

## **COVER**

The photograph on the cover was taken during a hearing in the native title matter of *The Members of the Yorta Yorta Aboriginal Community v The State of Victoria* before Justice Olney. The Court was sitting at the Rumbulara Aboriginal Co-operative, Mooroopna (near Shepparton). Thereafter the Court also sat at locations near Echuca, Barmah, Mulwala and Wangaratta. The area under claim falls within the region bounded by Jerilderie in the north, Euroa in the south, Cohuna in the west and Howlong in the east.



**FEDERAL COURT  
OF  
AUSTRALIA**

**Annual Report**

**1996 - 1997**

Australian Government Publishing Service  
Canberra



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31 October 1997

The Honourable Daryl Williams AM QC MP  
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 1996-97 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 eighth annual report.

Yours sincerely

R M Northrop  
Acting Chief Justice



## FEDERAL COURT REGISTRIES

### Principal Registry

Level 17 Law Courts Building  
Queens Square Sydney NSW 2000  
Phone: (02) 9230 8037 Fax: (02) 9223 7706  
Hours: 9am-5pm

### Australian Capital Territory District Registry

Childers Street  
Canberra City ACT 2601  
Phone: (02) 6267 0566  
Fax: (02) 6267 0625  
Hours: 10am-1pm; 2pm-4pm

### New South Wales District Registry

Level 16 Law Courts Building  
Queens Square  
Sydney NSW 2000  
Phone: (02) 9230 8567  
Fax: (02) 9230 8535  
Hours: 9am-4pm

### Northern Territory District Registry

1st Floor  
Commonwealth Law Courts  
Cnr Mitchell & Herbert Streets  
Darwin NT 0800  
Phone: (08) 8941 2333  
Fax: (08) 8981 6081  
Hours: 9.30am-4pm

### Queensland District Registry

Level 6  
Commonwealth Law Courts  
119 North Quay  
Brisbane QLD 4000  
Phone: (07) 3248 1100  
Fax: (07) 3248 1260  
Hours: 9am-4pm

### South Australia District Registry

8th Floor  
Grenfell Centre  
25 Grenfell Street  
Adelaide SA 5000  
Phone: (08) 8205 4436  
Fax: (08) 8205 4439  
Hours: 9am-4pm

### Tasmania District Registry

Commonwealth Law Courts Building  
39-41 Davey St  
Hobart TAS 7000  
Phone: (03) 6232 1715  
Fax: (03) 6232 1701  
Hours: 9.30am-1pm; 2pm-4pm

### Victoria District Registry

450 Little Bourke Street  
Melbourne VIC 3000  
Phone: (03) 9289 9333  
Fax: (03) 9600 0425  
Fax: (03) 9670 4965  
Hours: 9am-4.30pm

### Western Australia District Registry

Level 6  
Commonwealth Law Courts  
1 Victoria Avenue  
Perth WA 6000  
Phone: (08) 9268 7100  
Fax: (08) 9221 3261  
TTY: (08) 9325 7053  
Hours: 8.30am-4pm

### Contact officer for Annual Report:

Deputy Registrar  
Principal Registry  
Level 17 Law Courts Building  
Queens Square  
Sydney NSW 2000  
Phone: (02) 9230 8336  
Fax: (02) 9223 1906  
Hours: 9am-5pm

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## Chapter 1

### OVERVIEW OF THE FEDERAL COURT OF AUSTRALIA

#### 1.1 ESTABLISHMENT

The Federal Court of Australia, created by the *Federal Court of Australia Act 1976*, 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 of the jurisdiction of the Australian Industrial Court and of 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.

#### 1.2 FUNCTIONS AND POWERS

The Court's original jurisdiction is conferred by over 100 statutes of the Parliament. A list of these Acts appears in Appendix 5 to this report on pages 91 to 94.

The Court exercises appellate jurisdiction over decisions of single judges of the Court, decisions of the Supreme Courts of the Australian Capital Territory and Norfolk Island and certain decisions of State Supreme Courts exercising federal jurisdiction. The Court's jurisdiction is more fully described in Chapter 2.

#### 1.3 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 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.

## 1.4 THE COURT

### Judges

The *Federal Court of Australia Act* provides that the Court consists of a Chief Justice and such other judges as are appointed. The Chief Justice is the senior judge of the Court and is responsible for ensuring the orderly and expeditious discharge of the business of the Court.

Judges of the Court are appointed by the Governor-General, by commission. Judges may not be removed except by the Governor-General on an address from both Houses of Parliament, in the same session, praying for the judge's removal on the ground of proved misbehaviour or incapacity. This requirement is contained in s 72 of the *Commonwealth of Australia Constitution Act 1901* and Part II of the *Federal Court of Australia Act*.

Until 1977 judges were appointed for life. As a consequence of the constitutional referendum in that year, all judges appointed after 1977 must retire at the age of 70. There is presently one judge of the Court with a life appointment, the Hon Justice Northrop.

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

As at 30 June 1997 there were 46 judges of the Court. They are listed on pages 3 to 5 in order of seniority. The list gives details about each judge and any other commissions or appointments held on courts or tribunals. Of the 46 judges, there were 8 whose work as members of other courts or tribunals occupied all or most of their time. Last year it was reported that there were 13 judges whose work as members of other courts or tribunals occupied all or most of their time. The reason for the difference is that on 26 May 1997 the jurisdiction of the Industrial Relations Court of Australia was vested in the Federal Court. Accordingly, the judges who had in previous years mostly heard matters in the Industrial Relations Court now undertake that work as part of the jurisdiction of the Federal Court.

**JUDGES OF THE COURT**  
(as at 30 June 1997)

Judge	Location	Other Commissions/Appointments
<b>Chief Justice</b>		
The Hon Michael Eric John BLACK	Melbourne	
<b>Judges</b>		
The Hon Raymond Moyle NORTHROP	Melbourne	Australian Industrial Court - Judge Supreme Court of the ACT - Additional Judge
The Hon John Foster GALLOP	Canberra	Supreme Court of the ACT - Judge Supreme Court of the NT - Judge Supreme Court of Christmas Island - Judge Administrative Appeals Tribunal - Presidential Member Defence Force Discipline Appeal Tribunal - President
The Hon John Daryl DAVIES	Sydney	Supreme Court of the ACT - Additional Judge
The Hon John Stanley LOCKHART AO	Sydney	Supreme Court of the ACT - Additional Judge Australian Competition Tribunal - President Copyright Tribunal - Deputy President
The Hon Bryan Alan BEAUMONT	Sydney	Supreme Court of Norfolk Island - Chief Justice Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member Supreme Court of Vanuatu - Acting Judge
The Hon Murray Rutledge WILCOX	Sydney	Industrial Relations Court of Australia - Chief Justice Supreme Court of the ACT - Additional Judge Supreme Court of Norfolk Island - Judge
The Hon Jeffrey Ernest John SPENDER	Brisbane	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member
The Hon Peter Ross Awdry GRAY	Melbourne	Industrial Relations Court of Australia - Judge Administrative Appeals Tribunal - Presidential Member National Native Title Tribunal - Deputy President Aboriginal Land Commissioner
The Hon James Charles Sholto BURCHETT	Sydney	Privy Councillor of Tonga Court of Appeal of Tonga - Judge
The Hon Jeffrey Allan MILES AO	Canberra	Supreme Court of the ACT - Chief Justice
The Hon Donnell Michael RYAN	Melbourne	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
The Hon Robert Shenton FRENCH	Perth	National Native Title Tribunal - President Supreme Court of the Cocos (Keeling) Islands - Judge Supreme Court of Christmas Island - Additional Judge Administrative Appeals Tribunal - Presidential Member
The Hon Marcus Richard EINFELD	Sydney	Supreme Court of the ACT - Additional Judge Eastern Caribbean Supreme Court - Judge High Court of Justice, Dominica - Judge
The Hon Michael Leader FOSTER	Sydney	Supreme Court of the ACT - Additional Judge Federal Police Disciplinary Tribunal - President
The Hon Alastair Bothwick NICHOLSON AO RFD	Melbourne	Family Court of Australia - Chief Justice
The Hon Malcolm Cameron LEE	Perth	Industrial Relations Court of Australia - Judge Supreme Court of the Cocos (Keeling) Islands - Additional Judge
The Hon Howard William OLNEY	Melbourne	National Native Title Tribunal - Deputy President Administrative Appeals Tribunal - Presidential Member Federal Police Disciplinary Tribunal - Deputy President
The Hon John William von DOUSSA	Adelaide	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge Administrative Appeals Tribunal - Presidential Member Australian Competition Tribunal - Deputy President Australian Law Reform Commission - Commissioner
The Hon Donald Graham HILL	Sydney	Administrative Appeals Tribunal - Presidential Member
The Hon Maurice Francis O'LOUGHLIN	Adelaide	
The Hon Deirdre Frances O'CONNOR	Sydney	Australian Industrial Relations Commission - President
The Hon Terence John HIGGINS	Canberra	Supreme Court of the ACT - Judge
The Hon Peter Cadden HEEREY	Melbourne	
The Hon Douglas Paton DRUMMOND	Brisbane	Administrative Appeals Tribunal - Presidential Member
The Hon Richard Ellard COOPER	Brisbane	Supreme Court of the ACT - Additional Judge
The Hon Antony Philip WHITLAM	Sydney	Supreme Court of the ACT - Additional Judge
The Hon Christopher John Seymour Metford CARR	Perth	

