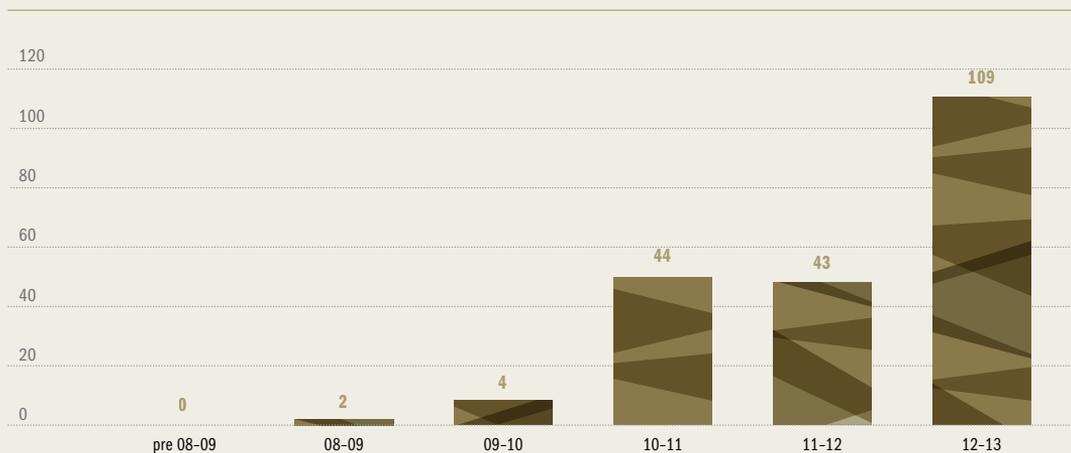


Figure A5.13.1 – Current Taxation matters (excl. appeals) by year of filing



A total of 202 taxation cases remain current as at 30 June 2013.

APPENDIX 5 WORKLOAD STATISTICS

Figure A5.14 – Intellectual Property Matters (excl. appeals) filed over the last five years

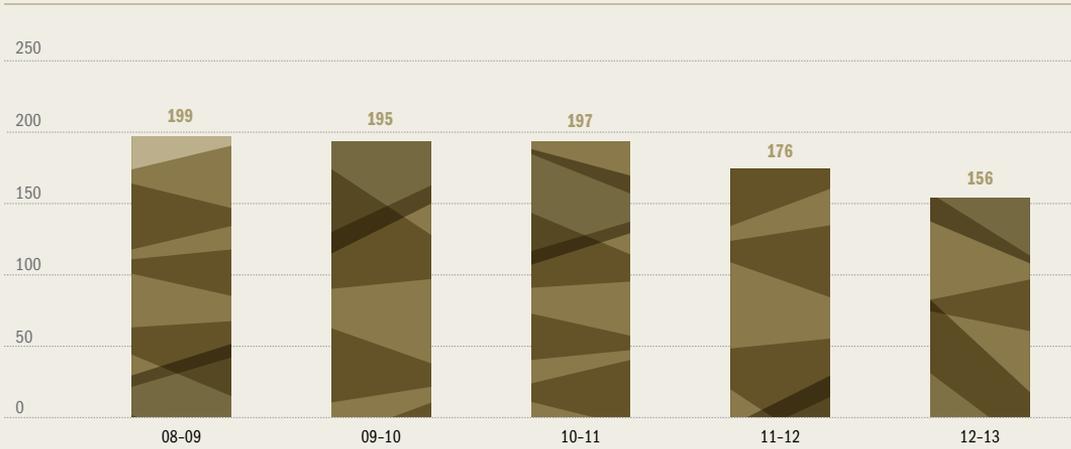
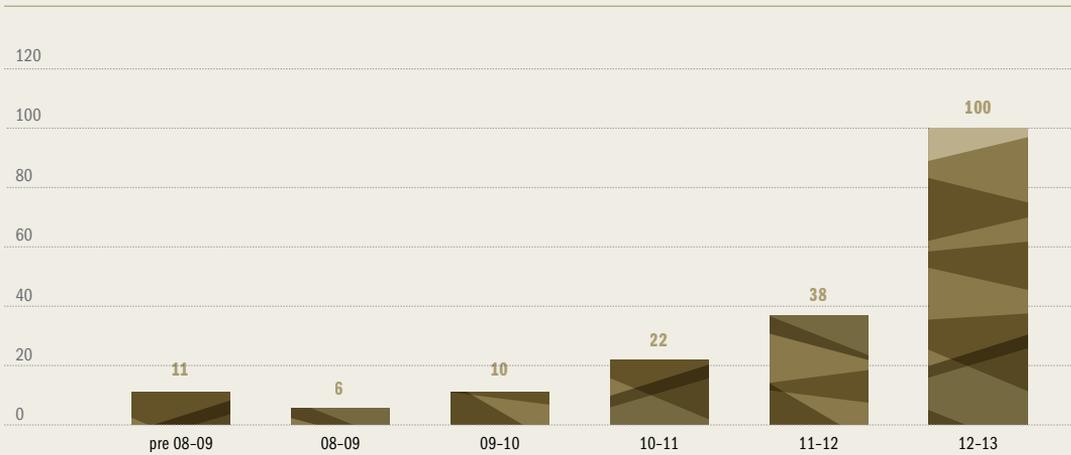


Figure A5.14.1 – Current Intellectual Property matters (excl. appeals) by year of filing



A total of 187 intellectual property cases remain current as at 30 June 2013.

Figure A5.15 – Appeals and Related Actions filed over the last five years

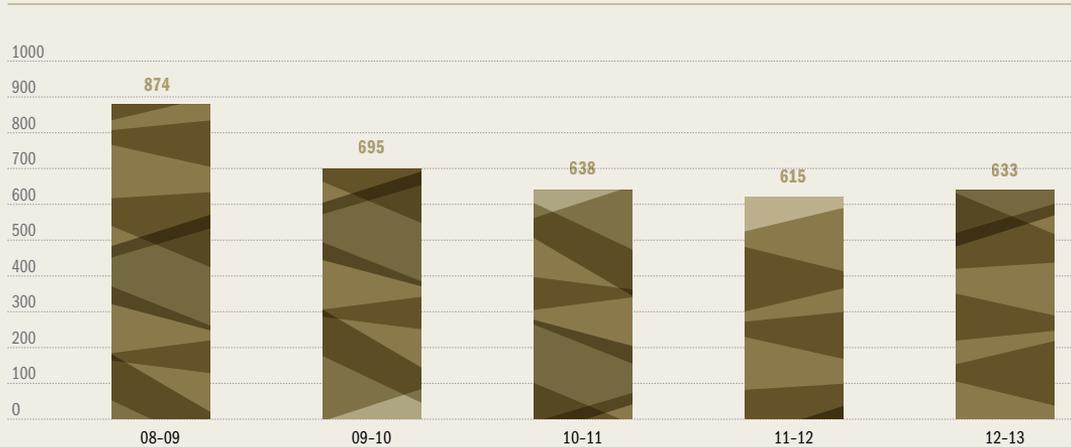
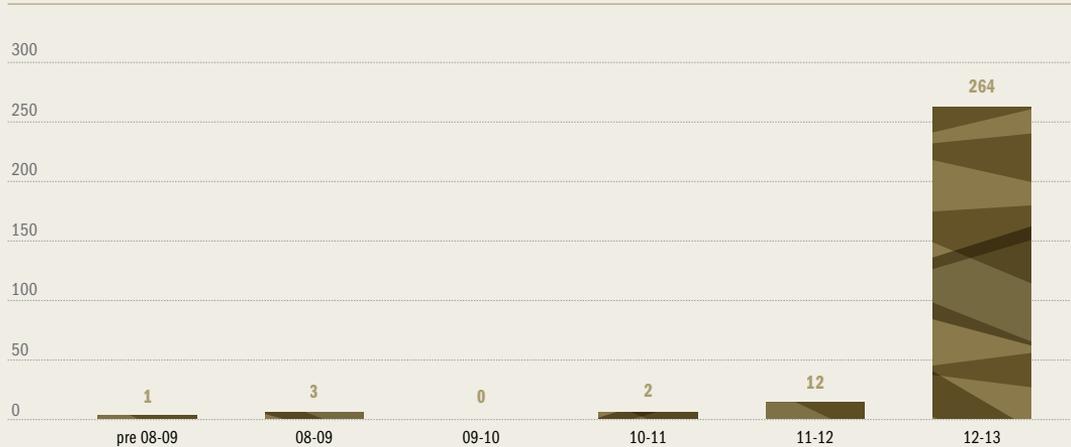


Figure A5.15.1 – Current Appeals and Related Actions by date filed



A total of 282 Appeals and Related Actions remain current as at 30 June 2013.

APPENDIX 5 WORKLOAD STATISTICS

Figure A5.16 – Source of Appeals and Related Actions over the last five years

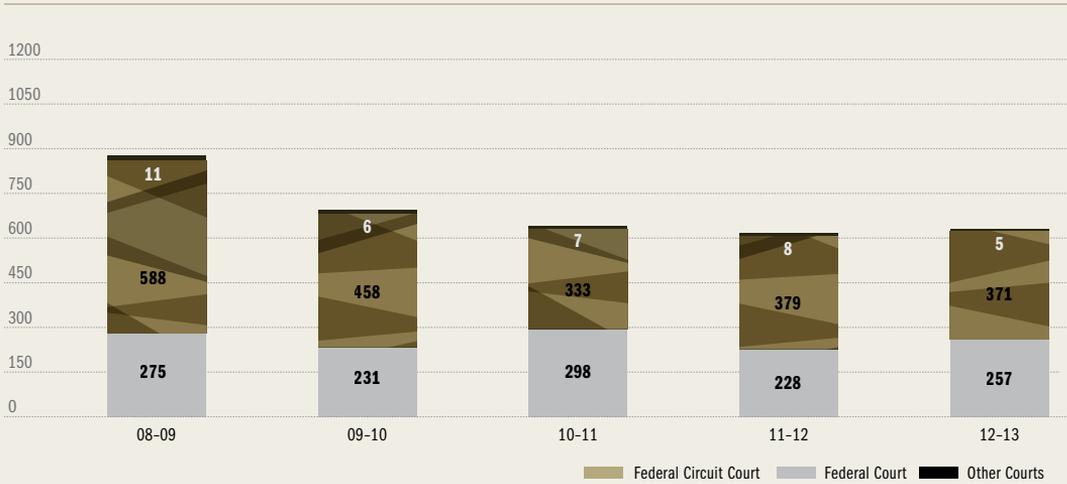


Table A5.6 – Appeals and Related Actions (excluding interlocutory applications)

SOURCE	2008-09		2009-10		2010-11		2011-12		2012-13	
Federal Court	275	31.5%	231	33.2%	298	46.7%	228	37.1%	257	40.6%
Federal Circuit Court	588	67.3%	458	65.9%	333	52.2%	379	61.6%	371	58.6%
Other	11	1.3%	6	0.9%	7	1.1%	8	1.3%	5	0.8%
Total by Period	874		695		638		615		633	

APPENDIX 6

WORK OF TRIBUNALS

The following summarises the work of the Australian Competition Tribunal, the Copyright Tribunal and the Defence Force Discipline Appeal Tribunal during the reporting year.

AUSTRALIAN COMPETITION TRIBUNAL

Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 1965* and continues under the *Competition and Consumer Act 2010* (the Act) to hear applications for the review of:

- Determinations by the Australian Competition and Consumer Commission (ACCC) in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Act for being anti-competitive.
- Decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines.
- Determinations by the ACCC in relation to notices issued under s 93 of the Act in relation to exclusive dealing.
- Determinations by the ACCC granting or refusing clearances for company mergers and acquisitions.

The Tribunal also hears applications for authorisation of company mergers and acquisitions which would otherwise be prohibited under the Act.

A review by the Tribunal is a re-hearing of a matter and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of the review. It can affirm, set aside or vary the decision under review. The Tribunal also has power to inquire into, and report to the Minister on, whether a non-conference ocean carrier has a substantial degree of market power on a trade route.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Act and regulations within the discretion of the Tribunal. The Competition and Consumer Regulations 2010 sets out some procedural requirements in relation to the making and hearing of review applications.

Proceedings are conducted with as little formality and technicality and with as much expedition as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

The Tribunal has been given additional jurisdiction to review 'reviewable regulatory decisions' of the Australian Energy Regulator (AER): National Electricity Law, s 71B(1), and 71A (definitions). These reviewable regulatory decisions include:

- a network revenue or pricing determination that sets a regulatory period or
- any other determination (including a distribution determination or transmission determination) or decision of the AER under the National Electricity Rules that is prescribed by the Regulations.

APPENDIX 6

WORK OF TRIBUNALS

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. During 2012–13 the following changes were announced to the membership of the Tribunal which will take effect in 2013–14:

- Justice Kathleen Farrell was appointed as a part-time Deputy President of the Tribunal for a five-year term commencing on 21 August 2013
- Mr Robin Davey, Mr Grant Latta AM and Professor David Round were each reappointed as part-time members of the Tribunal for a five-year period commencing on 17 July 2013
- Mr Ray Steinwall was reappointed as a part-time member of the Tribunal for a five-year period commencing on 12 December 2013.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 4 on page 136.

Activities

Three matters were current at the start of the reporting year. During the year, six matters were commenced and six matters were finalised, three matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Application by DBNGP (WA) Transmission Pty Ltd (No 3) [2012] ACompT 14 (26 July 2012)

Applications by Robe River Mining Co Pty Ltd and Hamersley Iron Pty Ltd [2013] ACompT 2 (8 February 2013)

Application by Co-operative Bulk Handling Limited (No 3) [2013] ACompT 3 (19 April 2013)

COPYRIGHT TRIBUNAL

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* to hear applications dealing with four main types of matters:

- To determine the amounts of equitable remuneration payable under statutory licensing schemes.
- To determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems.
- To declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a State.
- To determine a wide range of issues in relation to the statutory licensing scheme in favour of government.