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia - Judge
The Hon Catherine Margaret BRANSON	Sydney	
The Hon Jane Hamilton MATHEWS	Sydney	Administrative Appeals Tribunal - President National Native Title Tribunal - Deputy President
The Hon Kevin Edmund LINDGREN	Sydney	
The Hon Brian John Michael TAMBERLIN	Sydney	
The Hon Ronald SACKVILLE	Sydney	
The Hon Susan Mary KIEFEL	Brisbane	
The Hon Robert David NICHOLSON	Perth	Administrative Appeals Tribunal - Presidential Member
The Hon Paul Desmond FINN	Canberra	
The Hon Ross Alan SUNDBERG	Melbourne	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia - Judge
The Hon John Robert Felix LEHANE	Sydney	
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia - Judge
The Hon Rodney Neville MADGWICK	Sydney	Industrial Relations Court of Australia - Judge Supreme Court of the ACT - Additional Judge
The Hon Ronald MERKEL	Melbourne	
The Hon John Ronald MANSFIELD	Adelaide	
The Hon Alan Henry GOLDBERG	Melbourne	
The Hon Arthur Robert EMMETT	Sydney	

The judges of the Court must devote time to other courts and tribunals on which they hold commissions or appointments. During 1996-97 judges whose main duties were as Federal Court judges sat for a total of 315 days as members of other courts or tribunals. In addition to the time spent hearing cases, time was necessarily devoted to other work related to those commissions or appointments, such as writing reserved judgments.

Members of the Court also spend a significant amount of time on other activities related to the law. In particular:

Justice Gallop is Chairman of the Steering Committee of the Supreme Court and Federal Court Judicial Conference and Chairman of the Steering Committee of the Australian Judicial Conference.

Justice Lockhart is the President of the Australian Judicial Conference.

Justice Beaumont is Convenor of the Council of Chief Justices Committee on Harmonisation of Appellate Practice and Procedure and a member of the Judicial Conference of the South Pacific Committee to Establish A South Pacific Institute of Judicial Administration.

Justice Burchett is a judge of the Court of Appeal of Tonga and is a Privy Councillor of Tonga.

Justice Ryan is a consultant to the Australian Law Reform Commission for the Choice of Law Reference.

Justice French is the Chairman of the Australian Institute of Judicial Administration Research Committee.

Justice von Doussa is a part-time Commissioner of the Australian Law Reform Commission.

Justice O'Loughlin is the Chairman of the Law Foundation of South Australia, Inc.

Justice Cooper is the presiding member of the Admiralty Rules Committee for rules made under the *Admiralty Act 1988*.

Justice Branson is the Deputy President of the Australian Institute of Judicial Administration.

Justice R D Nicholson is a member of the Australian Institute of Judicial Administration, Chairman of the Advisory Committee on the AIIA Project on Courts and the Public, Secretary of the LAWASIA Judicial Section and Deputy Convenor of the Trustees of the Francis Burt Law Education Centre.

Justice Lindgren is Chairman of the Legal Education Committee of the New South Wales Bar Association and Convenor of the Council of Chief Justices Committee on Harmonisation of Practice and Procedure of Corporations Law.

Many judges are designated persons under various Acts and, as such, may issue warrants authorising telephone interceptions and the use of listening devices. These functions add to their workload.

## **Appointments and retirements**

During the year three Judges were appointed to the Court:

The Hon John Ronald Mansfield (resident in Adelaide) appointed on 2 September 1996;

The Hon Alan Henry Goldberg (resident in Melbourne) appointed 3 February 1997;

The Hon Arthur Robert Emmett (resident in Sydney) appointed on 3 February 1997.

The Hon Ian Fitzhardinge Sheppard retired as a judge of the Court on 23 May 1997 on attaining the age of 70 years. Justice Sheppard was subsequently appointed as an Acting Judge of the New South Wales Court of Appeal. The Hon Kenneth Joseph Jenkinson retired as a judge of the Court on 5 June 1997.

## **1.5 JUDICIAL REGISTRARS**

During the year the jurisdiction of the Industrial Relations Court of Australia was vested in the Federal Court by the *Workplace Relations and Other Legislation Amendment Act 1996*. That Act appointed the Judicial Registrars of the Industrial Relations Court of Australia as Judicial Registrars of the Federal Court pursuant to s 18AA of the *Federal Court of Australia Act*. The appointments are to continue for the balance of the term of each Judicial Registrar's appointment as a Judicial Registrar of the Industrial Relations Court. A list of the Judicial Registrars of the Court as at 30 June 1997 appears in Appendix 3 at page 87.

## **1.6 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 a Secretary of a Department of the Australian Public Service in respect of the officers and staff of the Court employed under the *Public Service Act 1922* (s 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.

There are District Registries in each State capital city, in Canberra and in Darwin. The New South Wales District Registry operated a sub-registry in Parramatta until October 1996.

The District Registries provide operational support for the Court as well as an information service to legal practitioners and members of the public. The registries also receive court and related documents, assist with the arrangement of court sittings and facilitate the enforcement of orders made by the Court.

Legal staff of the registries perform statutory functions assigned to them by the *Federal Court of Australia Act* and Rules. These include issuing process, taxing costs and settling appeal indexes. They also conduct examinations of bankrupt individuals and associated persons under the *Bankruptcy Act 1966*, and examinations of company officers and others under the *Corporations Law*. The power to conduct examinations under the *Corporations Law* and the *Bankruptcy Act* is delegated by judges. Senior legal staff exercise additional powers delegated by judges. These include the power to make sequestration (bankruptcy) orders, orders for the winding up of companies and the setting aside of statutory demands.

During the reporting period the District Registries ceased to be Bankruptcy Registries for the purposes of the *Bankruptcy Act* following the commencement of the *Bankruptcy Legislation Amendment Act 1996*. This Act transferred many of the administrative functions previously performed by the District Registries to Insolvency and Trustee Service, Australia.

Most District Registries are also registries for the following federal tribunals: the Australian Competition Tribunal, the Defence Force Discipline Appeal Tribunal and the Federal Police Disciplinary Tribunal. The Tasmania District Registry is a joint registry for the Administrative Appeals Tribunal and the National Native Title Tribunal. The Registry of the Copyright Tribunal is located in the New South Wales District Registry of the Court.

On 30 March 1994 all registries were given the additional function of registries of the Industrial Relations Court of Australia. Separate registries for the Industrial Relations Court were opened in Sydney and Melbourne during the 1994-95 year and in Perth during the 1995-96 year, but all other registries continued to provide a joint registry facility for that Court. Following the commencement of the *Workplace Relations and Other Legislation Amendment Act* the jurisdiction of the Industrial Relations Court was vested in the Federal Court. The registries of the Federal Court will continue to be registries for the Industrial Relations Court until the work of that Court is completed.

During the reporting year the Northern Territory District Registry ceased to be administered by the Federal Court. That Registry is now administered by the Family Court of Australia which provides registry services to the Federal Court, Administrative Appeals Tribunal and National Native Title Tribunal under service contracts.

## **Officers of the Court**

Officers of the Court are appointed by the Registrar under s 18N of the *Federal Court of Australia Act*. The officers of the Court are:

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

The office of Marshal was created during the year by an amendment to the *Federal Court of Australia Act* contained in the *Law and Justice Legislation Amendment Act 1997*.

The Registrar, District Registrars, Deputy Registrars and Deputy District Registrars must take an oath or make an affirmation of office before undertaking the duties of registrar (s 18Y of the

*Federal Court of Australia Act*). A schedule of the registrars appears in Appendix 4 on pages 88 to 90 and a list of District Registrars appears in Table 1a. During the year the office of Registrar in Bankruptcy was abolished by the *Bankruptcy Legislation Amendment Act*.

**Table 1a**  
**District Registrars**

<b>Registry</b>	<b>District Registrar</b>
Australian Capital Territory	John Madden
New South Wales	John Mathieson
Northern Territory	Peter Liddle
Queensland	Graham Ramsey
South Australia	Peter Carey
Tasmania	Janet Cooper PSM
Victoria	Peter Seccombe
Western Australia	Martin Jan PSM

## **Staff of the Court**

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs) are appointed or employed under the *Public Service Act*. On 30 June 1997 there were 327 persons employed Australia-wide as registry staff or as judges' personal staff. Generally, judges have two personal staff members. Details of staffing are set out in Tables 3a to 3c in Chapter 3 on pages 48 to 50.

## **1.7 MANAGEMENT**

### **Management of the administrative affairs of the Court**

The Chief Justice is responsible for managing the administrative affairs of the Court. He is assisted by the Registrar (Part IIA ss 18A-18Y of the *Federal Court of Australia Act*).

The Chief Justice may delegate any of his administrative powers to judges. The Registrar may assist the Chief Justice by exercising powers on his behalf in relation to the Court's administrative affairs. The Chief Justice may give directions to the Registrar about the exercise of these powers.

## Judges' Committees

There are 17 standing committees which assist in the administration of the Court:

Admiralty	Information Technology
Assisted Dispute Resolution	Library
Audit	Practice and Procedure
Bankruptcy	Remuneration
Corporations	Rules
Cultural Awareness	Security
Federal Court Reports	Statistics
Finance	Transcript
Gender Issues	

An ad hoc Enterprise Bargaining Steering Committee has been convened to assist in the development of a Workplace Agreement for the Court under the *Workplace Relations Act 1996*. The Committee will play a role in endorsing the parameters of the negotiations, considering implications of proposals for the Agreement and endorsing the fairness of the process being followed.

Each committee is supported by staff of the Court and its role is defined by its terms of reference.

## Judges' Meetings

There were two meetings of the whole Court during the year. The matters dealt with included reforms to the Court's practice and procedure and amendments to the Rules.

## Principal Registry

The Principal Registry, headed by the Registrar, has overall responsibility for the management of the Court's registries. The Principal Registry also provides various services to the Court including personnel services, financial management, computing support, library services and property management.

## District Registries

To facilitate access to the Court and to enable the Court to exercise its jurisdiction nationally there is a District Registry in each of the States and mainland Territories of Australia. These are managed by a District Registrar supported by legal and administrative staff.

District Registrars and Deputy District Registrars also perform important legal functions including the exercise of judge-delegated functions and statutory functions under the *Federal Court of Australia Act* and Rules and the *Bankruptcy Act*. District Registrars and their staff are a first point of contact for the community and the legal profession in seeking advice on court procedures and in the processing of documents for those using the Court.

## 1.8 ACCESS TO JUSTICE

### Practice and procedure reforms

During the reporting year the Court's Practice and Procedure Committee continued the work of developing changes to the practice and procedure issues set out in the 1995-96 Annual Report. In particular, although not limited to these issues, the Practice and Procedure Committee refined procedures to enable the implementation of the Individual Docket System and made recommendations as to the role and purpose of experts.

The Individual Docket System involves each case being allocated to an individual judge who will ordinarily be responsible for that case from its commencement until its disposition. The disposition could, for example, occur by the parties settling the matter among themselves or alternatively by the matter proceeding to trial and being disposed of by judgment.

The system envisages a time standard of no more than 18 months for the disposition of most cases. It is recognised, however, that the majority of cases will be disposed of well within this period and that some cases by their nature and complexity will require more time.

After consultation with representative members of the legal profession nationally and after giving consideration to developments in case management and listing techniques in Australia and overseas, the Court decided to adopt the Individual Docket System as the basis of its case management throughout Australia.

To that end a pilot scheme of individual docketing commenced in Melbourne on 1 January 1997. The system will be fully implemented in Melbourne on 1 July 1997 and throughout the Court by the end of September 1997.

The proposals of the Court with regard to the role and purpose of experts have been the subject of correspondence between the Chief Justice, the Law Council of Australia and various professional associations.

The Court's proposals have a number of elements, some of which are:

- although the Court will be concerned that experts be used quickly and efficiently in a case, the calling of expert evidence would usually be subject to the control of the parties. The Court, however, would take some control in exceptional cases. Such control could extend, for instance, to limiting the number of experts called in a field of speciality;
- experts should be given clear guidance that, when preparing or giving evidence, their first responsibility is to be open and truthful to the Court;
- to reinforce the element immediately above, any report or draft report prepared for the purpose of giving evidence to a court and delivered to a client will be addressed to the Court;
- such a report should end with a declaration by the expert that the expert has made enquiries which the expert believes are appropriate and that the matters of significance

which the expert regards as materially relevant have not, to the expert's knowledge, been withheld from the expert or by the expert to the Court;

- if experts instructed by the parties meet at the direction of the Court, it would be improper conduct for an expert to be given or accept instructions not to reach agreement. If the experts cannot reach agreement on matters of expert opinion they should specify their reasons for being unable to do so;
- codes of practice providing guidance as to the practice in relation to experts should be drawn up firstly by the appropriate professional bodies representing the expert and the legal profession (the Law Council of Australia) and the expert(s) should state whether their report(s) have been prepared in accordance with a relevant code of practice;
- often the evidence of experts will be given at the conclusion of all other evidence in the case; and
- the Court would, in appropriate cases, empanel experts in the manner successfully trialed by the Australian Competition Tribunal.

The practice of the Australian Competition Tribunal is set out below.

### **“Reception and Role of Expert Evidence from Economists in the Australian Competition Tribunal**

The practice, which has now become the usual practice in the Australian Competition Tribunal concerning the reception of evidence from expert economists is as follows:

1. Economists submit written statements prior to the oral proceedings, but after the reception of written non-expert evidence and documentary material.
2. The witness box is, of course, too limited a space for all experts to be in at the one time, so they usually sit at one end of the bar table.
3. The Tribunal informs the experts before they give evidence that they should feel free to modify the views expressed by them in their reports as little or as much as they wish, because the Tribunal wishes to receive the benefit of their present views, having had access to all of the evidence. It is the experience of the Tribunal that some experts modify their views in varying degrees.
4. At the conclusion of all the evidence (other than evidence of the experts) and before the commencement of addresses, each expert is sworn immediately after the other.

5. Each expert in turn gives an oral exposition of his or her opinion with respect to the relevant issues arising from the evidence.
6. Each expert then in turn expresses his or her opinion about the opinions expressed by the other experts.
7. Counsel then cross examines the experts, being at liberty to cross examine on the basis:
  - (a) either that questions could be put to each expert in the customary fashion, one after the other, completing the cross examination of one before proceeding to the next, or
  - (b) that questions may be put to all or any of the experts, one after the other in respect of a particular subject, then proceeding to the next subject.
8. Re-examination is conducted on the same basis.
9. Members of the Tribunal sometimes intervene with their questions.

The advantages of this system are as follows:

- (a) Experts are required to prepare written submissions which are set down as a connected argument and, when giving oral evidence, the same connected thread runs through it, rather than being a series of disconnected responses to questions by counsel.
- (b) It achieves the result of the experts defining for their purposes points of agreement and disagreement.
- (c) It takes the expert as far away from the adversarial field as possible.

The above practice is recorded generally in *QIW (re Queensland Independent Wholesalers Ltd)* (1995) ATPR 41-438 at 40,925) and in other decisions of the Tribunal. In *QIW*, four economists appeared. The total time required for their evidence was only 3½ hours.”

The Court has received wide and supportive media coverage and professional approval with regard to the proposal to review the role and purpose of experts. The views of the Law Council of Australia and the professional associations will be considered and the proposals further refined and developed as necessary by the Court’s Practice and Procedure Committee.

The Practice and Procedure Committee has also developed a new Full Court rostering system which will commence operation in 1998.

Unlike previous years when Full Court Sittings commenced in Sydney in February and were held consecutively around Australia, and in a number of capital cities more than once, the Full Court Sittings for 1998 and future years will be held on a national basis with the Full Court

sitting for a total of three times a year for four weeks each sitting, namely in March, July and November.

One of the purposes of the new system is to provide greater uninterrupted periods of time for individual docket work for judges allocated to Full Courts and also to enable judges not required for Full Courts to list individual docket cases during the Full Court Sittings periods.

### **Gender issues**

In 1993 the Court established a Gender Issues Committee. The terms of reference of the Committee include advising the Chief Justice and judges about gender issues as they may affect the Court and making recommendations about judicial studies concerning such issues.

As in previous years, the Chief Justice continued the practice of arranging meetings between judges and women legal practitioners. These meetings provide valuable insight into the operation of the court system as it affects women and related issues.

During the year many of the Court's staff attended programs on eliminating harassment in the workplace and gender awareness.

### **Disability, race and sex discrimination**

During the year the Registrar and a group of officers from the Principal Registry met with the Executive Director and officers from the Human Rights and Equal Opportunity Commission to consider issues affecting the Court arising from the amendments contemplated by the Human Rights Legislation Amendment Bill 1997. The Registrar and officers paid particular attention to the expectations of the likely clients in this new jurisdiction. If passed in its current form the Bill will transfer to the Court the jurisdiction to hear cases under the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984*.

### **Accessibility - facilities and registry services**

The Federal Court registries are centrally located in each of the State and Territory capital cities. In several cities pamphlets are available for distribution to litigants and witnesses showing the location of the Court buildings, public transport access, nearby car parking facilities and containing other helpful information. Pamphlets of this type are being prepared for all the Court's registries.

The locations and business hours of the registries are set out in the front of this report. During the reporting period the Court met all requests to open a registry for urgent business outside normal office hours.

The Court is conscious of the need to ensure physical access to its registries and courtrooms and is committed to ensuring that there are no barriers to access for people with disabilities. During the year Works Australia were engaged to undertake an audit of each registry to identify deficiencies in the provision of access and facilities for disabled persons. The audit was partially complete at the end of the reporting period. Preliminary reports indicate that areas requiring attention include upgrading of building access with ramps, handrails and tactile indicators (for example, special tiles

which indicate the presence of steps); provision of suitable toilet facilities for people with disabilities; upgrading lifts to comply with the "Persons with Disabilities Code"; and repositioning of information boards and improvement of signs and provision of hearing augmentation (for example, hearing loops and amplifiers).