The *Copyright Amendment Act 2006*, assented to on 11 December 2006, has given the Tribunal more jurisdiction, including to hear disputes between collecting societies and their members.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Copyright Act and regulations and is also within the discretion of the Tribunal. The Copyright Tribunal (Procedure) Regulations 1969 set out procedural requirements for the making and hearing of applications.

Proceedings are conducted with as little formality and technicality and as quickly as the requirements of the Act, and a proper consideration of the matters before the Tribunal, permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. During the reporting year the following change occurred to the membership:

- Justice Arthur Emmett resigned as President of the Tribunal with effect from 6 March 2013.
- Justice Nye Perram is acting President of the Tribunal.
- The Registrar of the Tribunal is an officer of the Federal Court. Details are set out in Appendix 4 on page 136.

Activities

There was a typographical error in the 2011–12 Annual Report which indicated that there were three matters pending at the end of the reporting year. A matter was finalised very close to the end of the reporting period and was not counted when the Report was compiled.

Two matters were current at the start of the reporting year. During the year one new matter was filed and no matters finalised; there are three matters pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

APPENDIX 6

WORK OF TRIBUNALS

DEFENCE FORCE DISCIPLINE APPEAL TRIBUNAL

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1955* (Cth) (Act). Pursuant to s 20 of the Act, a convicted person may bring an appeal to the Tribunal against his or her conviction and/or against a punishment imposed or court order made in respect of that conviction.

Following the decision of the High Court of Australia in *Lane v Morrison* (2009) 239 CLR 230, the Defence Force Discipline Appeals Act was amended by operation of the *Military Justice (Interim Measures) Act (No. 1) 2009* (Cth). In the main, references in the Act to the Australian Military Court were replaced with references to courts martial and Defence Force magistrates. Accordingly, appeals to the Tribunal now lie from decisions of courts martial and Defence Force magistrates, rather than from the Australian Military Court.

The Tribunal has the power to hear and determine appeals and questions of law.

Practice and procedure

Formal determination of sitting dates has been introduced. Under s 14(1) of the Act, the sittings of the Tribunal will be held at places to be further determined on the following dates, subject to the availability of business: 26–27 September 2013, 24–25 October 2013, 13–14 December 2013 and 26–27 March 2014.

Otherwise, the procedure of the Tribunal is within its discretion.

Membership and staff

The Tribunal consists of a President, a Deputy President and such other members as are appointed by the Governor-General. During the reporting year Justices Dean Mildren and Margaret White retired from the Tribunal.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 4 on page 136.

Activities

One matter was current at the start of the reporting year. During the year, five matters were commenced and three matters were finalised. There are three matters pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

[2012] ADFDAT 1 – *Li v Chief of Army* (DFDAT 2 of 2011)

[2013] ADFDAT 3 – *King v Chief of Navy* (DFDAT 5 of 2012)

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

HIGH COURT AND FEDERAL COURT – original jurisdiction – whether there is a ‘matter’ before the Court within meaning of s 39B of the *Judiciary Act 1903 (Cth)* and Chapter III of the Constitution – declarations – whether circumstances warranted a rare exercise of discretion to grant of declaratory relief in respect of possible criminality and partially future conduct

MIGRATION – whether non-citizens working aboard pipe-laying vessels are within Australia’s ‘migration zone’ as defined by s 5(1) of the *Migration Act 1958 (Cth)* – whether the pipe-laying vessels are ‘resource installations’ within the meaning of s 5(1) – whether by coming into contact with pipelines connected to the Australian seabed, non-citizens are within Australia’s migration zone

Allseas Construction S.A. v Minister for Immigration and Citizenship [2012] FCA 529
(22 May 2012, Justice McKerracher)

In this case the applicant (Allseas) successfully sought two declarations. The first was that by section 5(13) of the *Migration Act 1958 (Cth)* (the Act), two vessels were not ‘resource installations’ within the meaning of the Act while they are engaged in installing offshore pipelines on the Australian seabed for the Chevron Gorgon and Jansz gas projects. The second was that, to the extent that the vessels did not enter the Australian migration zone under section 5(1) of the Act, the non-Australian workers were not in breach of the Act and did not require a visa.

The Minister for Immigration and Citizenship (the Minister) argued that there was no ‘matter’ before the Court in a constitutional sense and therefore the Court lacked the jurisdiction to make the declarations; what Allseas was seeking was essentially an advisory opinion or an answer to a hypothetical question. Justice McKerracher found that the Court did have jurisdiction to make the declarations sought by Allseas because they were deliberately specific, narrow and suitably confined in scope to the particular vessels and project. His Honour also noted the substantial number of workers aboard the vessels and earlier attempts made by Allseas to pursue and clarify the correct interpretation of the Migration Act with the Minister’s Department before seeking declaratory relief.

On the question of whether the workers aboard the vessels were within Australia’s migration zone, his Honour concluded that they were not. Simply because they were aboard the vessels, which were connected to the gas pipelines being laid on the Australian seabed was insufficient. His Honour also rejected the alternative proposition advanced by the Minister that the workers entered Australia’s migration zone whenever they touched one end of the pipeline which was attached to the Australian seabed. In short, by s 5(13) of the Act the vessels were not resource installations.

No appeal was brought from this judgment; however, on 15 October 2012 the then Minister for Immigration and Citizenship announced that the government would legislate to amend the Migration Act and clarify the situation of foreign workers engaged in operations in Australia’s offshore maritime zones. On 27 June 2013 the Migration Amendment (Offshore Resources Activity) Bill 2013 was passed in the Australian Parliament. The Bill received Royal Assent on 29 June 2013. On commencement its provisions will provide that all offshore resource workers, including support staff, are taken to be in the migration zone when engaged in conduct or support activities regulated by Commonwealth, State and Territory legislation relating to the exploration and exploitation of Australia’s natural resources.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

HIGH COURT AND FEDERAL COURT – jurisdiction of the Federal Court – proceedings brought in the Australian Capital Territory for defamation – whether *Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth)* validly confers jurisdiction on the Federal Court

CONSTITUTIONAL LAW – courts – cross-vesting of jurisdiction – conferring jurisdiction on the Federal Court with respect to laws made under s 122 of the Constitution – whether section both conferred jurisdiction and created rights – whether law defined jurisdiction of the Federal Court pursuant to s 77(i) of the Constitution – whether necessary to decide other constitutional questions

Crosby v Kelly [2012] FCAFC 96
(2 July 2012, Justices Bennett, Perram and Robertson)

These proceedings concerned allegations of defamation in respect of words allegedly published on Twitter in October 2011. The applicants were directors of a political strategy company, and the respondent was a Member of the House of Representatives. The proceedings were commenced in the Australian Capital Territory (ACT) Registry of the Federal Court on 24 November 2011. On 23 December 2011 the respondent filed an interlocutory application challenging the jurisdiction of the Court to hear the proceedings. That application was referred to a Full Court for hearing and was the subject of the judgment given by their Honours.

The key question for the Full Court's consideration was whether s 9(3) of the *Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth)* validly conferred jurisdiction on the Federal Court to hear matters commenced in the ACT pursuant to the common law of defamation and/or ACT law. That provision relevantly provided that the Court could exercise original or appellate jurisdiction conferred on it by a law of the ACT relating to cross-vesting of jurisdiction.

The Full Court held that s 9(3) of the *Jurisdiction of Courts (Cross-vesting) Act* validly conferred jurisdiction on the Federal Court to hear and determine these proceedings. The Court held that s 9(3) was a provision made by Parliament within s 77(i) of the Constitution, under which Parliament may make laws defining the jurisdiction of federal courts other than the High Court. Consistently with the High Court's decision in *Ruhani v Director of Police*, s 9(3) picked up as Commonwealth law the jurisdiction of the ACT Supreme Court to hear matters such as this.

An application for special leave to appeal was refused by the High Court on 15 February 2013.

CONSTITUTIONAL LAW – Judicial pensions – Federal Magistrates – s 72(iii) of the Constitution – constitutional requirement of judicial independence – apprehension of dependence or partiality by reasonable well-informed lay observer

Baker v Commonwealth of Australia [2012] FCAFC 121

(31 August 2012, Chief Justice Keane and Justices Lander and Perram)

In this case a group of Federal Magistrates challenged the constitutional validity of their superannuation arrangements. The case was commenced in the High Court and remitted to Justice Buchanan who then stated a case for the opinion of the Full Court. All federal judicial officers apart from the Federal Magistrates are entitled to a defined benefits pension after ten years service and the achievement of the age of sixty. The Federal Magistrates were, however, excised from the definition of a 'judicial officer' contained in the *Judges' Pension Act 1968* (Cth) and instead given a 15.4 per cent contribution to their nominated superannuation fund by means of the Federal Magistrates (Terms and Conditions of Appointment) Determination 2011 (Cth). That determination was a subordinate instrument made under the *Federal Magistrates Act 1999* (Cth) as it was then called.

The Federal Magistrates submitted that this superannuation arrangement did not provide them with sufficient certainty as to their financial position in retirement because of the potential fluctuation in the markets in which the superannuation might be invested. This mattered because they submitted that Chapter III of the Constitution contained an implication that judicial officers would be provided with a sufficiently certain remuneration to avoid any apprehension of a lack of independence on their part.

It was also argued that s 72(iii) of the Constitution permitted the Parliament to reduce a judicial officer's remuneration following retirement but this was subject to a limitation that it could not be altogether extinguished.

The Court unanimously rejected the Federal Magistrate's contentions. Chief Justice Keane and Justice Lander delivered a joint set of reasons in which they concluded that there was no risk of a perception of a lack of impartiality arising from the fact that the Federal Magistrates were receiving superannuation contributions rather than a defined benefits pension entitlement. Their Honours rejected the alternate argument on the basis that it was unlikely Parliament could in any event reduce the pension of a retired judge noting that this would almost certainly infringe the prohibition in s 51(xxxi) of the Constitution on acquisitions of property other than on just terms. Justice Perram concluded that the Federal Magistrates Act authorised the making both of a determination that the Federal Magistrates should have a defined benefits scheme or a superannuation scheme. The difficulty, if there was one, lay not under the Federal Magistrates Act but instead with the terms of the determination which the Governor-General had seen fit to make. Since the validity of the determination was not challenged by the Federal Magistrates his Honour concluded that the suit was not properly configured and that the constitutional question did not arise.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

PRACTICE AND PROCEDURE – costs – appeal allowed – costs follow the event – appellant litigant in person – whether appellant can claim costs for legal advice where no evidence of client agreement with legal practitioner – whether appellant can claim out of pocket expenses – appropriate order

Mbuzi v Favell (No 3) [2012] FCA 1078
(2 October 2012, Justice Collier)

The issue was whether a litigant in person could claim costs for legal advice and disbursements where there was no evidence of a client agreement with a legal practitioner. As a general proposition an order for costs will be confined to money paid or liabilities incurred for professional legal services. The appellant, who had been successful in his appeal, requested an order in relation to consultations he had had with a legal practitioner, as well as related costs, specifically travel, parking and documentation costs.

The Court noted that it has a broad discretion in relation to cost orders pursuant to s 43 of the *Federal Court of Australia Act 1976* (Cth). As the appellant had been successful in his appeal, he ought to be entitled to costs and outlays properly incurred. This would be contingent on the production of an invoice in respect of particular legal advice sought to assist him in prosecuting his appeal. The Court also referred to authority in support of the appellant's claim for out-of-pocket expenses which had been actually, necessarily and reasonably incurred. While the power of the Court conferred by s 43 of the Act does not extend to awarding a litigant in person any amount for time spent preparing the case or presenting it to Court, there is nothing which precludes a claim for expenses such as filing fees or the costs of copying the appeal books. Accordingly, the Court ordered that the appellant present a bill of costs and disbursements to the Registrar in taxable form and that the appellant be paid such sums as the Registrar allowed.

CONTRACT – implication of terms – construction of written and oral contracts for purchase or sale of complex financial products – construction of written contract authorising respondent to undertake transactions on applicants' behalf

NEGLIGENCE – implied contractual terms and co-extensive tortious duty of financial adviser to exercise reasonable skill and care in making recommendations giving advice to, or acting on behalf of clients in making investments

TRADE PRACTICES – misleading and deceptive conduct

Wingecarribee Shire Council v Lehman Brothers Australia Ltd (in liq) [2012] FCA 1028
(21 September 2012, Justice Rares)

In representative proceedings, three local Councils sued Lehman Brothers Australia (In Liq) (previously called 'Grange Securities Ltd') for losses allegedly suffered arising out of their acquisitions from Lehman of financial products called synthetic collateralised debt obligations and some other complex financial instruments (collectively SCDOs). Some of the transactions occurred as individual sales while Lehman was acting for two of the Councils without a written contract. Subsequently, one of those Councils and another Council entered into written agreements with Lehman that gave it the right to select how the Councils' funds should be invested within agreed criteria.

The Councils alleged that Lehman represented that these products were suitable for a conservative investment strategy, and were prudent, capital protective investments that complied with statutory and Council policy requirements. The Councils also alleged that Lehman acted not as merely the vendor of the products at arm's length (as Lehman claimed) but as their financial adviser. The Councils contended that Lehman was liable for breach of contract, breach of fiduciary obligations, misleading and deceptive conduct in contravention of the *Australian Security Investment Commission Act 2001* (Cth) and negligent advice.

Lehman's explanations to the Councils of the way in which the SCDOs worked emphasised that their high credit ratings reflected a very remote risk that the Councils' capital could be lost, similar to the risk of loss from a loan to the Australian Government or the large local banks. However, that explanation was wrong. If general or systemic extreme market events occurred, such as a large market correction, a recession or as happened, the global financial crisis, the synthetic or structured nature of the SCDOs created a significantly greater risk of loss for investors than for similarly rated products, such as Australian government, corporate or bank debts. That was because if a corporation or bank went into liquidation, a creditor, ordinarily, would not lose all its investment. Rather, the liquidator, ultimately, would pay a proportion of the amount owing. The SCDOs, on the other hand, were not investments in a corporation, but in a bundle of rights that were subject to all or nothing credit events. The credit events did not need to cause any real world loss to anyone yet could cause loss of some or all of the investors' investment.

Prior to mid 2007, Lehman had provided a secondary market that enabled its clients to buy and sell the SCDOs as a feature of its promotion of its sales of the SCDOs. Lehman ensured that this market operated in such a way that, while economic conditions were stable, SCDOs could be sold quickly for at or above face value. But this market depended entirely on Lehman being able either to on-sell a product to another client or to fund its repurchase itself. Lehman made very large profits from selling new issues of SCDOs to its client base and from its trading with them in this secondary market. But the 'market' was fragile. Lehman was undercapitalised and, when economic conditions began to deteriorate, it could not operate the market any longer. The risk of this happening was set out by issuers of SCDOs in their offering documents. However, Lehman did not tell its clients that there was no assurance that any secondary market would exist or continue to exist or that there would be any liquidity for the SCDOs. Nor did Lehman tell its clients of the risk that the SCDOs would be effectively unsaleable if it did not continue to provide this 'market'. If the worst happened, that would have the consequence that the Councils and group members would have to hold the SCDOs until they matured, sometimes several years later. Only once, in about April 2007, did Lehman provide information to its clients, and then in fine print, about the possibility of those risks in a slide presentation for its US related companies' SCDO known as Federation.

The Court found that not only were the SCDOs risky, illiquid and, if sold, might realise far less than their face value, Lehman also was conscious that the trust its uninformed Council clients had placed in it was being used to Lehman's advantage. Lehman was held to be liable to compensate the Councils for the losses incurred as a result of their investments.

An appeal to the Full Court was filed on 15 April 2013.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

CONTRACT – breach of contract – contract for provision of financial services – implied warranties in s 12ED *Australian Securities and Investments Commission Act 2001 (Cth)* – damages for breach of contract

CORPORATIONS – financial products – misleading and deceptive statements

Bathurst Regional Council v Local Government Financial Services (No 5) [2012] FCA 1200
(5 November 2012, Justice Jagot)

ABN Amro Bank NV (ABN Amro) was the creator of a highly leveraged credit derivative called the constant proportion debt obligation (CPDO). The CPDO involved the creation of a special purpose vehicle through which investors became parties to credit default swap contracts (CDSs). Standard and Poor's (the trading name of the rating service provided by McGraw Hill International (UK) Limited, known as S&P) was engaged by ABN Amro to rate the CPDO before it was released to investors. S&P rated the CPDO AAA, the highest possible rating. Local Government Financial Services (LGFS) was an authorised deposit taking institution for Councils in New South Wales. LGFS purchased the CPDO notes and on-sold some of the notes to Councils. During the global financial crisis the CPDO notes defaulted and LGFS and the Councils lost ninety per cent of their investments.

The Councils sued LGFS, ABN Amro and S&P for their losses. LGFS sued ABN Amro and S&P for its losses. LGFS, ABN Amro and S&P all counter-claimed against each other on the basis of proportionate liability and against the Councils for contributory negligence.

The claims of the Councils against LGFS, ABN Amro and S&P were upheld. The claims of LGFS against S&P and ABN Amro were also upheld. The counter-claims by LGFS, S&P and ABN Amro against the Councils were dismissed. LGFS, S&P and ABN Amro were held to be liable to the Councils in equal proportions for the Councils' losses. S&P and ABN Amro were also liable to the LGFS for LGFS's losses.

The Councils succeeded on claims of misleading and deceptive conduct and negligence against LGFS, S&P and ABN Amro. The Councils also succeeded in claims of breach of fiduciary duty, breach of contract and breach of the *Corporations Act 2001* (Cth) against LGFS. LGFS succeeded on grounds of misleading and deceptive conduct and negligence against S&P and ABN Amro, as well as breach of contract against ABN Amro.

It was held that the rating of the CPDO notes AAA by S&P was negligent and misleading, the marketing of the CPDO notes to LGFS by ABN Amro was also negligent and misleading, as was the sale of the CPDO notes by LGFS to the Councils.

An appeal to the Full Court is listed for hearing in March 2014.

NATIVE TITLE – whether the exercise of Executive and Legislative power of the State of Western Australia in entering into the *Iron Ore (Mount Goldworthy) Agreement Act (1964) (WA) ‘the 1964 Act’ with particular joint venturers and enacting the 1964 Act extinguish native title rights and interests*

Brown (on behalf of the Ngarla People) v State of Western Australia [2012] FCAFC 154
(5 November 2012, Justices Mansfield, Greenwood and Barker)

This appeal addressed questions regarding the extent to which the mineral leases and undertakings associated with a large scale mining project extinguish native title rights and interests.

At first instance, Justice Bennett found that the mineral leases granted to joint venturers in relation to the Mt Goldsworthy mining project in the 1960s in the Pilbara region of Western Australia had not totally extinguished the Ngarla People’s native title rights and interests, but had extinguished native title rights and interests over areas where mines, towns and associated infrastructure were constructed.

Brown appealed this decision to the Full Court. The joint venturers and the State cross appealed, arguing that Justice Bennett should have found that the Ngarla People’s native title rights and interests were wholly extinguished across the whole of the project area which was subject to the mineral leases.

The Full Court (Justices Greenwood and Barker; Justice Mansfield dissenting) allowed the appeal and dismissed the cross appeal. In doing so, the Court did not follow the earlier decision in *De Rose v South Australia (No 2)* [2005] FCAFC 110; (2005) 145 FCR 290. In that case, the Full Court found that some mining activities extinguished native title when, and in the area, the mining activities occurred.

Justice Greenwood held that the Ngarla People are prevented, for so long as the joint venturers continue to hold the granted rights under the mineral leases, from exercising their native title rights and interests over the whole of the project area. However, if the joint venturers stopped performing activities under the leases, or the leases came to an end, the Ngarla People could again exercise their native title rights and interests.

Justice Barker held that the legislative and executive acts describing the Mt Goldsworthy project did not reveal a clear and plain intent to extinguish all native title rights. His Honour held that to the extent that, in the exercise of statutory rights so created, native title rights and interests in the project area could not be exercised or enjoyed by reason of the incompatibility of activities conducted by the joint venturers under the rights they held, the exercise of native title rights and interests were prevented by and yielded to the joint venturers’ exercised rights, but were not thereby extinguished. Therefore, upon the cessation of the joint venturers’ activities (as has occurred), the Ngarla People are again free to exercise their native title rights and interests in the project area.

Justice Mansfield dissented and held that the appeal and the cross appeal should both be dismissed. His Honour held that the joint venturers’ rights over the project area were granted only to the extent that mining and related activities were conducted. This meant that the Ngarla People’s native title rights and interests continue to exist in the undeveloped project areas. However, Justice Mansfield held that in the developed project areas, the rights of the joint venturers as exercised are inconsistent with the continued existence of native title rights and interests and they are thus extinguished to that extent.

An application for special leave to appeal to the High Court was filed on 3 December 2012.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

INCOME TAX – dividends paid by companies incorporated in Luxembourg to Australian resident unit trust being an Australian public trading trust for the purposes of Div 6C of Pt III of *Income Tax Assessment Act 1936* (Cth) which had chosen to form a tax consolidated group for the purposes of Pt 3-90 of *Income Tax Assessment Act 1997* (Cth) with trust as head company of the consolidated group – effect of choice on beneficial ownership of assets and derivation of income – whether assessable income under s 44 of *Income Tax Assessment Act 1936* (Cth) or non-assessable, non-exempt income under s 23AJ of that Act

Intoll Management Pty Ltd v Commissioner of Taxation [2012] FCAFC 179
(11 December 2012, Justices Edmonds, McKerracher and Jagot)

The applicant was trustee of an Australian resident unit trust and an Australian public trading trust (the trust) for the purpose of Div 6C of Pt III of the *Income Tax Assessment Act 1936* (Cth) (1936 Act). The trust had chosen to form a tax consolidated group for the purposes of Pt 3-90 of the *Income Tax Assessment Act 1997* (Cth) (1997 Act), with the applicant recorded by the Commissioner as the head company of the group. By virtue of such choice, s 713-135 of the 1997 Act provided that the 1936 Act and the 1997 Act (together the applied law) applied in relation to the trust in an identical manner as the applied law applied to a company. Furthermore, in accordance with s 713-140, the applicant was not covered by a reference in the applied law to a trustee.

The primary issue in the case was whether dividend income received by the trust from overseas companies (incorporated in Luxembourg) was properly included in the applicant's assessable income pursuant to s 44(1) of the 1936 Act, or whether, as the applicant contended, such income should be excluded pursuant to s 23AJ of the 1936 Act, on the basis that the applicant had not received dividends in the capacity of trustee. In the alternative, a secondary issue was whether the Commissioner was bound by his public ruling that s 23AJ applies to a trust that is a member of a consolidated group.

On appeal the Court held that s 23AJ of the 1936 Act applied to a trust that is a member of a consolidated group, such that the dividends are not included as assessable income under s 44(1) of the 1936 Act. The trust, as head company of the group, received the dividends for its own benefit as an assumed company, and not as trustee.

In upholding the view of the applicant on the first issue, it was unnecessary for the Court to consider the second issue. However, the Court observed that the Commissioner would be bound by his public ruling, Tax Determination TD 2008/25, as reference in the ruling to a 'trust which is part of a consolidated group' encompasses a trust which is head company as well as a trust which is a subsidiary company of the consolidated group.

DOUBLE TAXATION TREATIES – United States Double Taxation Convention – principles of and materials in aid of interpretation – taxation of gains derived from disposition of shares in a company owning real property (mining tenements) situated in Australia by a limited partnership formed outside both Australia and the United States but comprised of limited partners being predominantly United States residents – whether gain derived by limited partnership or limited partners for the purpose of the Convention – reconciliation with any inconsistency under Australia’s domestic law – Div 5A of Pt III of *Income Tax Assessment Act 1936* (Cth)

INCOME TAX – Div 855 of Pt 4-5 of *Income Tax Assessment Act 1997* (Cth) – whether capital gains derived by a foreign resident to be disregarded – whether ‘principal asset test’ in s 855-30 passed – consideration of what is to be valued and compared as the criterion for passing the test – hypotheses and methodologies of valuation to be adopted

Resource Capital Fund III LP v Commissioner of Taxation [2013] FCA 363
(11 December 2012, Justice Edmonds)

This case concerned an assessment of income tax which the Commissioner of Taxation raised against the applicant. The applicant was a limited partnership formed in the Cayman Islands, with more than ninety-seven per cent of its contributed capital being held by United States residents. Neither the applicant nor any partners in the applicant were Australian residents. The applicant in the 2008 income year (in July 2007 and January 2008) sold its shares in St Barbara Mines Ltd (now St Barbara Ltd) (SBM), which was a gold mining enterprise conducted in Australia.

The two issues in the case were firstly, whether the *International Tax Agreements Act 1953* (Cth) (the Agreements Act) precluded the Commissioner’s assessment of income tax on the applicant and secondly, if the answer to the first issue was in the negative, whether any capital gain is required to be disregarded by s 855-10 of the *Income Tax Assessment Act 1997* (Cth) (the 1997 Act) as the sum of the market values of SBM’s taxable Australian real property (TARP) assets did not exceed the sum of the market values of SBM’s non-TARP assets at the date of disposition of the interests by the applicant, in accordance with s 855-30 of the 1997 Act.

The Court held in relation to the first issue that while Schedule 2 to the Agreements Act: Convention between the Government of Australia and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of the Fiscal Evasion with respect to Taxes on Income (the Convention, inclusive of the amendments in Sch 2A) authorised Australia, by its domestic law, to tax the US resident limited partners in the applicant on their respective distributive shares of the gain derived by the applicant, it does not authorise Australia to tax that gain to the applicant, a limited partnership, as a non-transparent company. It therefore followed that there was an inconsistency between the Assessment Acts (the 1997 Act and *Income Tax Assessment Act 1936* (Cth)) and application of the Convention, which through s 4(2) of the Agreements Act, would be resolved in favour of the application of the Convention. The conclusion on the first issue was sufficient to allow the appeal. However, the Court also canvassed the second issue and concluded that SBM did not pass the principal asset test in s 855-30 of the 1997 Act at either July 2007 or January 2008.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

PRACTICE AND PROCEDURE – dismissal or stay – application for proceedings to be dismissed or stayed as an abuse of process under r 26.01(1) of the Federal Court Rules 2011 – categories of abuse of process not closed – where allegations made in pleading were for predominant purpose of a political attack to advance maker's own interests and irrelevant, scandalous or calculated to injure – where applicant's lawyer responsible for impugned allegations – where applicant and lawyer intended or aware that media would obtain a copy of pleading and publish allegations made in it

COSTS – where Court's power to order a party to pay costs limited by s 570(1) of the *Fair Work Act 2009* (Cth)

Ashby v Commonwealth of Australia (No 4) [2012] FCA 1411
(12 December 2012, Justice Rares)

Mr Ashby commenced proceedings under the *Fair Work Act 2009* (Cth), alleging that the Speaker of the House of Representatives, Mr Slipper MP had sexually harassed him in the course of Mr Ashby's employment by the Commonwealth with Mr Slipper. Mr Ashby sought damages and the imposition of pecuniary penalties. Mr Ashby's originating application pleaded that in 2003 Mr Slipper had had a relationship of a sexual nature with a younger male member of his staff, an encounter between them had been recorded on a video and that a viewer of the video had concluded that the relationship depicted was consensual. That application also stated that he intended to report his allegations about the misuse of Cabcharge vouchers to the police and that the allegations it made were supported 'by sworn/affirmed evidence', including a forensic report of text messages which were set out verbatim. As soon as the originating application was filed, it received significant media publicity. Three weeks later Mr Ashby amended his claim by abandoning all but the sexual harassment claims.