To assist people with hearing difficulties the Court has installed electronic hearing loops and amplifiers in a number of its courtrooms.

The Court has in place a system to provide access to professional interpreter services for people who need those services.

### **Remission or waiver of court and registry fees**

During the year the Federal Court of Australia Regulations were amended changing some fees and introducing new fees to be taken in the registry. The new fees are required to be paid when matters are set down for hearing and a daily hearing fee is payable. A setting down fee is not payable on all matters and the amount of the daily hearing fee will vary depending on the nature of the hearing.

The Federal Court of Australia Regulations authorise registrars to remit or waive fees payable where a person:

- has been granted legal aid by a body approved by the Attorney-General; or
- is the holder of a pensioner health benefit card, a health benefit card, a pharmaceutical benefits concession card or a health care card; or
- is an inmate of a prison or one who is otherwise lawfully detained in a public institution; or
- is a child under the age of 18 years; or
- is in receipt of AUSTUDY allowance; or
- is in receipt of ABSTUDY allowance.

Registrars also have a discretion to waive or remit a fee where a payment would cause financial hardship to a person, taking into account the person's assets, day-to-day living expenses, income and liabilities. A registrar's decision to refuse an application to waive a fee is reviewable by the Administrative Appeals Tribunal. The Administrative Appeals Tribunal did not receive any applications to review any such decisions during the reporting period.

### **Public information and legal education programs**

A series of brochures detailing services and facilities provided by District Registries has been completed. A brochure on bankruptcy, for litigants who are not legally represented, is being updated following amendments to the *Bankruptcy Act* and the introduction of the Court's

Bankruptcy Rules. Registry staff will assist parties, particularly unrepresented parties, with the basic procedures and documents provided for by the Rules of Court.

The Court has continued to cooperate with the media particularly in some cases of public importance by allowing television cameras to record briefly in the court room. On several occasions judges have permitted sound and visual recording of the handing down of their judgments. As reported last year judges have, in some circumstances, prepared summaries of judgments to assist the media.

The Court is active in the support of legal education programs. During the reporting year the Chief Justice and many judges and registrars presented papers, gave lectures and chaired sessions at judicial conferences, judicial administration meetings, continuing legal education courses, university law schools, Bar reading courses and Law Society meetings.

## **Searches**

Following commencement of the *Bankruptcy Legislation Amendment Act* on 16 December 1996, the bankruptcy database known as BIOS ceased to be updated. This Act transferred many of the administrative functions formerly performed by Registrars in Bankruptcy to Insolvency and Trustee Service, Australia (ITSA). Members of the public may search BIOS, which is now a historical record, for no fee. Searches for the purposes of bankruptcy matters must now be carried out at ITSA.

Public access is also available to FEDCAMs (the Court's case management system). The public may search the database at registry computer terminals. Anyone may inspect initiating documents filed with the Court, subject to any order of a judge to the contrary or to any limitation or fee imposed by the Federal Court Rules or Regulations.

Fees for copying documents are prescribed by the Federal Court of Australia Regulations.

## **1.9 VISITORS TO THE COURT**

### **Sweden**

Messrs Ulf Melin and Kent Olsson, of the Parliament of Sweden.

### **People's Republic of China**

A delegation headed by Mr Xiao Yang, Minister of Justice and including His Excellency Mr Hua Junduo, Ambassador from the People's Republic of China.

### **United States of America**

Judge Ellen Burns of the United States District Court, Southern District of New York.

## **Indonesia**

A delegation from Indonesia including Judges Rita Herlena Pakpahan, Pak Arifin, Pak Ridwan, Amin Sutikano Soedjono and Widyo Suwidya.

## **Philippines**

Judge Christine Ascaranga-Jacob, the presiding Judge of the Municipal Trial Court, Naga City, Philippines.

### **1.10 TWELFTH SOUTH PACIFIC JUDICIAL CONFERENCE**

The Twelfth South Pacific Judicial Conference, which was organised by the High Court of Australia and the Federal Court, was held in Sydney from 13 to 18 April 1997. Justice Sheppard was the Chairman of the management committee for the Conference.

The Conference was attended by Judges and academics from the South Pacific including Sir Gerard Brennan (High Court of Australia), Judge Clifford Wallace (United States Court of Appeals, 9th Circuit), Dr C Guy Powles (Faculty of Law, Monash University), Chief Justice Andon Amaraich (Supreme Court of the Federated States of Micronesia), Sir Arnold Amet (Chief Justice of the Supreme Court of Papua New Guinea), Justice Daniel Fatiaki (High Court of Fiji), Chief Justice Nigel Hampton (Supreme Court of the Kingdom of Tonga), Chief Justice Tiavaasu'e Falefotu M Sapolu (Supreme Court of Western Samoa), Sir John Muria (Chief Justice of the High Court and Court of Appeal of the Solomon Islands), Chief Justice Marty Taylor (Commonwealth of the Northern Mariana Islands), Chief Judge Young (District Court of New Zealand), Chief Justice Lussick (Kiribati), Monsieur Olivier Aimot (President of the Court of Appeal, Noumea, New Caledonia) and Madame Andree Gervais de Lafond (President of the Court of Appeal of Papeete, French Polynesia).

The Conference included a reception by their Excellencies, the Governor-General of Australia and Lady Deane. Papers were presented on topics including the United States experience of administrative law remedies as it may assist the courts of the South Pacific, customary law, sentencing options available to judges sentencing prisoners in criminal matters, domestic violence, and the French judicial system in the jurisdictions of the Court of Appeal of Noumea and Papeete.

## Chapter 2

# THE WORK OF THE COURT

## 2.1 GENERAL

### Jurisdiction

The Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary criminal matters. Cases arising under Part IV (restrictive trade practices) and Part V (consumer protection) of the *Trade Practices Act 1974* still constitute a significant part of the workload of the Court. These cases may raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. Other cases may only concern the immediate parties.

The Court's jurisdiction under the *Corporations Law* covers a diversity of matters ranging from the appointment of provisional liquidators and the winding up of companies, to applications for the orders available in relation to fundraising, corporate management and misconduct by company officers. This jurisdiction is exercised concurrently with the Supreme Courts of the States and Territories. Amendments to the Federal Court of Australia Regulations changing fees and introducing a number of new fees have had an impact on the number of *Corporations Law* matters commenced in the Court, and in particular, matters relating to the winding up of companies.

The Court exercises jurisdiction under the *Bankruptcy Act*. 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 extends to matters arising from the administration of bankrupt estates. The *Bankruptcy Legislation Amendment Act*, which amended the *Bankruptcy Act*, commenced on 16 December 1996. The effect of the amendment was to transfer many of the administrative functions performed by the Registrars in Bankruptcy to Insolvency and Trustee Service, Australia. The functions transferred included the acceptance of debtors' petitions and the issuing of bankruptcy notices. The office of Registrar in Bankruptcy was abolished upon the commencement of the *Bankruptcy Legislation Amendment Act*.

Administrative law is another important area of jurisdiction. Many cases arise under the *Administrative Decisions (Judicial Review) Act 1977*. This Act 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 (see Table 6.4 on pages 113 to 116 for a list of some of the enactments under which decisions have been made). Many cases also arise under the *Administrative Appeals Tribunal Act 1975* which provides for a review on the merits by the Administrative Appeals Tribunal of many Commonwealth administrative decisions, and which also provides for a right of appeal from the Tribunal to the Court on questions of law. The Court has jurisdiction under the *Migration Act 1958* to hear appeals for judicial review of decisions of the Immigration Review Tribunal and the Refugee Review Tribunal.

The Court hears taxation matters on appeal from the Administrative Appeals Tribunal, mostly concerning income tax and sales tax. It exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation.

The Court shares first instance jurisdiction with the Supreme Courts of the States and Territories in the complex area of intellectual property (copyright, patents, trade marks and designs). All appeals in these cases, including appeals from the Supreme Courts, lie to a Full Federal Court.

The Court also has jurisdiction under the *Native Title Act 1993*. It may hear contested applications to determine native title, claims by native title holders for compensation for certain acts which have affected their rights and ancillary matters and other matters arising under the Act. During the year the Native Title Amendment Bill 1997 was introduced into the Parliament. The Bill proposes amendments to the *Native Title Act* and if passed in its current form will require parties to commence native title matters in the Federal Court. Under the current legislative scheme matters are required to be commenced in the National Native Title Tribunal. The new scheme will require the Court to refer matters to the National Native Title Tribunal for mediation.

Another important part of the Court's jurisdiction derives from the *Admiralty Act*. The Court has concurrent jurisdiction with the Supreme Courts of the States and Territories under this Act to hear maritime claims and 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 ordered the judicial sale of two ships (one in Perth and one in Brisbane) subsequent to their arrest by the Admiralty Marshal. The Admiralty Marshal also paid out part of the proceeds of sale to creditors of three vessels arrested and sold during the last two reporting years.