The Commonwealth and Mr Slipper applied for the proceedings to be dismissed or stayed as an abuse of process. The Commonwealth subsequently settled Mr Ashby's claims for \$50 000. Mr Slipper alleged that Mr Ashby had the improper, predominant purpose for commencing and pursuing the proceedings. Mr Slipper alleged that Mr Ashby had brought and continued the proceedings, in combination with one or more of a number of other people, for the predominant purpose of forming a part of a political attack on Mr Slipper to aid Mr Slipper's former political party (LNP) and/or a political opponent in that party, the Hon Mal Brough, so that Mr Ashby and another worker in Mr Slipper's office, Ms Doane, would be able to find new employment with the help of the LNP.

The Court found that Mr Ashby's predominant purpose for bringing the proceedings was to pursue a political attack against Mr Slipper, rather than the vindication of any legal claim. The Court held that Mr Ashby and his lawyers intended or were aware that the media would obtain a copy of the originating application and publish the allegations made in it, including the scandalous and irrelevant ones concerning the 2003 matters and the Cabcharge allegations. The Court was satisfied that the \$50 000 Mr Ashby received from the Commonwealth was more than he would be awarded as damages and pecuniary penalties in respect of his claims of sexual harassment were he to have proved them. Accordingly, it found that the proceedings were an abuse of process.

The application was dismissed and Mr Ashby was ordered to pay Mr Slipper's costs.

An appeal, filed on 11 January 2013, has been heard by the Full Court.

ADMINISTRATIVE LAW – Judicial review – Decision under s 74B(1) of the Environment Protection and Biodiversity Conservation Act 1999 (Cth) – Minister’s consideration of material in proposal and within the knowledge of the Department – Whether such consideration exceeded power vested in the Minister to make decisions ‘on the basis of the referral’ – Exercise of discretion – Impact on ecology and species diversity in a National Heritage place.

Secretary to the Department of Sustainability and Environment (Vic) v Minister for Sustainability, Environment, Water, Population and Communities (Cth) [2013] FCA 1
(4 January 2013, Justice Kenny)

In this proceeding Justice Kenny considered a judicial review challenge pursued by the Secretary to the Victorian Department of Sustainability and Environment to a decision of the Federal Minister for Sustainability, Environment, Water, Population and Communities. The challenged decision concerned a proposal by Victoria to strategically graze cattle in the State’s high country as part of research investigating fuel and bushfire risk management in the wake of the black Saturday bushfires. The majority of the land targeted for grazing fell within Victoria’s ‘Alpine National Park’ and, as it formed part of the ‘Australian Alps National Parks’, the grazing proposal was referred to the Federal Minister for approval pursuant to the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

Exercising the power provided by s 74B of the EPBC Act, the Federal Minister determined that the Secretary’s alpine grazing proposal would have unacceptable impacts on the National Heritage Values (NHVs) of the Australian Alps National Parks. The decision effectively halted the progress of the grazing proposal, pending a final decision. While the EPBC Act provided the State with an avenue to have the determination ‘reconsidered’, the Secretary instead sought writs in the nature of certiorari and mandamus setting aside the decision under s 16 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth). The decision was challenged on four grounds. Justice Kenny rejected all four grounds of review and held that the decision was valid.

First, the Secretary argued that the decision was made in excess of the power provided by para 74B(1)(a) of the EPBC Act to make a decision ‘on the basis of the referral’ because the Minister had considered limited documentation beyond that provided by Victoria in its referral, sourced from within the Department’s knowledge. As her Honour held, however, while the words ‘on the basis of the information in the referral’ focussed the Minister’s scrutiny on the referral, it did not prevent him from drawing on the Department’s knowledge to conduct that scrutiny. To hold otherwise would be to deny the possibility for any effective scrutiny of referrals.

Second, the Secretary submitted that, even if the Minister was permitted to consider this further documentation, the decision was made in breach of natural justice obligations because Victoria was afforded no opportunity to be heard in relation to the adverse content of the documents prior to the decision. This argument was also unsuccessful as the ‘reconsideration process’ built into the EPBC Act (and left unpursued by the Secretary) already provided the proper avenue for a fair hearing on any adverse content prior to the final decision.

Third, the Secretary contended that the decision itself was flawed because it addressed the impact of the grazing proposal on the full breadth of NHVs, wrongly including the ‘recreation’ values and ‘aesthetic characteristics’ of the Alpine National Park. Instead, so the Secretary submitted, the relevant provisions of the EPBC Act protected only the NHVs necessary to effect Australia’s obligations under article 8 of the *Convention on Biological Diversity*. Her Honour rejected this construction of the EPBC Act, holding instead that, for the purpose of s 74B, no such constraint was imposed on the Minister. In any case, the facts revealed that the Minister’s reasons for the decision related to the impacts on the ecology and species diversity of the Alpine National Park; both matters with a clear nexus to biodiversity.

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SUMMARY OF DECISIONS OF INTEREST

Finally, Victoria submitted that ss 74B(1) of the EPBC Act required the Minister, once satisfied that unacceptable impacts were clear, to then separately consider whether the Division should be applied to the proposal. A task, which it argued, had not been undertaken. The Secretary could not satisfactorily identify a circumstance where the Division would not be applied once the Minister determined that a proposal would have unacceptable impacts. Ultimately, her Honour held that there was no evidence that the Minister had failed to make the second decision in this case.

ADMIRALTY – challenge to jurisdiction – whether that challenge must always be determined immediately – requirement for the plaintiff to establish jurisdiction on the balance of probabilities by reference to its claim as put forward, irrespective of whether claim likely to succeed or not

ADMIRALTY – demise charter (BARECON 2001 form) – ship arrested under s 18 of the Admiralty Act 1988 (Cth) – whether demise charter had been terminated before writ issued – whether necessary for disponent owner to retake physical possession of ship to effect termination of demise charter – whether clause in charterparty providing that charterer will be gratuitous bailee of ship after termination effective

Ships ‘Hako Endeavour’, ‘Hako Excel’, ‘Hako Esteem’ and ‘Hako Fortress’ v Programmed Total Marine Services Pty Ltd [2013] FCAFC 21

(26 February 2013, Justices Siopis, Rares and Buchanan)

This appeal dealt with important issues that often arise in challenges to the arrest of a ship. Programmed Total Marine Services Pty Ltd (PTMS) issued writs against four tugs which Hako Offshore Pte Ltd had demise chartered from their four different owners. PTMS claimed that because Hako Offshore was the demise charterer of the tugs, it was liable to PTMS under s 18 of the *Admiralty Act 1988* (Cth) for PTMS’ claims against each ship. PTMS had supplied crews and other services to the ships under a deed with Hako Offshore and the time charterer of each tug. PTMS claimed separate amounts against each ship, totalling over \$7.5 million, on two bases: firstly, because it was the assignee of the crews’ maritime liens for wages under s 15(2)(c) of the Act or entitled to be subrogated to them, and secondly, a general maritime claim in respect of goods and services supplied to the ships under s 4(3)(m).

Dolphin 2 Pte Ltd owned Hako Fortress. Before the writs were issued, Dolphin 2 terminated the demise charter of Hako Fortress for non-payment of hire but did not take possession of her.

Each of the owners challenged the primary judge’s findings that the Court had jurisdiction over each ship, and that PTMS had general maritime claims and was entitled to enforce the lien for wages.

The Full Court held that it was necessary to decide whether the jurisdictional facts in s 18 of the Act had been established to justify the arrests. Hako Fortress was not demised at the time the proceedings commenced and consequently the Full Court set aside her arrest. The Full Court found that after the termination of the demise charter, the charter party provided that Hako Offshore held the ship as a gratuitous bailee.

The Full Court affirmed the primary judge’s findings that PTMS’ claims against the other three ships for goods and services supplied fell under s 4(3)(m) as general maritime claims for which those ships were validly arrested. However, the Full Court held that PTMS could not enforce the masters’ and crews’ maritime liens under s 15(2)(c) because PTMS employed and paid them.

CONSUMER LAW – unconscionable conduct, misleading or deceptive conduct, false or misleading representations and undue coercion – representations that certain letters and telephone calls sent and made to consumers by the first respondent were sent and made by an independent debt collector

Australian Competition and Consumer Commission v Excite Mobile Pty Ltd [2013] FCA 350
(18 April 2013, Justice Mansfield)

In this proceeding, the Australian Competition and Consumer Commission (ACCC) made numerous allegations of breaches of the *Trade Practices Act 1974* (Cth) (TP Act) against Excite Mobile Pty Ltd (Excite), a mobile phone provider business. The TP Act as in force at the time applied because the alleged breaches occurred before it was renamed and amended. Justice Mansfield found that Excite had breached the TP Act in all respects alleged, and found that the two directors and shareholders of Excite, along with one director's partner, had been involved in and knowingly concerned with the breaches, to varying extents.

The breaches arose from practices that relevantly included Excite's sales method and its sending letters of demand to customers purportedly from an independent debt collector. The ACCC alleged that both practices amounted to 'unconscionable conduct', and the debt collection practice also amounted to 'undue coercion'.

Excite's sales method comprised the making of oral contracts with customers through telemarketing calls. The contract imposed a 'day cap' upon phone usage. This 'day cap' meant customers were each day given a small amount of 'credit'. If the customer's phone usage exceeded the 'day cap', penalty rates applied. The telemarketers explained this unusual term poorly, before making an oral contract with the customer. Excite then sent the customer a mobile phone and letter explaining the contract in more detail. If the customer then wanted to cancel the contract, a fee would be incurred. If the customer opened the phone's packaging, cancellation incurred a further 'damage' fee.

His Honour found this conduct was 'unfair to such a degree as to attract a strong adverse moral judgment', and so it was unconscionable, following *ASIC v National Exchange Pty Ltd* (2005) 148 FCR 132. That conclusion was reached because the sales method concealed the fact that Excite's plan was likely to lead to quite substantial bills, and that it was not suited to the everyday user, and it was cynically indifferent to the customer's interests.

Excite's debt collection practice consisted of sending letters of demand to customers with unpaid bills, purportedly from an external debt collector, that threatened customers with legal action that would lead to orders against customers, including orders confiscating their children's toys.

His Honour found this conduct amounted to 'undue coercion' because it was intended to intimidate consumers by exploiting a knowledge discrepancy between the consumer and Excite as to debt recovery procedures. It was also (in part) 'unconscionable conduct' because of the false statements made in the letters about the likely outcome of debt recovery procedures. Those statements were clearly unfair and unreasonable.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

COURTS AND JUDGES – power of the Court to make interlocutory orders to protect or prevent frustration or abuse of its process pending determination of application for determination of native title under s 225 of *Native Title Act 1993* (Cth) – power of Court to make interlocutory orders under ss 22 and 23 of *Federal Court of Australia Act 1976* (Cth) in proceedings for determination of native title under s 225 of *Native Title Act*

Weribone on behalf of the Mandandanji People v State of Queensland (No 2) [2013] FCA 485
(23 May 2013, Justice Rares)

In these native title proceedings there was a significant anthropological dispute between experts as to who were the apical ancestors of the persons entitled to claim native title in the claim area. This had led to the applicant for a determination of native title under s 225 of the *Native Title Act 1993* (Cth) (NT Act) becoming dysfunctional. Earlier, two different groups applied to be made the replacement applicant under s 66B of the NT Act. The Court held that neither group had been authorised in accordance with s 251B of the NT Act and dismissed both applications. In those circumstances, the Court made orders to control the monies paid or payable pursuant to indigenous land use (ILUAs) and other agreements, so as to protect the assets of the persons who ultimately would be found to be native title holders and prevent frustration or abuse of the Court's process. The orders required that any monetary benefit paid by reason of the status afforded by operation of the NT Act, would be paid to the Registrar to be held for the benefit of the claim group: see *Weribone on behalf of the Mandandanji People v State of Queensland* [2013] FCA 255.

The original applicant had formed Mandandanji Ltd, as the trustee of a charitable trust. It formed two subsidiaries to conduct businesses for trust purposes. The Mandandanji companies earned their income by reason of applicant's status under the NT Act. The Mandandanji companies sought discharge or variation of the orders so that they would not apply to funds held or received by them. The Mandandanji companies submitted, supported by Queensland and the Commonwealth, that the Court did not have power to have made such orders as they were not sufficiently related to the final relief sought under the NT Act.

The Court held that the interlocutory orders were within its powers, including under ss 22 and 23 of the *Federal Court of Australia Act 1976* (Cth), to protect the integrity of its processes once proceedings have commenced. The Court held that s 225 of the NT Act dealt with the rights and interests of holders of native title in the claimed area, including those exploited under the ILUAs and other agreements. Final relief under s 225 could cause automatic removal of ILUAs from the Register of ILUAs under s 199C(1) of the NT Act. The orders were based on the fiduciary duties owed to ultimate native title holders by an applicant with procedural rights as native title claimants.

The Court also ordered the parties to mediate on necessary amendments to the orders so that they would not adversely affect the commercial operations of the companies and about who should be appointed as trustee of the monies instead of the Registrar.

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On 11 July 2012, at the invitation of Griffith University and the Commonwealth Attorney-General's Department, Chief Justice **KEANE** chaired a panel and gave the introductory address on *Changing Australian Private International Law: Is Codification the Answer?* at the Queensland College of Art, Griffith University, Brisbane.

On 25 July Chief Justice Keane gave a short address to the International Chamber of Commerce Australia's 2012 Roadshow which was focused on business relationships with China and commercial dispute resolution.

On the evening of 1 August Chief Justice Keane and Dr Shelley Keane attended a Reception for members of the Council of Chief Justices of Australia and New Zealand, international guests and members of the Judiciary. The Reception was hosted by Her Excellency Ms Penelope Wensley AC, Governor of Queensland, and Mr Stuart McCosker at Government House in Brisbane.

On 2 August Chief Justice Keane attended a meeting of the Council of Chief Justices of Australia and New Zealand at the Supreme and District Courthouse in Brisbane. The meeting was also attended by overseas guests Lord Neuberger, Lady Justice Hallett and Chief Justice Ma.

On 3 August at the invitation of the Hon Jarrod Bleijie MP Queensland Attorney-General and Minister for Justice, Chief Justice Keane attended the opening of the Queen Elizabeth II Courts of Law by Her Excellency Ms Penelope Wensley AC, Governor of Queensland. The Chief Justice and Dr Keane also attended a dinner on 4 August to mark the opening of the building.

On Saturday 4 August Chief Justice Keane attended the Supreme Court of Queensland Seminar held at the Queen Elizabeth II Courts of Law in Brisbane and provided a commentary on a paper by The Rt Hon Dame Sian Elias GNZM, Chief Justice of New Zealand, entitled *Not on Speaking Terms? The Executive and the Courts*.

On 8 August at the Federal Court in Brisbane Chief Justice Keane and Registrar Soden held discussions with Chief Justice Sir Salamo Injia and a delegation from the Supreme and National Courts of Papua New Guinea.

On 14 August Chief Justice Keane participated in a judgment writing seminar for members of Fair Work Australia in Melbourne.

On 5 September Chief Justice Keane attended the sixth John Lehane Memorial Lecture at the Federal Court in Sydney and proposed the vote of thanks to the Hon Diane Wood, Federal Judge of the United States Seventh Circuit Court of Appeals.

On 13 September Chief Justice Keane presented the opening address at the Australian Law Librarians' Association Annual Conference 2012 at the Brisbane Convention and Exhibition Centre.

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Also on 13 September Chief Justice Keane attended the Current Legal Issues Seminar Series 2012 in the Banco Court of the Queen Elizabeth II Courts of Law in Brisbane and provided a commentary on a paper presented by Lord Walker of Gestingthorpe entitled *Pure Economic Loss: The Problem of Timing*.

On 14 September Chief Justice Keane attended the 6th Australasian Institute of Judicial Administration Appellate Judges' Conference at the Queen Elizabeth II Courts of Law in Brisbane and chaired a session on judgment writing in the context of an appellate court.

On the evening of 14 September in the Banco Court at the Queen Elizabeth II Courts of Law in Brisbane Chief Justice Keane attended the 18th Australasian Institute of Judicial Administration Oration given by the Hon Wayne Martin AC, Chief Justice of Western Australia.

On 20 September at the Federal Court in Melbourne Chief Justice Keane welcomed attendees to a reception for Victorian Women Lawyers.

On 25 September, via video link from the Federal Court in Brisbane, Chief Justice Keane delivered the Australian Maritime and Transport Arbitration Commission (AMTAC) Address 2012 entitled *The Prospects for International Arbitration in Australia: Meeting the Challenge of Regional Forum Competition or Our House Our Rules*.

On 2 October Chief Justice Keane welcomed the Hon Dr Hatta Ali, Chief Justice of the Supreme Court of the Republic of Indonesia, and a delegation from the Supreme Court to Brisbane. On 3 October Chief Justice Keane, Chief Justice Bryant of the Family Court of Australia and Chief Justice Hatta Ali signed a further Annex to the Memorandum of Understanding between the Courts. Each Chief Justice delivered a short address. Also on 3 October 2012 Chief Justice Keane hosted a dinner to celebrate the occasion of the signing of the Annex to the Memorandum of Understanding at the Federal Court in Brisbane.

On 4 October at the Queensland University of Technology (QUT) in Brisbane Chief Justice Keane delivered the QUT Faculty of Law Public Lecture entitled *Legal History and Lawyers*.

On 12 and 13 October Chief Justice Keane attended the 10th Annual University of South Australia Competition and Consumer Workshop in Adelaide. On 13 October Chief Justice Keane presented a paper at the workshop on common law and competition law and participated in a panel session with Justices Mansfield and Middleton.

On 18 October in Sydney Chief Justice Keane presented the address at the annual dinner of the New South Wales Bar Constitutional and Administrative Law Section.

On 1 November at the Federal Court in Brisbane Chief Justice Keane and Sir Salamo Injia, Chief Justice of the Supreme and National Courts of Justice of Papua New Guinea, signed a further Annex to the Memorandum of Understanding between the Courts. Each Chief Justice delivered a short address.

On 1 November Chief Justice Keane presented an Address entitled *Intellectual Property: The Priesthood and the Agnostics* at a judges' dinner in Brisbane hosted by the Queensland Branch of the Intellectual Property Society of Australia and New Zealand.

On 2 November Chief Justice Keane was the guest speaker at the Mary MacKillop Foundation annual fundraising dinner in Brisbane.

On 5 November Chief Justice Keane travelled to Honiara in the Solomon Islands to attend the 20th Pacific Judicial Conference from 6 to 8 November and delivered a paper entitled *The Separation of Powers: Some Historical Perspectives*. On the evening of 6 November Chief Justice Keane attended a welcome dinner hosted by Sir Albert Palmer, Chief Justice of the High Court of the Solomon Islands. On the evening of 7 November Chief Justice Keane attended a function hosted by the Hon Prime Minister Gordon Darcy Lilo MP.

On 28 November Chief Justice Keane and Professor Gerard Carney, Dean, TC Beirne School of Law, University of Queensland, unveiled a plaque in the Tank Street Courtyard of the Commonwealth Law Courts Brisbane, to commemorate the birthplace of Lord Atkin of Aberdovey in Tank Street.

On 30 November at the Federal Court in Brisbane Chief Justice Keane attended a lecture by Colin Sheehan, previously Coordinator of the Connection Unit in Aboriginal and Torres Strait Islander Land Services, Queensland Department of Natural Resources and Mines, to acknowledge the twentieth anniversary of the historic Mabo judgment.

On 6 February 2013 at the Federal Court in Sydney Chief Justice Keane welcomed Chief Justice Mr Anton Ivanov and a delegation from the Commercial Court of Russia and later hosted a lunch for the delegation.

On 8 February Chief Justice Keane attended the Comparative Constitutional Law Expert Seminar 'United States Constitutional Law for Australian Lawyers' which was presented by United States Judge Albert M Rosenblatt at the University of Melbourne.

On 15 February Chief Justice Keane presented the Keynote Address entitled *Advocacy: The View from the Bench* at the Australian Lawyers Alliance Queensland State Conference at the Sheraton Mirage Resort on the Gold Coast.

On 4 March 2013 Justice James **ALLSOP** was sworn in as Chief Justice of the Federal Court of Australia.

On 5 March Chief Justice Allsop attended a meeting of the Council of Chief Justices of Australia and New Zealand at the High Court of Australia in Canberra and the swearing in of Justice Keane as a Justice of the High Court of Australia.

On 23 March Chief Justice Allsop attended the International Association of Refugee Law Judges 'Girt by Sea' Australasian Chapter Regional Conference at the Faculty of Law, the University of Sydney.

On 4 April Chief Justice Allsop attended a presentation by The Hon Stefan Lindskog, Justice of the Supreme Court of Sweden on the invitation of the University of Adelaide Business School, IMF (Australia) Ltd and the Hon Justice Gray of the Supreme Court of South Australia. Chief Justice Allsop delivered a paper entitled *The Intervention of the Courts and Arbitration in the Resolution of Commercial Disputes* at that event.

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On the afternoon of 10 April Chief Justice Allsop gave the keynote address entitled *Incoherence in Australian Private International Laws* at the Sydney Centre for International Law Conference, 'Facing Outwards: Australian Private International Law in the 21st Century'.

On 12 April Chief Justice Allsop co-hosted a lunch with Chief Justice Bathurst of the Supreme Court of New South Wales for the Hon Stefan Lindskog, Justice of the Supreme Court of Sweden.

On the afternoon of 23 April Chief Justice Allsop attended the unveiling of a portrait of the Hon Patrick Keane at the Harry Gibbs Commonwealth Law Courts Building in Brisbane.

On 30 April Chief Justice Allsop attended a dinner to mark the inaugural ceremonial sitting of the Federal Circuit Court of Australia, in Sydney.

On 1 May Chief Justice Allsop was conferred with the Order of Australia Award at an Investiture Ceremony held at Government House, Sydney.

On 10 May Chief Justice Allsop attended a lunch hosted by Chief Justice Bathurst for the former Chief Justice of Malaysia, the Rt Hon Zaki Tun Azmi in Sydney.

On 4 June Chief Justice Allsop judged the Grand Final of the 2013 Ashurst Junior Mooting Competition held by Macquarie University.

On 5 June Chief Justice Allsop judged the Grand Final of the Public International Law Moot held by Sydney University.

On 19 June, in Sydney, Chief Justice Allsop and the Hon Vincent Lunabek, Chief Justice of Vanuatu, signed a Memorandum of Understanding between the Federal Court of Australia and the Supreme Court of Vanuatu.

On 26 June Chief Justice Allsop gave a lunchtime talk for the University of Newcastle and the Maritime Law Association of Australia & New Zealand entitled *Recent Charterparty Decisions of Interest*.

On 16 July 2012 Justice **MARSHALL** gave an address to Monash University Juris Doctor students at the Monash City Campus on the topic of *Access to Justice*.

In November Justice Marshall was one of four Australian delegates at the 55th Annual Meeting of the International Association of Judges which was held in Alexandria, Virginia, the United States of America. Also in November Justice Marshall participated in an external review of the Post Graduate Program in Monash University's Faculty of Law as a panel member.

In early December Justice Marshall presided over the welcome ceremony for new silks in Victoria.

On 19 March 2013 Justice Marshall participated in the Koori Twilight Seminar at the Children's Court of Victoria to celebrate the tenth anniversary of Koori Courts in Victoria.

On 22 March Justice Marshall represented the Court at the opening session of the Victorian Bar Readers course.

On 18 April Justice Marshall gave the Occasional Address at the 2013 Prize Ceremony for the Monash University Law School.

On 26 June, together with Registrar Caporale, Justice Marshall spoke to students enrolled in the Tasmanian Legal Practice Course about the Court's bankruptcy and corporations jurisdictions.

Justice **NORTH** continued as a member of the International Humanitarian Law Advisory Committee of the Victorian Branch of the Red Cross.

Justice North continued to serve as a member of the Monash Law School, Centre for Employment & Labour Relations Law Advisory Committee.

Justice North continued as Chair of the Advisory Committee of the Centre for Employment and Labour Relations Law at the University of Melbourne.

Justice North continued as Patron of the Institute of Post Colonial Studies.

In September 2012 Justice North, together with Professor James Hathaway, convened an expert roundtable at Cambridge University to consider the need for reform to the process of supervision of the Refugee Convention.

In May 2013 Justice North again coordinated a program of Court visits by law students from the University of Melbourne, and hosted a visit of a group of students to a Court hearing.

Justice **MANSFIELD**'s commitments for the reporting year commenced with delivering the opening remarks at the Law Society of South Australia Advanced Intellectual Property Law Conference held in Adelaide on 7 August 2012.

On 15 August Justice Mansfield assisted with the 2012 South Australian Bar Association Bar Readers' Course and Reading Program by presenting a session on the Federal Court.

On 17 August Justice Mansfield presented a paper entitled *Experiences in the Australian Competition Tribunal* to the Hong Kong Chamber of Listed Companies at a seminar entitled 'Hong Kong Competition Ordinance: an International Perspective'. On 25 August, Justice Mansfield attended and presented the opening remarks to the 37th Competition and Consumer Law Workshop, held by the Law Council of Australia in Canberra.

Justice Mansfield delivered the Annual Brad Selway Memorial Lecture on 13 September entitled *Native Title in South Australia: A Paradise or a Paradise of Dissent* and opened the annual South Australian Bar Association Conference held in Victor Harbour on 14 September.

The 10th Annual UniSA Competition and Consumer Workshop was held in Adelaide from 12–13 October. Justice Mansfield participated as a panellist in Session 1 'Australian Federal Court Judges'.

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On 3 November, Justice Mansfield, on behalf of Chief Justice Keane, attended the Pacific Judicial Development Chief Justices Leadership Workshop held in Honiara, Solomon Islands, presenting the session *Judicial Perspectives from the Federal Court of Australia*. He then attended, on 6–9 November, the 20th Pacific Judicial Conference, also held in Honiara, Solomon Islands, presenting at Session 1: *Ethical issues confronting Judges*; Session 2: *Extra Judicial Activities While Serving as a Judge* and Session 5: *Judicial Leadership in Times of Natural Crisis*.

Justice Mansfield attended the AIJA Conference 'The Pursuit of Excellence and Innovation in Courts and Tribunals' held in Auckland, New Zealand on 7-9 March 2013 presenting a session on *Judicial Leadership in Times of Natural Crisis* with Chief Justice Carl Ingram of the Republic of Marshall Islands.

On 9 March Justice Mansfield delivered a paper to the Australian Institute of Energy (South Australia Branch) entitled *The Role of the Australian Competition Tribunal in the Energy Sector*.

From 13–16 March Justice Mansfield attended the Pacific Judicial Development Chief Justices Workshop, held in Auckland, New Zealand on behalf of the Chief Justice.

The International Bar Association held its 9th Competition Mid-Year Conference in Sydney on 21–22 March. Justice Mansfield delivered the keynote speech entitled *Merits Review of Regulatory Decisions in Competition Law: Spotlight or Twilight*.

Justice **DOWSETT** continues as a member of the Programs Advisory Committee of the National Judicial College of Australia (NJCA). Until May 2013 he chaired the Steering Committee which is responsible for the planning and delivery of the National Judicial Orientation Program conducted bi-annually by the NJCA. During the reporting year Justice Dowsett was appointed to the Griffith Law School Visiting Committee (Brisbane) and has continued in his capacity as a Community Member of the Board of the College of Law (Sydney).

On 1 August 2012 Justice Dowsett addressed the Magistrates' Annual State Conference in Brisbane on the topic *Avoiding Unintended Judicial Prejudice*.

On 3 August Justice Dowsett attended the opening of the new Supreme Court building in Brisbane and, on 4 August, the Supreme Court of Queensland Seminar held to mark that event.