The Court has a diverse appellate jurisdiction. It hears appeals from decisions of single judges of the Court and also exercises general appellate jurisdiction in criminal and civil matters on appeal from the Supreme Court of the Australian Capital Territory and the Supreme Court of Norfolk Island. Appeals on points of law from the Administrative Appeals Tribunal are within the original jurisdiction of the Court.

This summary refers only to some of the principal sources of the Court's work. Other matters heard by the Court range from cases involving anti-dumping notices, tariff concession orders, to cases arising under Commonwealth anti-discrimination legislation. Statutes under which the Court exercises jurisdiction are listed in Appendix 5 on pages 91 to 94.

### **New jurisdiction**

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

- *Bankruptcy Legislation Amendment Act 1996*;
- *Workplace Relations and Other Legislation Amendment Act 1996*;
- *Aviation Legislation Amendment Act (No 1) 1997*;
- *Law and Justice Legislation Amendment Act 1997*;
- *Telecommunications Act 1997*;

- *Trade Practices Amendment (Telecommunications) Act 1997*;
- *Export Markets Development Grants Act 1997*;
- *Private Health Insurance Incentives Act 1997*;
- *Retirement Savings Account Act 1997*;
- *Australian National Railways Commission Sale Act 1997*.

## **Federal Court Rules and Practice Notes**

The judges are responsible for making the Rules of Court under the *Federal Court of Australia Act*. The Rules provide the procedural framework within which matters are commenced and conducted in the Court. The Rules of Court are made as Commonwealth Statutory Rules and are published by the Australian Government Publishing Service. The Rules are drafted by the Judges' Rules Committee with the assistance of a Deputy Registrar. An officer of the Office of Legislative Drafting within the Attorney-General's Department assists with the form and publication of the new Rules.

The Rules are kept under review. New and amending rules are made when needed to ensure that the Court's procedures are up to date 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 will be undertaken as a consequence of the changes to the Court's practice and procedure described elsewhere in this report.

During the reporting year new Rules were introduced to deal with the *Bankruptcy Act, Evidence Act 1995*, inspection of documents in the registry and leave to serve court documents outside the Commonwealth of Australia. The Court also made new Native Title Rules following the cessation of the original Rules as a result of the operation of a sunset clause. New rules to coincide with the vesting of the jurisdiction of the Industrial Relations Court in the Federal Court pursuant to the *Workplace Relations and Other Legislation Amendment Act* were drafted during the year.

The Court has previously reported on the consultative process with interested parties before important rule changes are made. During the year important new Bankruptcy Rules were drafted in consultation with members of the legal profession practising in that area. The new Rules coincided with the commencement of the *Bankruptcy Legislation Amendment Act* which amended the *Bankruptcy Act* and gave the Court power to make Rules of Court in relation to the practice of bankruptcy pursuant to the *Federal Court of Australia Act*. Previously the Bankruptcy Rules had been made by the Governor-General pursuant to the *Bankruptcy Act*.

Practice Notes supplement the procedures established in the Rules of Court. The Practice Notes were revised and reissued during the 1993-94 reporting year. They are available without charge through District Registries. They have been reproduced in looseleaf services by law publishers. In April 1997 the Chief Justice issued a Practice Note dealing with the service of court documents outside the Commonwealth of Australia under Order 8 of the Rules of Court. The Court has also published a guide to instituting appeals to the Federal Court of Australia and various notices to practitioners issued by the District Registries. These are also available from the District Registries and in looseleaf legal services.

## 2.2 DECISIONS OF INTEREST

During the reporting year the judges published over 1,200 decisions. To give some illustration of the Court's work, a few of these decisions are summarised below. The range of the decisions highlights the varied jurisdiction of the Court.

### **Income tax and bankruptcy law - additional tax for late payment**

*Deputy Commissioner of Taxation v Kavich* (8 August 1996, Justices Lockhart, Lee and Tamberlin)

The question in this appeal was whether, in the particular circumstances of the case, additional tax under s 207 (penalty for unpaid tax) of the *Income Tax Assessment Act 1936*, was a debt provable in the bankruptcy of the first respondent, Mrs Kavich.

The judge at first instance had held that the Australian Taxation Office could not claim for the late lodgement penalty as a creditor in the bankruptcy and could not recover the penalty out of the surplus of the estate after distribution to creditors.

The facts of the case were as follows. On 28 February 1978 Mrs Kavich was made bankrupt (sequestered). As a result of the bankruptcy there vested in the second respondent, the Official Trustee, shares in a company called Antlers Pty Ltd which was being wound up (liquidated). The shares were not disclosed by Mrs Kavich to the trustee.

On 27 November 1978, the Commissioner of Taxation issued amended assessments to Mrs Kavich for the 1972 to 1974 years of income and notices of assessment in respect of 1975 and 1976, with tax payable totalling \$102,054. The Commissioner lodged a proof of debt for tax in the amount of \$99,620 against Mrs Kavich's estate. No part of this sum was paid from the bankrupt estate.

Mrs Kavich was discharged from bankruptcy on 1 March 1981 under the automatic discharge provisions of the *Bankruptcy Act*. In August 1992 the Deputy Commissioner lodged a further proof of debt in the amount of \$338,448. This proof included an amount of \$239,916 claimed under s 207 of the *Income Tax Assessment Act*, as additional tax for late payment. By this time it had become known that Mrs Kavich would be entitled to a substantial distribution from Antlers Pty Ltd.

Both Mrs Kavich and the Deputy Commissioner of Taxation applied to the Court to have the status of the proof of debt determined.

The Court had to determine whether the late payment penalties satisfied s 82(1) of the *Bankruptcy Act* which provides that: "... all debts and liabilities, present or future, certain or contingent, to which a bankrupt was subject at the date of bankruptcy ... are provable in his bankruptcy."

The Full Court held that the late payment penalty did not satisfy the requirements of s 82 of the *Bankruptcy Act*. There was no debt or liability of the relevant kind as at the date of bankruptcy or one to which Mrs Kavich may have become subject to prior to her discharge from bankruptcy.

While amended assessments and the notices of assessment were served upon Mrs Kavich after the date of bankruptcy, the primary tax was a provable debt in the bankruptcy, as it was a debt which arose by reason of an obligation arising under the *Income Tax Assessment Act*.

There was, however, no obligation which made the penalty tax due and payable as the penalty tax did not arise until the due date for payment of the primary tax had passed (this was after the date of bankruptcy). The penalty tax could also not be classed as a contingent liability until the assessments were served, and again, this occurred after the date of bankruptcy.

In addition, as the primary tax had been converted into a right to prove in bankruptcy upon service of the assessments, there was no longer a debt which Mrs Kavich was personally liable to pay. As there was no primary tax debt, there was no failure to pay and hence no late payment penalty could arise.

The Court also held that there was no liability on the trustee of Mrs Kavich's estate to pay any amount to the Commissioner as tax.

### **Bankruptcy - "All moneys" clause in a mortgage document**

*In the bankrupt estate of Murphy; Donnelly v Commonwealth Bank of Australia*  
(26 September 1996, Justice Hill)

The question for determination by the Court in this matter was the construction of a mortgage document.

The facts of the case were as follows. On 19 December 1988 Ms Murphy, an employee of the Commonwealth Bank of Australia Ltd (the Bank), executed a mortgage over a property owned by her and her husband, in favour of the Bank. The mortgage to the Bank contained an "all moneys" clause.

In November 1995 Ms Murphy was dismissed by the Bank after she withdrew \$57,952 from customers' accounts with forged signatures. This money was not recovered.

On 15 December 1995 Ms Murphy became bankrupt on the presentation of her own petition to the Court and in the same month contracts were exchanged for the sale of the property the subject of the Bank's mortgage. Notwithstanding the bankruptcy, the contracts were executed by Ms Murphy and her husband. The trustee of Ms Murphy's bankrupt estate, Mr Donnelly, permitting this transaction to proceed to settlement.

On settlement the Bank claimed not only moneys owing on the loan transaction but also the \$57,952 misappropriated. Mr Donnelly sought a declaration from the Court that the \$57,952 was not a sum due to the bank under the mortgage.

After reviewing a number of decisions of the Supreme Court of New South Wales dealing with the construction of “all moneys” clauses, Justice Hill proceeded upon the principles which he felt were accepted law in New South Wales. Some of those principles were as follows:

- No principle of law that an “all moneys” clause should be read down because it is prepared by a bank.
- A bank mortgage is traditionally drawn to secure the bank in a multitude of possible situations.
- An “all moneys” clause is to be construed in the context in which it came to be executed and by reference to its commercial purpose.

Justice Hill found that Ms Murphy’s obligation to repay the \$57,952 she had misappropriated from the Bank fell within the “all moneys” clause of the mortgage. The Court made declarations accordingly.