On 31 August and 1 September Justice Dowsett attended a Jury Management Program in Sydney conducted by the NJCA.

In Brisbane on 12 September Justice Dowsett made the opening remarks at the 39th Annual Conference of the Maritime Law Association of Australia and New Zealand, held in conjunction with the Annual Richard Cooper Memorial Lecture.

On 24 September Justice Dowsett attended at Government House where her Excellency, the Governor of Queensland, Ms Penelope Wensley AC presented him with the insignia of a Member of the Order of Australia for 'service to the law and to the judiciary, to professional associations, and to legal education in the area of litigation and dispute resolution'.

On 25 September Justice Dowsett attended the Australian Maritime and Transport Arbitration Commission (AMTAC) Annual Address held at the Federal Court in Brisbane.

In Brisbane on 3 October Justice Dowsett was present at the signing of the Annex to the Memorandum of Understanding (MoU) between the Federal Court, Family Court and the Supreme Court of Indonesia.

Justice Dowsett was chair of the planning committee for the NJCA 'Dialogues on Being a Judge Program' and spoke at the program which was held in South Australia from 10-12 October.

In his capacity as chair of the National Judicial Orientation Program (NJOP) steering committee Justice Dowsett attended the NJOP program conducted from 29 October to 2 November in Queensland. He chaired sessions on *Familiarisation* and *Judicial Conduct In and Out of Court*.

On 28 November Justice Dowsett was present at the unveiling of a plaque commemorating the birth of Lord Atkin on the site of the Sir Harry Gibbs Law Courts Building in Tank Street, Brisbane in 1867. The plaque was co-sponsored by the Federal Court and the University of Queensland.

On 30 November Justice Dowsett chaired a lecture, *Mabo From a Researcher's Perspective*, delivered by Mr Colin Sheehan, former coordinator of the Connection Unit in Aboriginal and Torres Strait Islander Land Services, Queensland Department of Natural Resources and Mines.

On 9 and 10 February 2013 Justice Dowsett attended the 'Managing People in Court Conference' conducted by the NJCA at the Australian National University, Canberra.

From 8–10 March Justice Dowsett attended the annual Bar Association of Queensland conference held at the Gold Coast and participated in the presentation *Practice and Procedure – Update 2013*.

In his capacity as Chair of the NJOP Steering Committee Justice Dowsett attended the NJOP program conducted from 20–24 May in Sydney.

On 23 April Justice Dowsett was present at the Federal Court in Brisbane when a portrait of the Hon Patrick Anthony Keane was unveiled.

Justice **KENNY** was a part-time Commissioner, Australian Law Reform Commission, until July 2012 and thereafter a member of the Advisory Committee for the purpose of the reference that has to date resulted in Discussion Paper 79, *Copyright and the Digital Economy*.

Justice Kenny is a member of the Council of the Australian Institute of Judicial Administration; the Advisory Board of the Centre for International and Public Law, Australian National University; the International Law Advisory Board, Law School, Monash University; Chair of the Advisory Board of the Institute of Legal Studies, Australian Catholic University (until November 2012); Executive member, Future Justice; and a Foundation Fellow of the Australian Academy of Law.

In July 2012 Justice Kenny chaired the session 'Defining Charity' at the conference on 'Defining, Taxing and Regulating Not-for-Profits in the 21st Century' at the Law School, the University of Melbourne.

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JUDGES' PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2012–13

In August, by invitation, Justice Kenny participated in a Legal Theory Workshop at the Law School, the University of Melbourne, at which Dr Dale Smith presented his paper *Are Judges Opportunistic Interpreters?*

In October Justice Kenny participated as a member of the Selection Committee for Menzies Scholarships in Law for the 2013 academic year.

In November, by invitation, Justice Kenny participated in a seminar in the Occasional Seminar Series, Asian Law Centre, University of Melbourne, at which Professor Fu Hualing, Faculty of Law, Hong Kong University, spoke on *The Court and the Party in China's Political-Legal Order*. Also in November, Justice Kenny presented the Future Justice Medal to Christopher Varney, Child and Youth Participation Advisor, Indigenous Programs, World Vision.

In February 2013 Justice Kenny and senior court staff met with Australian Catholic University law students to explain the jurisdiction and operation of the Federal Court. Also in February, Dr Joyce Chia and Justice Kenny's article *The Children of Mae La: Reflection on Regional Refugee Cooperation* was published in vol 13(2) of the *Melbourne Journal of International Law*.

On 15 March 2013 Justice Kenny presented a paper on statutory interpretation at the seminar, 'Constitutional Role of the Judge', under the joint auspices of the Judicial College Victoria and the Law School, the University of Melbourne.

Justice **BENNETT** was appointed Chair of the National Health and Medical Research Council [NHMRC] from 1 July 2012.

On 11 July Justice Bennett presented a seminar with Mark Robinson SC entitled *Perspectives Series – Advocacy in the Federal Court: A public law viewpoint* which was held at the New South Wales Law Society as part of the continuing legal education seminar series.

For the purposes of the Pacific Judicial Development Program (PJDP), funded by New Zealand Aid, Justice Bennett attended a meeting in Wellington, New Zealand, with the New Zealand Foreign Minister and Chief Justice Sapolu of Samoa on 14 August. Together with Warwick Soden and Dr Livingston Armytage, she also attended a meeting in Canberra with AusAID in September.

Justice Bennett was invited by the Intellectual Property Judges' Association to attend and speak at the European Patent Judges' Forum which was held in Venice on 26–27 October.

In December The Chinese University of Hong Kong, Faculty of Law, convened a meeting in Hong Kong which Justice Bennett attended as a member of the Advisory Board of the Faculty of Law.

Justice Bennett was also invited to attend and participate as a member of the Faculty at the 21st Annual Conference on Intellectual Property Law and Policy which was held at the Fordham University School of Law, New York in April 2013. She was a speaker/panellist in various sessions on topics including: *Views from the Judiciary* and *Patent Law: Global Patent Developments*.

Justice Bennett attended the 2013 Asia-Pacific Regional Conference of the International Association of Women Judges (IAWJ) in Auckland, New Zealand on 9–12 May and spoke on *International work of the Federal Court*.

From 25–27 June Justice Bennett attended a conference on ‘Improving Litigation’ in Bologna and chaired a session on ‘The implementation of civil justice reforms in England and Wales’.

During the reporting year, Justice Bennett continued to be a member of the Dean of Medicine’s Advisory Group of The University of Sydney and was involved in a number of other judicial and extra-judicial commitments including: Arbitrator of the Court of Arbitration for Sport; member of the Law Academic Advisory Committee for the School of Law of The Chinese University of Hong Kong; member of the Australian Academy of Forensic Sciences; and member of Chief Executive Women.

On 5–7 October 2012 Justice **SIOPIS** attended the Judicial Conference of Australia Colloquium 2012 and the Annual General Meeting held in Fremantle, Western Australia.

On 18 October Justice Siopis chaired a Law Society of Western Australia Continuing Professional Development seminar entitled ‘Civil Procedure Reform: One Year On’.

On 14 November Justice Siopis chaired an Intellectual Property Seminar for the profession in Western Australia entitled ‘Internet, Tobacco and Red Soled Shoes – Recent Developments in Copyright and Trade Mark Law’.

On 12 December Justice Siopis addressed participants in the annual Summer Clerkship Program on the workings of the Federal Court.

On 13 March 2013 Justice Siopis chaired an Intellectual Property Seminar for the profession in Western Australia entitled ‘A Review of Recent Trade Mark Cases and their Application to Online Practices – Brand Rights in a Digital Context’.

On 17 May Justice Siopis was invited to and attended the Law Society of Western Australia’s Law Week lunch as the guest of the President of the Law Society.

On 3 August 2012 Justice **EDMONDS** was invited to give the address at the 54th Annual Dinner of the Challis Taxation Group held at the Australian Club in Sydney.

In October and November Justice Edmonds addressed the Young International Fiscal Association (IFA) Network of the IFA Australia Branch in Sydney and Melbourne respectively on the subjects of *Treaty Interpretation* and *Transfer Pricing*.

In November Justice Edmonds participated in a seminar organised jointly by the Melbourne University Law School and Allens Linklaters in Melbourne on the proposed amendments to the provisions of Part IVA of the *Income Tax Assessment Act 1936* (Cth).

In January 2013 Justice Edmonds presented a plenary paper at the 25th Annual Conference of the Australasian Tax Teachers’ Association in Auckland, New Zealand entitled *Tax Reform: The Dream and the Nightmare*. In April Justice Edmonds presented a similar paper to the No. 1 Tax Discussion Group of the Taxation Institute of Australia.

In March and May Justice Edmonds was invited to address fora in Sydney and Melbourne organised by Maddocks on the subject of *Managing Tax Controversy*.

Also in May Justice Edmonds participated in a seminar organised by the Melbourne University Law School on the amendments to Part IVA as introduced in Bill form under the umbrella of a paper entitled: *Judicial Construction of Part IVA: What to expect from the application of existing principles going forward*.

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JUDGES' PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2012-13

Justice **RARES** continues in his roles as a member of the Executive Committee and the Governing Council of the Judicial Conference of Australia, a member of the Council of the Australasian Institute of Judicial Administration and a member of the Steering Committee of the National Judicial Orientation Program. He is also the Chairman of the Consultative Council of Australian Law Reporting; the Presiding Member of the Admiralty Rules Committee established under the *Admiralty Act 1988* (Cth) and a member of the Comité Maritime International's International Working Group on Offshore Activities.

On 2 August Justice Rares presented the introductory remarks, as Chairman of the Consultative Council of Australian Law Reporting, at 'The Future of Law Reporting in Australia Forum' held at the Queen Elizabeth II Supreme and District Courts of Queensland building, Brisbane.

On 4 August Justice Rares attended the 2012 New South Wales Bar Association and Australian Centre for International Commercial Arbitration seminar, 'ADR in Australia and Beyond', at the Westin Hotel Sydney, and presented a paper entitled *The Role of Courts in Arbitration*.

Justice Rares presented a paper entitled *Some issues that arise in arrests of Ships* on 19 September at the Maritime Law Association of Australia and New Zealand lunchtime lecture held at the Federal Court of Australia, Sydney.

On 25 September Justice Rares welcomed participants to the Australian Maritime and Transport Arbitration Commission annual address at which Chief Justice Keane was the Guest Speaker.

In October Justice Rares attended the 2012 Comité Maritime International Conference in Beijing, and on 16 October presented a paper entitled *An International Convention on Off-shore Hydrocarbon Leaks? He also spoke about the use of foreign cases in interpreting maritime conventions* in the 'Maritime Issues for and by Judges' session at the Conference.

On 6 February 2013 Justice Rares presented a commentary on *State Jurisdiction Residue – What remains to a State Court when its Chapter III functions are exhausted* by Professor Helen Irving as part of an Australian Association of Constitutional Law afternoon seminar at the Federal Court, Sydney.

From 7–9 March Justice Rares attended the annual Australasian Institute of Judicial Administration, Asia Pacific Courts Conference in Auckland, New Zealand.

On 11 March Justice Rares judged a practice moot between the Universities of Sydney and Aix-Marseille (via videoconference to France) prior to the 2013 Vis Moot competition.

On 12 April Justice Rares gave a lecture on the Convention for the Limitation of Liability of Maritime Claims at the University of Aix-en-Provence, France.

On 4 May Justice Rares chaired a session at a Competition Law Conference held in Sydney.

Justice Rares chaired the 2013 Annual Conference for the Consultative Council of Australian Law Reporting in Adelaide on 31 May.

On 20 June Justice Rares presented a paper at the Australian Government Solicitor's Administrative Law Symposium, 'Excellence in Government decision-making', in Canberra, entitled *Legality, Rights and Statutory Interpretation*.

Justice **COLLIER** remains a part-time member of the Australian Law Reform Commission and a member of the Advisory Board to the bankruptcy and insolvency law scholarship unit at the Adelaide Law School. Justice Collier was part of a panel discussion at the Australian Law Librarians' Association National Conference held in Brisbane in September 2012 and attended a Corporate Governance Forum in October 2012.

Justice Collier is on the editorial board of *The Conveyancer and Property Lawyer Journal*.

In October 2012 and April 2013 Justice Collier visited Port Moresby to sit on the Supreme Court of Papua New Guinea.

In September 2012 Justice **TRACEY** delivered a paper entitled *Military Administrative Law* at a meeting of the Victorian Chapter of the Australian Institute of Administrative Law.

In December Justice Tracey, together with Justices Cowdroy and Logan, hosted a visit by military judges of the Supreme Peoples' Court of Vietnam. During the visit Justice Tracey made a series of presentations on Australian military disciplinary law.

In January 2013 Justice Tracey attended the State Supreme and Federal Court Judges' Conference in Adelaide and chaired a session at which Professor Riley, Dean of the Law School at the University of Sydney, presented a paper on the implication of the common law duty of good faith in employment contracts.

On 9 May Justice Tracey presided at the final of the Mooting competition between the Melbourne and Monash University Law Schools.

During the reporting year Justice Tracey was a member of: the Law Course Steering Committee of the Australian Catholic University; the Advisory Board of the Centre of Public Law at the Law School of the University of Melbourne; and a member of the Juris Doctor Program Advisory Board of the Graduate School of Business and Law at the RMIT University.

Justice **MIDDLETON** is a Council Member of the University of Melbourne, a member of the American Law Institute, an alternate Member of the National Judicial College of Australia, a member of the Judicial Liaison Committee for the Australian Centre for Commercial International Arbitration, a Board member of the Victorian Bar Foundation, a Fellow of the Australian Academy of Law and a part-time Commissioner of the Australian Law Reform Commission.

On 9 September 2012 Justice Middleton was a speaker at the 26th Intellectual Property Society of Australia and New Zealand Annual Conference held in Melbourne. Justice Middleton spoke on *The Skilled Addressee* in the context of Patent Law.

On 13 October Justice Middleton was a panellist, along with Chief Justice Keane and Justice Mansfield, at the 10th Annual University of South Australia Competition and Consumer Workshop held in Adelaide.