### **The Rugby League case**

*News Ltd v Australian Rugby Football League Ltd* (4 October 1996, Justices Lockhart, von Doussa and Sackville)

This well-known case involved a challenge by News Ltd to “commitment” and “loyalty” agreements between the Australian Rugby League (the ARL), the New South Wales Rugby League Ltd (the League) and the twenty clubs that comprised the national rugby league football competition. News Ltd was attempting to establish a new rugby league competition known as “Super League”. Agreements between some 300 players and coaches to participate in the Super League were signed after the commitment and loyalty agreements with the ARL and the League. The commitment and loyalty agreements precluded the clubs participating in a competition other than one organised by the League or the ARL. The League also relied on contracts with the clubs to compete in the 1995 competition.

The League and ARL had also claimed that the clubs were parties to a joint venture with the League and ARL, and that each club owed fiduciary duties to the other participants in the joint venture.

The trial judge found that some of the clubs participating in the national competition breached fiduciary and contractual obligations owed to the League, the ARL and other clubs, and that News Ltd and associated Super League companies induced or encouraged those breaches. Orders were made which had the effect of preventing the Super League interests from organising or participating in a rugby league competition, other than one authorised by the League or the ARL, until the year 2000.

News Ltd and related companies and clubs appealed. They sought orders that the commitment and loyalty agreements were void and restraining the League and the ARL from requiring compliance with the agreements. A large number of players and coaches were affected by the trial judge’s orders and they intervened to argue that as they had not been joined as parties, certain of the orders should be set aside.

The Full Court held that:

1. The evidence showed that the conduct of the “rebel” Super League clubs destabilised the conducting of the 1995 season and this action breached an implied term of the contract with the League in doing all that was necessary to allow the League to have the benefit of the 1995 season.
2. The making of the commitment and loyalty agreements contravened s 45(2) of the *Trade Practices Act* because they included “exclusionary provisions” and the League and ARL were to be precluded from giving effect to any such provisions in the agreements.
3. That as there were too many indicators that the clubs were entitled to act in accordance with their own interests where to do so involved conflicts with the interests of the other participants. Accordingly the trial judge had made an error in concluding that the League, the ARL and “loyal clubs” had established the fiduciary duties associated with the League Joint Venture.

As it was not possible to sever the terms of the commitment and loyalty agreements which prohibited the participation of the clubs and the players in a competition not conducted by the League or the ARL, the agreements as a whole could not be enforced.

The Full Court declared that the commitment and loyalty agreements were void and each of the respondents were restrained from requiring compliance or otherwise enforcing the agreements.

### **Administrative law - Natural justice - appearance of bias**

*Gaisford v Hunt* (6 December 1996, Justices Beaumont, O’Loughlin and Lehane)

In this appeal Mr Gaisford applied to the Court for judicial review of the conduct of the first respondent, Mr Hunt.

In essence Mr Gaisford sought an order that Mr Hunt not proceed with a statutory inquiry. Mr Gaisford alleged that he had been denied natural justice by Mr Hunt by virtue of there being a reasonable apprehension of bias by Mr Hunt in carrying out his Inquiry.

At first instance a judge of the Court had dismissed Mr Gaisford’s application.

The events that led to the appeal concerned an Inquiry, conducted by Mr Hunt, into alleged paedophile activity by officers and former officers of the Department of Foreign Affairs and Trade (DFAT).

At the time of the Inquiry an article detailing preliminary findings from a source close to the Inquiry, appeared in the Canberra Times. The judge at first instance had found that Mr Hunt had been the person who had had discussions with the Canberra Times journalist. The purpose of these discussions, according to Mr Hunt, was to obtain publicity for the Inquiry and to stimulate further information or submissions to it. Mr Gaisford was a DFAT officer who at the time when the article appeared in the Canberra Times, had not given evidence to the Inquiry.

At an Inquiry hearing and in correspondence, Mr Hunt sought to dispel any view that he had reached conclusions on any issues, and that he was the source of the information in the newspaper article.

When Mr Gaisford was to give evidence to the Inquiry, his solicitor raised concerns about the newspaper article. Mr Hunt then modified his position, indicating that he had had discussions with a journalist from the Canberra Times. Mr Gaisford's solicitor requested that Mr Hunt disqualify himself from the Inquiry.

The Full Court held that there was an appearance of bias and that the appearance of bias was made worse by the additional circumstances of the uncertainty as to whether the comments were actually made by Mr Hunt. He had not given evidence but asked the Court to assume that they could be attributed to him.

The appeal was allowed, the orders made at first instance set aside and in place of those orders it was ordered that Mr Hunt not proceed with the Inquiry.

### **Foreign Relations and Media and Communication Law - Australian content on commercial television**

*Australian Broadcasting Authority v Project Blue Sky Inc* (12 December 1996, Justices Northrop, Wilcox and Finn)

The question that arose in this appeal was the validity of a standard, relating to the Australian content of programs, that was made by the Australian Broadcasting Authority (the ABA) on 15 December 1995.

The ABA is under a duty pursuant to various sections of the *Broadcasting Services Act 1992* (the Act), and in particular, s 122 of the Act, to determine standards with respect to specified programs. Section 160 requires the ABA to perform its function, including the making of standards in a manner consistent with Australia's obligations under the CER Agreement (Australia New Zealand Closer Economic Relations Trade Agreement of 1983).

The purpose of the CER Agreement was to expand free trade between Australia and New Zealand; it also envisaged the gradual elimination of all trade barriers between the two countries and the creation of a free trade area.

The practical effect of the Australian Content Standard is that each commercial television broadcasting licensee must each day broadcast Australian programs for a minimum time. The Standard identifies Australian programs by reference to the citizenship or residence of the producers, directors and actors involved in a program. The Standard therefore confers a benefit on Australians at the expense of non-Australians.

On the day the Standard was determined Project Blue Sky Inc and the other respondents initiated proceedings by filing a Writ in the High Court of Australia. By consent of the parties, the High Court remitted the matter for determination to the Federal Court of Australia.

When the case came on for hearing at first instance, the issue before the Court, was whether the Standard was invalid because it failed to impose the same requirement of preferential treatment of New Zealand programs that it imposed for Australian programs.

The Court declared that the Standard was invalid for failure to comply with the CER Agreement and ordered that unless it was revoked or varied by the ABA on or before 31 December 1996 the Standard would be set aside with effect from that date.

The ABA appealed against the declaration and orders of the judge at first instance.

The Full Court concluded that if the ABA specified the Australian content of television programs in such a way as to allow any of that required content to be satisfied by New Zealand programs, however that might be defined, it would fail to carry out its statutory task. It would not then be specifying the (minimum) Australian content of each licensee's program time, but rather the minimum Australian-New Zealand content, in whatever proportion the licensees thought fit.

The only standard consistent with the CER Agreement which the ABA could set, would be one which allowed for no Australian content programs at all, provided that New Zealand programs were broadcast in lieu of Australian content programs. While this would be a standard it would be inconsistent with the ABA's statutory obligation.

A majority of the Court held that there was an irreconcilable conflict between the special provision (the Australian content of programs) constituted by paragraph 122(2)(b) of the Act and the general provision of subsection 160(d), as it applied to the CER Agreement, and that paragraph 122(2)(b) must prevail. The appeal accordingly was allowed.

The High Court of Australia has granted Special Leave to Appeal from the Full Court's judgment. The appeal has been heard and judgment reserved.

## **Copyright in the design of the Aboriginal Flag**

*Thomas v Brown* (9 April 1997, Justice Sheppard)

The application to the Court in this matter concerned the ownership of the copyright in the design of the flag known as the Aboriginal Flag. The flag is divided into two sections. The upper half is black and the lower half is red. In the centre of the flag is a large yellow circle which, in present representations of the flag, has half its area in the black upper part of the flag and the other half in the red lower part of it.

The applicant, Mr Thomas, a professional artist who resides at Humpty Doo, 60 miles south of Darwin, claimed to have designed the flag in 1971 while living in Adelaide.

In his application Mr Thomas sought a declaration to the effect that he was the author of the artistic work being the design for the flag described in a schedule to a proclamation dated 27 June 1995 under s 5 of the *Flags Act 1953* (that is, the flag had become an official flag of Australia). He also sought a declaration that he was the owner of the copyright comprised in the flag.

The application was commenced in the Copyright Tribunal pursuant to s 183 of the *Copyright Act 1968* and asserted that the Commonwealth was making copyright usage of the flag design for the purposes of the Crown without entering into any appropriate agreement with the applicant for the use of the flag design. During the hearings in July 1996 there were discussions concerning the suitability of the Tribunal as an appropriate forum for the determination of the question of the ownership of the copyright in the flag. The Tribunal and the parties therefore decided that it was a safer course for Mr Thomas to file an application for declaratory relief in the Court.

As the matter proceeded, the question was raised as to whether Mr Thomas was entitled to claim copyright in the flag design, as it was stated that over the years a number of persons had claimed that they were the creators of the flag.

Justice Sheppard therefore arranged for the publication of advertisements in newspapers calling upon anybody who claimed ownership of the flag design to apply to the Court to have their claim determined. The advertisements led to two claims to ownership, namely from Messrs Brown and Tennant, the respondents to the application.

The Court rejected the claims of Messrs Brown and Tennant. Justice Sheppard noted the strength of Mr Thomas's claim and corroborating evidence concerning events in 1971 when, according to Mr Thomas, he had created the flag design. That evidence included the production (in evidence) of a black and red round centrepiece retained from the first flag, the centrepiece being cut out to allow for the stitching in of the central sun emblem.

Justice Sheppard considered that copyright in the design had not been lost by reason of "industrial application" (pursuant to the design/copyright overlap provisions in s 77 of the *Copyright Act*), accepting that Mr Thomas had never authorised any mass reproduction of the flag design for any commercial purpose.

On 9 April 1997 the Court declared that Mr Thomas was the author of the artistic work being the design, known as the Aboriginal Flag, and that he was also the owner of the copyright subsisting in that artistic work.

## **Extradition**

***Papazoglou v The Republic of the Philippines*** (17 April 1997, Justices Wilcox, Tamberlin and Sackville)

This was an appeal from a decision of a single judge of the Supreme Court of Victoria relating to a request from the Republic of the Philippines for the extradition of the appellant, Mr Papazoglou, to that country. The Supreme Court of Victoria had confirmed the order of a magistrate that Mr Papazoglou was eligible for surrender for the purposes of the *Extradition Act 1988*. The jurisdiction of the Federal Court in this type of matter is set out in s 21(3) of the *Extradition Act* which provides for an appeal to the Full Court of the Federal Court.

Mr Papazoglou was the principal of a company which promoted the services of Philippines Airlines in return for commissions. It was alleged that between 1984 and 1988 he had falsely claimed commissions totalling \$11 million.

In 1989 Mr Papazoglou was charged in Australia with offences in relation to the false claims made between 1986 and 1988. The claims made from 1984 to 1985 were not pursued. Mr Papazoglou pleaded guilty to a number of counts of furnishing false and misleading information and was sentenced to six years in prison.

Towards the end of the term of imprisonment a warrant for the arrest of Mr Papazoglou was issued in the Philippines based on the claims made in 1984 and 1985. The respondent, the Republic of the Philippines, sought to extradite him to that country to face trial.

The two matters dealt with by the Supreme Court of Victoria and the subject of the appeal were:

1. An application seeking a review of the determination by the magistrate that Mr Papazoglou was “eligible for surrender”.
2. An application for a declaration that the proceedings brought by the Philippines for the extradition constituted an abuse of process.

The magistrate hearing the extradition proceedings had agreed with a submission by Mr Papazoglou that it would be an abuse of process for him to face a further trial, and the possibility of further time in prison, arising from the 1984 and 1985 offences. However, the magistrate held that he had no power to stay the proceedings on this ground. The magistrate determined that Mr Papazoglou was a person “eligible for surrender” in accordance with the *Extradition Act*. The Supreme Court of Victoria reached the same conclusion and Mr Papazoglou appealed to the Full Court of the Federal Court. The Full Court held that:

- the magistrate had no implied or inherent power to terminate the proceedings under s 19 of the *Extradition Act* as an abuse of process.
- the Supreme Court of Victoria had no jurisdiction to declare that the proceedings before the magistrate constituted an abuse of process. The Supreme Court’s powers are limited to the review provided by s 21 of the *Extradition Act*.
- there was no substance in Mr Papazoglou’s argument that the magistrate and primary judge had erred in concluding that he was eligible for surrender.

### **When is a person a refugee?**

***Jong v Minister for Immigration and Multicultural Affairs*** (2 May 1997, Chief Justice Black, Justices Foster and Lehane)

Mr Jong, who was born in East Timor, applied for judicial review of a decision of the Refugee Review Tribunal that he was not a refugee and was therefore not entitled to an Australian protection visa. He came to Australia in April 1992 and had Indonesian nationality.

When judicial review is sought of a decision of the Refugee Review Tribunal (the Tribunal), the Court’s function is to consider whether the Tribunal made any errors of law. The Court does not decide the facts of the case.

To be granted a protection visa an applicant must be a person to whom Australia has protection obligations under the *Convention Relating to the Status of Refugees 1951* as amended by the *Protocol Relating to the Status of Refugees 1967* (the Refugee Convention), an international treaty to which Australia is a party. The Refugee Convention defines a refugee as someone who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, unwilling to avail himself or herself of the protection of that country.

The Tribunal found that if Mr Jong returned to Indonesia he would face a real chance of persecution there on account of his political opinion. It found, however, that as well as his Indonesian nationality he also had Portuguese nationality, which he acquired at birth at a time when East Timor was a Portuguese colony. As he held no fear of persecution in Portugal he was not a refugee for purposes of the Refugee Convention. This was because the Convention, in a provision specifically dealing with dual nationality, requires that to be a refugee a person must have a fear of persecution in *each* of his countries of nationality, not just in one of them.

The Court held that where a person who claims to be a refugee has more than one nationality, the Refugee Convention requires consideration to be given not only to the formal fact of nationality but to the *effectiveness* of the protection available to the person by the country of his second nationality, in this case, Portugal. The effectiveness of protection has to be considered as a practical matter in the light of all the circumstances of a particular case. The Court held that the Tribunal did not do this in this matter, and even though it did consider aspects of that question, it did so in a different context. The Court concluded that the Tribunal had made an error of law, being the interpretation of the requirements of the Refugee Convention.

The decision of the Tribunal was set aside and the matter returned to the Tribunal for further consideration.

## **Military law**

*Hembury v Chief of the General Staff* (7 May 1997, Chief Justice Black, Justices Lockhart, Sheppard, Mathews and Madgwick)

This was an appeal from a decision of the Defence Force Discipline Appeal Tribunal dismissing an appeal from conviction by a Military Restricted Court Martial. The appellant, Sergeant Hembury, had been charged in relation to his conduct towards a female soldier and was convicted on three of six counts. The appeal to the Defence Force Discipline Appeal Tribunal was against both conviction and punishment.

On the hearing of the appeal two grounds of the four originally relied on were of significance. One ground concerned the effect of a direction given to the court martial by the Judge Advocate before it retired to consider its verdict as to the application of rule 33 of the Defence Force Discipline Rules.

The rule provides:

“33. On any question to be determined by the court martial, the members of the court martial shall vote orally, in order of seniority commencing with the junior in rank.”.

Rule 33, which can be traced back to the eighteenth century, is intended to prevent junior members of courts-martial being influenced by the opinions of the senior members.

The direction to the court martial by the Judge Advocate was in the following terms:

“When you come to voting on the questions of guilt, you should vote, orally, in order of seniority. Voting is by majority vote. It does not have to be unanimous.”

The other ground concerned a direction given by the Judge Advocate on the question of the onus of proof. The relevant portion of the direction relied on by Sergeant Hembury was in the following terms: “... the accused need do no more than raise a reasonable doubt in the mind of the court...”. It was argued that this direction could have been construed by the court martial as reversing the onus of proof which is ordinarily upon the prosecution to prove its case beyond reasonable doubt.

It was argued by Sergeant Hembury before the Tribunal and the Full Court that both directions contained a “material irregularity” in the course of the proceedings, which resulted in a “substantial miscarriage of justice” occurring within the meaning of s 23(1)(c) of the *Defence Force Discipline Appeals Act 1955*. If the Tribunal had agreed, Sergeant Hembury would have been entitled to have the convictions quashed.

The Court held that when the direction was read in context there was no substantial miscarriage of justice arising from the misdirection as to the onus of proof.

A majority of the Court held that there was no substantial miscarriage of justice arising from the misdirection concerning rule 33 of the Defence Force Discipline Rules.

An application for special leave to appeal has been filed in the High Court of Australia.

### **Resale price maintenance**

*Australian Competition and Consumer Commission v Australian Safeway Stores Pty Ltd*  
(30 May 1997, Justice Goldberg )

The Australian Competition and Consumer Commission (the Commission) sought pecuniary penalties against one of the respondents, George Weston Foods Ltd (GWF), and another company and two of its employees in relation to contraventions of ss 45 and 48 of the *Trade Practices Act*. GWF admitted to five contraventions and reached an agreement with the Commission as to the facts to be put to the Court. In some cases under these provisions the Commission will reach an agreement with the respondent as to the appropriate penalty to recommend that the Court impose. There was no agreement as to the pecuniary penalties.

The contraventions involved anticompetitive conduct and actual and attempted resale price maintenance in relation to the sale of bread products by small retailers in Victoria.

The Court held that the following principles were relevant to the determination of the pecuniary penalties to be imposed:

- where a large listed corporation carries on business through divisions rather than through separate operating companies, a pecuniary penalty should be imposed with reference to the entire company.
- the object of the penalties imposed under the Act is to deter repetition of the breaches by the party and the community.
- the penalty imposed under the Act might in an appropriate case include a component for punishment.
- the number of distinctions that could be drawn when considering the penalty renders the drawing of an analogy with other cases virtually useless.
- behaviour in contravention of the Act is not to be considered anything but deliberate and systematic merely because it was initiated by the conduct of others.
- the penalty should take into account the existence of a compliance program within the company and the failure of the program to prevent the breach.
- the principle of sentencing known as the “totality” principle is relevant to the penalties imposed under the Act.

The Court imposed pecuniary penalties totalling \$1,250,000 on GWF.