On 20 February 2013 Justice Middleton spoke, along with the Rt Hon Sir Robin Jacob from the United Kingdom and Justice Susan Crennan AC, at a Seminar entitled 'Patents – is Europe making a mess of things? Lessons for Australia?' sponsored by the Intellectual Property Research Institute of Australia in association with the Melbourne Law School.

In April Justice Middleton delivered a paper in conjunction with Mr David O'Callaghan SC to the Victorian Bar Readers' Course on *Written Advocacy*.

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Justice **GILMOUR**, in conjunction with Dr Lindgren, led a 'Judicial Precedent and Judgment Writing Workshop' in Hanoi, Vietnam from 24-28 June 2013.

During the reporting period Justice **GORDON** delivered the following addresses or papers:

29 August 2012, Annual Tax Lecture 2012 *The Commonwealth's Taxing Power and Its Limits – Are We There Yet?*

27 October, Law Council of Australia Taxation Workshop, Panellist, 'Tax Dispute Resolution'.

13 March 2013, Tax Institute of Australia 28th National Convention, Graham Hill Memorial Lecture *Equity, simplicity, certainty and individualised justice – in the one sentence?*

Justice Gordon is the Chair of the Academic Advisory Board, Faculty of Business and Law, Deakin University.

Justice Gordon is a member of the Elders and Respected Persons Panel of Tarwirri, the Indigenous Law Students and Lawyers Association of Victoria.

On 20 February 2013, Justice Gordon hosted the Chuo Summer School for Japanese students at the University of Melbourne.

From 23 July to 22 October 2012 Justice Gordon co-taught 'Taxation Litigation' and from 12 March to 3 June 2013 co-taught 'Statutes in the 21st Century' in the Law Masters program at the University of Melbourne.

From 11 February to 27 March 2013 Justice Gordon and Justice Gray participated in the Indigenous Clerkship Program in conjunction with the Supreme Court of Victoria and the Victorian Bar.

Justice **LOGAN** attended, at his own expense, the World Bar Conference at the Middle Temple, London, United Kingdom from 28 June to 5 July 2012. He also attended as an invited speaker, at his own expense, the 18th Commonwealth Law Conference at Cape Town, South Africa in April 2013 where he delivered a paper, *A Year in the Life of an Australian Member of the PNG Judiciary*. At the request of the Papua New Guinea Association of Australia, he delivered an after dinner speech on that same topic at an association dinner held in Brisbane on 31 January 2013.

On 24 July 2012, at the invitation of the English Speaking Union, Queensland Branch, Justice Logan delivered its annual Churchill Lecture, selecting as the subject of the lecture, *Winston Churchill and the War on Terror*.

In September, at the request of Sir Salamo Injia, Chief Justice of Papua New Guinea, Justice Logan organised and co-delivered, with Mr John Bond QC of the Queensland Bar, a presentation on commercial litigation at the PNG Legal Training Institute at Port Moresby.

On 3 June 2013, at the invitation of the Secretariat of the South Pacific, Justice Logan delivered the keynote address at the Secretariat's 'Pacific Regional Consultation for Judges on Human Rights and Contemporary Pacific Issues' in Brisbane.

Throughout the year, Justice Logan continued to chair the Queensland Bar Association's Annual Conference Committee and, in that capacity, attended the Bar's annual conference on the Gold Coast in March 2013. He also continued to serve as a member of the Board of Governors of Cromwell College at the University of Queensland.

On 4 July 2012 Justice **FOSTER** co-chaired and presented a session on *Lawyer-Client Privilege in Litigation* as part of the College of Law 2012 Judges Series.

On 27 July Justice Foster, in his capacity as Deputy President of the Australian Competition Tribunal, met with representatives of the Ministry of Trade and Industry of the Republic of Namibia who were visiting Australia on a study visit. The Law Reform and Development Commission of Namibia, in conjunction with the Ministry of Trade and Industry of Namibia, were involved in a national project of Consumer Protection (CPP) with the aim of developing a Consumer Protection Regulation Policy and Legal Framework for Namibia. The CPP team visited Australia to conduct benchmark studies.

On 4 August Justice Foster chaired a session entitled 'Enforcing Arbitral Awards' at the '2012 ADR Workshop' conducted by The New South Wales Bar Association and the Australian Centre for International Commercial Arbitration.

On 21 August Justice Foster attended the Annual Corporate Law Conference conducted by the Supreme Court of New South Wales.

On 6 October Justice Foster assisted with judging course participants in the inaugural Australian Bar Association Appellate Advocacy Course in Sydney. The course comprised a mix of workshops and practical performances for twenty-four senior juniors at the Bar. The judges' role was to hear short full court appeals, to run the Court in the usual way and to make suggestions on how the performances could be improved.

On 21 November Justice Foster addressed a group of admiralty practitioners at a lunchtime lecture as part of a lecture series convened for the Maritime Interest Group, University of Newcastle and the Maritime Law Association of Australia and New Zealand. The topic of his address was *Does s 11(2) of the Carriage of Goods by Sea Act 1991 mean what it says?*

In May 2013, at the invitation of the Australian Centre for International Commercial Arbitration (ACICA), Justice Foster gave several presentations in the United States on *The Australian Arbitration Option*. Those presentations showcased the benefits and opportunities for United States entities which may consider Australia a neutral venue for conducting international arbitration. While in the United States, Justice Foster also met with Federal Appellate judges, judges from Federal District Courts and judges from State Courts.

On 29 June Justice Foster presented a session to College of Law Masters' students at the College's inaugural 'Commercial Litigation Intensive Workshop'. The topic of the session was *Ethical issues arising in the context of litigation*.

On 15 August 2012, as Patron of the NSW Young Lawyers for 2012, Justice **KATZMANN** spoke at the NSW Young Lawyers State of the Profession Address.

On 6 October Justice Katzmann assisted with judging course participants at the inaugural Australian Bar Association Appellate Advocacy Course in Sydney.

On 10 November Justice Katzmann spoke at the NSW Young Lawyers 2012 Annual Assembly in Wollongong.

On 16 November Justice Katzmann delivered the keynote address to the New South Wales Administrative Decisions Tribunal Annual Members Conference. The paper was entitled *Let the sun shine in: Open Justice v Confidentiality*.

On 11 December Justice Katzmann spoke at a Carroll & O'Dea Lawyers Lunchtime Speaker Seminar with a paper entitled *Sisters are doing it for themselves*.

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On 15 February 2013, at the Gilbert + Tobin Centre of Public Law 2013 Constitutional Law Conference, Justice Katzmann presented a paper entitled *The Federal and State Courts on Constitutional Law: The 2012 Term*.

On 2 March Justice Katzmann chaired a session on 'Prosecutorial Discretions' at the Toongabbie Legal Centre Criminal Law Conference.

On 5 April Justice Katzmann attended an Australasian Institute of Judicial Administration Workshop on Interpreters in Courts and Tribunals at the University of New South Wales.

From 9-12 May Justice Katzmann attended the International Association of Women Judges Asia-Pacific Regional Judges Conference 2013 in Auckland, New Zealand where she chaired a session on 'Judicial Appointment Processes'.

Justice Katzmann continues to be involved in a number of extra-judicial commitments including as a director of the Tristan Jepson Memorial Foundation.

On 31 July 2012 Justice **ROBERTSON** chaired a seminar conducted by the Constitutional and Administrative Law Section of the New South Wales Bar Association on 'Evidence in Public Law Cases'.

At the Federal Court Judges' Meeting in Sydney on 22 August Justice Robertson gave a presentation on *Aspects of Tax Litigation* and at the Federal Court and Law Council Joint Seminar on Taxation, he chaired a session on *Part IVA and Division 13 - Where to Now?*

On 19 June 2013 Justice Robertson presented a *Commentary on the Administrative Review Council's Report No 50, 2013 - Federal Judicial Review in Australia* at a seminar conducted by the Constitutional and Administrative Law Section of the New South Wales Bar Association.

APPENDIX 9

STAFFING PROFILE

Note: The Federal Court Registrar and NNTT Registrar are holders of public office and are not included in this appendix.

Table 9.1 – Staffing overview by location
(actual occupancy as at 30 June 2013 – includes full-time and part-time staff)

LEVEL	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	NNTT	TOTAL
SES2	1	1	1	–	–	–	–	–	–	–	–	3
SES1	1	–	1	1	1	1	–	–	–	1	2	8
FCL2	–	6	5	2	1	2	–	–	–	5	1	22
FCL1	–	–	–	–	–	–	1	–	–	–	1	2
FCM2	6	1	2	1	–	1	–	–	–	1	3	15
FCM1	18	3	1	1	2	1	–	–	–	2	13	41
FCS6	17	23	16	6	3	7	–	1	1	9	27	110
FCS5	11	31	20	8	5	8	–	–	–	2	2	87
FCS4	6	7	12	9	6	6	3	1	2	6	27	85
FCS3	3	12	1	1	1	–	–	–	1	–	6	25
FCS2	–	–	1	–	–	–	–	–	–	–	12	13
FCS2 CCO	–	28	11	11	6	6	–	2	–	1	–	65
FCS1	–	–	–	–	–	–	–	–	–	–	–	–
Total	63	112	71	40	25	32	4	4	4	27	94	476

SES Senior Executive Service officer

FCL Federal Court Legal

FCM Federal Court Manager

FCS Federal Court Staff

CCO Casual Court Officer

PR Principal Registry

NAT National. Includes the following staff:
 – Federal Court Native Title staff
 – Chambers of Chief Justice
 – Appeals
 – Tribunals

NNTT National Native Title Tribunal

APPENDIX 9

STAFFING PROFILE

Table 9.2 – Staffing by gender, classification and location (as at 30 June 2013)

LEVEL	GENDER	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	NNTT	TOTAL
SES2	Male	1	1	–	–	–	–	–	–	–	–	–	2
	Female	–	–	1	–	–	–	–	–	–	–	–	1
SES1	Male	1	–	1	–	–	1	–	–	–	1	1	5
	Female	–	–	–	1	1	–	–	–	–	–	1	3
FCL2	Male	–	4	5	1	–	1	–	–	–	1	–	12
	Female	–	2	–	1	1	1	–	–	–	4	1	10
FCL1	Male	–	–	–	–	–	–	–	–	–	–	1	1
	Female	–	–	–	–	–	–	1	–	–	–	–	1
FCM2	Male	4	1	1	–	–	1	–	–	–	1	2	10
	Female	2	–	1	1	–	–	–	–	–	–	1	5
FCM1	Male	13	–	1	–	–	–	–	–	–	–	3	17
	Female	5	3	–	1	2	1	–	–	–	2	10	24
FCS6	Male	5	1	1	–	1	1	–	–	–	2	7	18
	Female	12	22	15	6	2	6	–	1	1	7	20	92
FCS5	Male	6	12	8	6	2	2	–	–	–	1	1	38
	Female	5	19	12	2	3	6	–	–	–	1	1	49
FCS4	Male	1	2	2	1	1	1	–	–	–	1	3	12
	Female	5	5	10	8	5	5	3	1	2	5	24	73
FCS3	Male	3	7	–	–	1	–	–	–	–	–	2	13
	Female	–	5	1	1	–	–	–	–	1	–	4	12
FCS2	Male	–	9	2	7	4	3	–	2	–	1	–	28
	Female	–	19	10	4	2	3	–	–	–	–	12	50
Total		63	112	71	40	25	32	4	4	4	27	94	476

SES Senior Executive Service officer

FCL Federal Court Legal

FCM Federal Court Manager

FCS Federal Court Staff

PR Principal Registry

NAT National. Includes the following staff:
 – Federal Court Native Title staff
 – Chambers of Chief Justice
 – Appeals
 – Tribunals

NNTT National Native Title Tribunal

Table 9.3 – Staffing by gender, classification and employment type (as at 30 June 2013)

LEVEL	GENDER	ONGOING		NON-ONGOING		INTERMITTENT	TOTAL
		FULL-TIME	PART-TIME	FULL-TIME	PART-TIME	INTERMITTENT/IRREGULAR	
SES2	Male	2	–	–	–	–	2
	Female	1	–	–	–	–	1
SES1	Male	5	–	–	–	–	5
	Female	3	–	–	–	–	3
FCL2	Male	12	–	–	–	–	12
	Female	7	2	1			10
FCL1	Male	1	–	–	–	–	1
	Female	–	1	–	–	–	1
FCM2	Male	9	–	1	–	–	10
	Female	4	1	–	–	–	5
FCM1	Male	17	–	–	–	–	17
	Female	18	5	1	–	–	24
FCS6	Male	16	–	2	–	–	18
	Female	77	7	8	–	–	92
FCS5	Male	16	–	22	–	–	38
	Female	17	1	29	2	–	49
FCS4	Male	5	1	6	–	–	12
	Female	53	8	10	2	–	73
FCS3	Male	12	–	1	–	–	13
	Female	3	4	4	1	–	12
FCS2	Male	–	–	–	–	–	0
	Female	9	1	2	1	–	13
FCS2/CCO	Male	–	–	–	–	28	28
	Female	–	–	–	–	37	37
Total		287	31	87	6	65	476

SES Senior Executive Service officer

FCL Federal Court Legal

FCM Federal Court Manager

FCS Federal Court Staff

CCO Casual Court Officer

APPENDIX 9

STAFFING PROFILE

Table 9.4 – Salary ranges by classification level under Enterprise Agreement or Determination (as at 30 June 2013)

COURT DESIGNATION	AUSTRALIAN PUBLIC SERVICE (APS) CLASSIFICATION	SALARY
CLERICAL ADMINISTRATIVE POSITIONS		
Federal Court Staff Level 1	APS Level 1	\$41 852
		\$46 253
Federal Court Staff Level 2	APS Level 2	\$47 365
		\$52 524
Federal Court Staff Level 3	APS Level 3	\$53 950
		\$58 228
Federal Court Staff Level 4	APS Level 4	\$60 132
		\$65 288
Federal Court Staff Level 5	APS Level 5	\$67 068
		\$71 115
Federal Court Staff Level 6	APS Level 6	\$72 437
		\$83 209
Federal Court Manager Level 1	Executive Level 1	\$92 712
		\$100 127
Federal Court Manager Level 2	Executive Level 2	\$106 881
		\$121 202
		\$125 260
LEGAL POSITIONS		
Federal Court Legal 1	From APS Level 3	\$60 572
	To Executive Level 1	\$117 752
Federal Court Legal 2	Executive Level 2	\$136 411
		\$141 758
SENIOR EXECUTIVE POSITIONS		
Senior Executive Service Band 1	SES Band 1	\$177 125
Senior Executive Service Band 2	SES Band 2	\$252 250

Table 9.5 – Senior Executive Service (SES) (as at 30 June 2013)

PRINCIPAL REGISTRY		SES LEVEL
Executive Director, Corporate Services Branch	Gordon Foster	Senior Executive Band 2
Deputy Registrar	John Mathieson	Senior Executive Band 1
Acting Deputy Registrar, Native Title	Ian Irving	Senior Executive Band 1
NEW SOUTH WALES DISTRICT REGISTRY		
District Registrar	Michael Wall	Senior Executive Band 2
VICTORIA DISTRICT REGISTRY		
District Registrar	Sia Lagos	Senior Executive Band 2
Deputy District Registrar	Daniel Caporale	Senior Executive Band 1
QUEENSLAND DISTRICT REGISTRY		
District Registrar	Heather Baldwin	Senior Executive Band 1
SOUTH AUSTRALIA DISTRICT REGISTRY		
District Registrar	Patricia Christie	Senior Executive Band 1
WESTERN AUSTRALIA DISTRICT REGISTRY		
District Registrar	Martin Jan PSM	Senior Executive Band 1
NATIONAL NATIVE TITLE TRIBUNAL		
Director Operations West	June Eaton	Senior Executive Band 1
Director Operations East	Frank Russo	Senior Executive Band 1

APPENDIX 10

COMPLIANCE WITH ANNUAL REPORT REQUIREMENTS

This is a guide to the report's compliance with the requirements for Annual Reports as approved by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

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Administrative Notices	See Practice Notes.
Alternative procedure agreement	A type of indigenous land use agreement.
Appeal	An application to a higher court to review a decision of a lower court or tribunal. For example, an appeal from a decision of a Federal Circuit Court judge may be made to the Federal Court, and a decision of a single judge of the Federal Court may be the subject of an appeal to the Full Court of the Federal Court.
Appellate jurisdiction	The power given to a court to hear appeals in certain matters.
Applicant	The individual, organisation or corporation who/which applies to the Court to start legal proceedings against another person or persons. Also known as 'plaintiff' in admiralty and corporations matters and in some other courts. In the National Native Title Tribunal the applicant is the person or persons who make an application for a determination of native title or a future act determination.
Application	The document that starts most proceedings in the Federal Court.
Area agreement	A type of indigenous land use agreement.
Body corporate agreement	A type of indigenous land use agreement.
Cause of action	A term used in the Federal Court's case management system to classify proceedings commenced with the Court. There are sixteen main causes of action and five supplementary causes of action.
Compensation application	An application made by Indigenous Australians seeking compensation for loss or impairment of their native title.
Cross appeal	An application by a respondent in an appeal also seeking a review of the lower court or tribunal decision and made in response to the appeal. A cross appeal is not required if the respondent is simply seeking that the decision of the lower court or tribunal be upheld.
Cross claim	A claim made in a proceeding by one party against a co-party, such as the first respondent (or defendant) against the second respondent (or defendant). However if the claim in the proceeding is by one party against an opposing party, such as the respondent (or defendant) against the applicant (plaintiff), it is called a counter claim. A cross claim has to be closely connected to what is in dispute in the original claim or a counter claim.
Directions	Orders made by the Court or a judge in relation to the conduct of a proceeding. Before the trial or hearing of a matter a judge may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
Discovery	A process by which the parties involved in a legal proceeding must inform each other of documents they have in their possession and which relate to the matters in dispute between the parties.
Docket system	A system by which each case is allocated to a particular judge who will then see the case through to completion. In the Federal Court the system is called the Individual Docket System (IDS).
Exhibit	A document or item produced in court for the purpose of becoming part of the evidence in a proceeding.

Filing of documents	The process of the Court accepting a document or documents lodged by a party to a proceeding.
First instance	A proceeding heard in the Court's original jurisdiction.
Full Court	Three or more judges sitting together to hear a proceeding.
Future act	A proposed activity on land and/or waters that may affect native title.
Future act determination application	An application requesting the National Native Title Tribunal (NNTT) to determine whether a future act can be done (with or without conditions).
Future act determination	A decision by the NNTT either that a future act cannot be done, or can be done with or without conditions. In making the determination, the Tribunal takes into account (among other things) the effect of the future act on the enjoyment by the native title party of their registered rights and interests and the economic or other significant impacts of the future act and any public interest in the act being done.
Good faith negotiations (native title)	All negotiation parties must negotiate in good faith in relation to the doing of future acts to which the right to negotiate applies (<i>Native Title Act 1993</i> s 31(1)(b)). See the list of indicia put forward by the NNTT of what may constitute good faith in its Guide to future act decisions made under the Right to negotiate scheme at www.nntt.gov.au . Each party and each person representing a party must act in good faith in relation to the conduct of the mediation of a native title application (s 136B(4)).
Hearing	That part of a proceeding where the parties present evidence and submissions to the Court.
ILUA	Indigenous land use agreement, a voluntary, legally binding agreement about the use and management of land or waters, made between one or more native title groups and others (such as miners, pastoralists, governments).
Interlocutory application	Interlocutory proceedings are for dealing with a specific issue in a matter – usually between the filing of the application and the giving of the final hearing and decision. An interlocutory application may be for interim relief (such as an injunction) or in relation to a procedural step (such as discovery).
Judgment	The final order or set of orders made by the Court after a hearing, often accompanied by reasons which set out the facts and law applied in the case. A judgment is said to be 'reserved' when the Court postpones the delivery of the judgment to a later date to allow time to consider the evidence and submissions. A judgment is said to be 'ex tempore' when the Court gives the judgment orally at the hearing or soon after.
Jurisdiction	The extent of legal authority or power of the Court to apply the law. The Federal Court has jurisdiction under more than 150 Acts of the Commonwealth Parliament and has original and appellate jurisdiction.
Litigants	Individuals, organisations or companies who/which are the parties to a proceeding before the Court.
Mediation (or Assisted Dispute Resolution)	A process in which an impartial third party (the mediator) assists the parties in an attempt to bring about an agreed settlement or compromise, without requiring a decision of the Court.
Milestone agreement	An agreement on issues, such as a process or framework agreement, that leads towards the resolution of a native title matter but does not fully resolve it.
National Native Title Register	The record of native title determinations.

GLOSSARY

National Native Title Tribunal Member	A person who has been appointed by the Governor-General as a member of the Tribunal under the Native Title Act. Members are classified as presidential and non-presidential. Some members are full-time and others are part-time appointees.
Native Title determination	A decision by an Australian court or other recognised body that native title does or does not exist. A determination is made either when parties have reached an agreement after mediation (consent determination) or following a trial process (litigated determination).
Native title claimant application/claim	An application made for the legal recognition of native title rights and interests held by Indigenous Australians.
Native title representative body	Representative Aboriginal/Torres Strait Islander Body also known as native title representative bodies are recognised and funded by the Australian Government to provide a variety of functions under the <i>Native Title Act 1993</i> . These functions include assisting and facilitating native title holders to access and exercise their rights under the Act, certifying applications for determinations of native title and area agreements (ILUA), resolving intra-indigenous disputes, agreement-making and ensuring that notices given under the NTA are brought to the attention of the relevant people.
Non-claimant application	An application made by a person who does not claim to have native title but who seeks a determination that native title does or does not exist.
Notification	The process by which people, organisations and/or the general public are advised by the relevant government of their intention to do certain acts or by the NNTT that certain applications under the Act have been made.
On country	Description applied to activities that take place on the relevant area of land, for example mediation conferences or Federal Court hearings taking place on or near the area covered by a native title application.
Original jurisdiction	The authority or legal power of the Court to hear a case in the first instance.
Parties	People involved in a court case. Applicants, appellants, respondents, defendants, are generally called 'parties'.
PBC	Prescribed body corporate, a body nominated by native title holders which will represent them and manage their native title rights and interests once a determination that native title exists has been made.
Practice Notes and Administrative Notices	The Court publishes Practice Notes and Administrative Notices. Practice Notes are issued by the Chief Justice on advice of the judges of the Court. Administrative Notices are issued by each District Registrar at the request, or with the agreement, of the judges in the District Registry to which the notice relates.
Practice Notes	provide guidance on practice and procedure required or followed by the Court nationally to supplement what might be contained in statutes or the Court's Rules.
Administrative Notices	provide guidance on practice and procedure required or followed by the Court in the District Registry to which the notice relates to supplement what might be contained in statutes or the Court's Rules.
Proceeding	The regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the judgment.

Register of Indigenous Land Use Agreements	A record of all indigenous land use agreements that have been registered. An ILUA can only be registered when there are no obstacles to registration or when those obstacles have been resolved.
Register of Native Title Claims	The record of native title claimant applications that have been filed with the Federal Court, referred to the Native Title Registrar and generally have met the requirements of the registration test.
Registered native title claimant	A person or persons whose names(s) appear as 'the applicant' in relation to a claim that has met the conditions of the registration test and is on the Register of Native Title Claims.
Registration test	A set of conditions under the <i>Native Title Act 1993</i> that is applied to native title claimant applications. If an application meets all the conditions, it is included in the Register of Native Title Claims, and the claimants then gain the right to negotiate, together with certain other rights, while their application is under way.
Regulations	The Federal Court of Australia Regulations 2004 which prescribe the filing and other fees that must be paid in relation to proceedings in the Federal Court.
Respondent	The individual, organisation or corporation against whom/which legal proceedings are commenced. Also known as a 'defendant' in admiralty and corporations matters and in some courts. In an appeal it is the party who/which did not commence the appeal.
Rules	Rules made by the judges which set out the procedures for conducting a proceeding. The current rules of the Federal Court are the Federal Court Rules, Federal Court (Corporations) Rules 2000 (for proceedings under the <i>Corporations Act 2001</i>) and Federal Court (Bankruptcy) Rules 2005 (for proceedings under the <i>Bankruptcy Act 1966</i>).
Self Represented Litigant	A party to a proceeding who does not have legal representation and who is conducting the proceeding on his or her own behalf.
Setting Down Fee	A fee that must be paid when a date is set for hearing a matter. It includes the first day's hearing fee and, usually, has to be paid at least 28 days before the hearing.

FEDERAL COURT REGISTRIES

Principal Registry

Law Courts Building
Queens Square Sydney NSW 2000
Phone: (02) 9230 8567 **Fax:** (02) 9280 1381
Email: query@fedcourt.gov.au
<http://www.fedcourt.gov.au>
Contact hours: 8.30am–5.00pm

Australian Capital Territory District Registry

Nigel Bowen Commonwealth Law Courts Building
Childers Street, Canberra City ACT 2600
Phone: (02) 6267 0666 **Fax:** (02) 6267 0625
Email: actman@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

New South Wales District Registry

Level 17 Law Courts Building
Queens Square, Sydney NSW 2000
Phone: (02) 9230 8567 **Fax:** (02) 9230 8535
Email: nswdr@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Northern Territory District Registry

Level 3 Supreme Court Building
State Square, Darwin NT 0800
Phone: (08) 8941 2333 **Fax:** (08) 8941 4941
Email: ntreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

Queensland District Registry

Level 6 Harry Gibbs Commonwealth
Law Courts Building
119 North Quay, Brisbane QLD 4000
Phone: (07) 3248 1100 **Fax:** (07) 3248 1260
Email: qldreg@fedcourt.gov.au
Counter hours: 9.00am–4.00pm
Contact hours: 8.30am–5.00pm

South Australia District Registry

Level 5 Roma Mitchell Commonwealth
Law Courts Building
3 Angas Street, Adelaide SA 5000
Phone: (08) 8219 1000 **Fax:** (08) 8219 1001
Email: sareg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Tasmania District Registry

Edward Braddon Commonwealth
Law Courts Building
39-41 Davey St, Hobart TAS 7000
Phone: (03) 6232 1615 **Fax:** (03) 6232 1601
Email: tasreg@fedcourt.gov.au
Counter hours: 9.00am–4.30pm
Contact hours: 8.30am–5.00pm

Victoria District Registry

Level 7 Owen Dixon Commonwealth
Law Courts Building
305 William Street, Melbourne VIC 3000
Phone: (03) 8600 3333 **Fax:** (03) 8600 3351
Email: vicreg@fedcourt.gov.au
Counter hours: 9am–4.30pm
Contact hours: 8.30am–5.00pm

Western Australia District Registry

Level 6 Peter Durack Commonwealth
Law Courts Building
1 Victoria Avenue, Perth WA 6000
Phone: (08) 9268 7100 **Fax:** (08) 9221 3261
Email: waregistry@fedcourt.gov.au
Counter hours: 8.30am–4.00pm
Contact hours: 8.30am–5.00pm

Contact officer for Annual Report

Elizabeth Connolly
Principal Registry
Phone: (02) 9230 8720 **Fax:** (02) 9223 1906
Email: Elizabeth.Connolly@fedcourt.gov.au

If you have a hearing or speech impairment, contact us through the National Relay Service (NRS):

- TTY users phone 133 677 then ask for your local registry's phone number as listed above
- Speak and Listen users phone 1300 555 727 then ask for your local registry's phone number as listed above
- Internet relay users connect to the NRS and then ask for your local registry's phone number as listed above.

An electronic version of the report is available at <http://www.fedcourt.gov.au>

Commonwealth of Australia 2013

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