### **Trade Practices and Noah’s Ark**

*Fasold v Roberts* (2 June 1997, Justice Sackville)

The second applicant in this matter, Professor Plimer, claimed to have been affronted by statements made by the first respondent, Dr Roberts, in the course of public lectures throughout Australia in April and May 1992. He also complained about statements made or authorised by Dr Roberts in certain publications and in audio and video tapes of the lectures. The first applicant, Mr Fasold, claimed that Dr Roberts had infringed his copyright by reproducing or authorising the production of a diagram from a book by Mr Fasold in a brochure and newsletter distributed in 1992.

Dr Roberts publicly supported the view that a boat-shaped geological formation at a place near Mount Ararat in Eastern Turkey could contain the remnants of Noah’s Ark, as referred to in *Genesis*.

The matter required two major questions to be answered. The first was whether Dr Roberts contravened the *Fair Trading Acts* of the States and of the Australian Capital Territory. The *Fair Trading Acts* provide that a person shall not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive. The applicants alleged that Dr Roberts, in the course of a series of public lectures given in early 1992 and in certain publications, misrepresented his qualifications and the nature of the investigations he personally carried out at the Mount Ararat site.

The second question was whether Mr Fasold was entitled to relief under the *Copyright Act* in respect of what he claimed was an infringement of his copyright. Mr Fasold is the author of a book entitled “*The Ark of Noah*”, published in the United States in 1989. He claimed that Dr Roberts infringed his copyright by reproducing or authorising the reproduction of a diagram from his book in a newsletter and brochure published in 1992.

In relation to the first issue the applicants claimed that although Dr Roberts was not paid for his lectures, he was acting in trade or commerce, because he was promoting the business of an organisation known as Noah’s Ark Research Foundation (“NARF”).

Justice Sackville rejected the argument that Dr Roberts was engaging in trade or commerce for two reasons. First, NARF was not carrying on a business because its activities lacked the necessary degree of system and continuity. Thus, there was no foundation to the argument that Dr Roberts was promoting NARF’s business. Secondly, even if NARF were to be regarded as having conducted a business, Dr Roberts activities did not bear the required “trading or commerce character”. Accordingly, his conduct could not be regarded as being “in trade or commerce”.

In view of the Court’s conclusion that Dr Roberts did not make representations “in trade or commerce” it was not necessary for the Court to consider whether any of his statements in the public lectures or elsewhere constituted misleading or deceptive conduct. The claim against Dr Roberts in this respect was dismissed.

In relation to Mr Fasold’s claim, the Court concluded a drawing appearing in the brochure and newsletter published by NARF in 1992 reproduced, in substance, a diagram appearing in Mr Fasold’s book. As Dr Roberts authorised the reproduction of the diagram in the brochure and newsletter he infringed Mr Fasold’s copyright. Mr Fasold was awarded \$2,500 in damages for this breach.

There has been an appeal to the Full Court of the Federal Court and the Court has reserved its decision.

### **Admiralty - the arrest of ships**

***KMP Coastal Oil Pte Ltd v The Owners of Motor Vessel “Iran Amanat”*** (5 June 1997, Justices Wilcox, Burchett and Emmett)

The appellant, KMP Coastal Oil Pte Ltd, commenced an action against the owner of 85 vessels, including the motor vessel “Iran Amanat” which was arrested by a Marshal of the Court at the Port of Geelong in October 1996. The claim was for the sum of US\$150,400 for bunker fuel supplied to other ships owned by the owner of the “Iran Amanat”. It is permissible to arrest surrogate ships or sister ships owned by the one owner in respect of some types of claims under the *Admiralty Act*.

The owner of the arrested ship, Islamic Republic of Iran Shipping Lines, denied that it was liable for the fuel and applied for release of the ship on the basis that the Court did not have jurisdiction to order the arrest of the vessel and hear the dispute. This matter was an appeal from the decision to release the vessel on the basis that the owner of the vessel was not liable to KMP Coastal Oil and

therefore was not a “relevant person” for the purposes of the *Admiralty Act*. A “relevant person” is defined, in relation to a maritime claim, to mean a person who would be liable on the claim in a proceeding commenced in an action *in personam*. The matter involved an interpretation of the words “who would be liable” in that definition. The term *in personam* means “against the person”.

KMP Coastal Oil argued that the trial judge had adopted an incorrect approach in determining whether the owner was a relevant person for the purposes of s 19 of the *Admiralty Act*.

The Full Court held that where there was a challenge to the jurisdiction of the Court in this way it is not necessary to determine whether the owner is as a matter of fact and law liable on the claim. The question that must be answered is whether, if the claim succeeds against some entity, that entity has the relevant relationship with the ship against which the proceedings *in rem* are brought, namely, its owner. It is not necessary for the Court to first determine the liability of the relevant person. In an admiralty law context the term *in rem* means “against the ship”.

The Court concluded that as the Islamic Republic of Iran Shipping Lines had conceded it was the owner of both the vessel arrested and the ship that had the bunker fuel supplied the Court had jurisdiction to order the arrest and hear the claim.

An application for special leave to appeal has been filed in the High Court of Australia.

### **Copyright - techno music and Carmina Burana**

*Schott Musik International GmbH & Co v Colossal Records of Australia Pty Ltd*  
(19 June 1997, Justices Wilcox, Hill and Lindgren).

This case was an appeal from the decision of Justice Tamberlin given on 26 November 1996. The appeal was dismissed.

The matter was brought before the Court on behalf of the estate of the composer Carl Orff to determine whether a “techno” version (a dance remix) of the “O Fortuna” chorus from Orff’s work “Carmina Burana”, released by Colossal Records on a compact disk called “Excalibur”, debased the original.

Section 55 of the *Copyright Act* entitles a record manufacturer to make a record of a work without infringement of the owner’s copyright provided that the adaptation does not debase the original.

At the hearing at first instance Justice Tamberlin held that the adaptation did not debase the original work. He considered that a broad approach should be taken to determining the question.

The Full Court was therefore called upon to determine the meaning of “debase”.

All three appeal judges found for slightly different reasons that the “techno” version did not debase the original work.

Their Honours all indicated that where an adaptation has its own artistic integrity it is unlikely to be a debasement. The respondents were therefore entitled to a compulsory licence under s 55(1) of the *Copyright Act*.

### **Negligence, Trade Practices - cattle contaminated by pesticide**

*McMullin v ICI Australia Operations Pty Ltd* (24 June 1997, Justice Wilcox)

This was a representative action under Part IVA of the *Federal Court of Australia Act* by husband and wife graziers who claimed that they had suffered loss as a result of the contamination of their cattle by a pesticide (Helix).

The first three respondents were related companies (which were referred to collectively and individually as ICI) and other respondents included the States of New South Wales and Queensland.

The pesticide which had been developed by ICI for the control of insects that feed on cotton plants was registered for that use in 1989 by relevant government bodies. The contamination of the McMullin's cattle was caused by the ingestion of the pesticide from over-spray and spray drift as a result of aerial spraying and or from the cattle being fed cotton gin trash. The feeding of cotton gin trash to cattle was a practice sanctioned by the relevant New South Wales and Queensland State departments. The pesticide contained the chemical, chlorfluazuron, which had a tendency to accumulate in the fat of mammals (bio-accumulate).

Although the characteristic of bio-accumulation was known to ICI, it marketed the pesticide without carrying out full environmental field studies that were recommended by a related United Kingdom company.

By the end of 1994 contaminated cattle were discovered. Steps were then taken to curtail the movement and sale of contaminated cattle and exporters refused to purchase cattle having any contamination. As a result many people suffered financial loss.

The McMullin's case against ICI was based on negligence and a breach of s 52 (misleading conduct) of the *Trade Practices Act*. The case against New South Wales alleged negligence and a breach of s 42 of the *Fair Trading Act 1987 (NSW)* and against Queensland, negligence only.

The misleading conduct part of the McMullin's case related to ICI's failure to warn that chlorfluazuron had a tendency to build up in the tissue of cattle which consumed cotton trash and by-products, stubble and pasture and to notify an appropriate withholding period. The withholding period being the time that chlorfluazuron remained within crops, cotton trash and by-products, and soil.

As to the *Fair Trading Act* claim against New South Wales, the McMullins argued that the representation by that State's Department of Agriculture that cotton trash was suitable for consumption by cattle, was misleading or deceptive or likely to mislead or deceive.

The Court decided that the negligence claim (breach of duty of care) against ICI succeeded in the case of four types of claimants, namely: claimants such as graziers whose cattle became contaminated during their period of ownership; claimants such as graziers and abattoir operators who unwittingly purchased contaminated cattle; claimants such as meat processors and exporters who owned meat which was contaminated and thus condemned and claimants such as feedlot operators who had to feed detained contaminated cattle.

The negligence claims against New South Wales and Queensland failed for the reason that relevant decisions, such as, to register the pesticide under State law were policy decisions.

The Court also held that the s 52 claim was only important to claimants who fell outside the ambit of the common law duty of care. The question of whether these claimants could make out a case under s 52 was reserved for future decision.

The case against the New South Wales government under the *Fair Trading Act* was also unsuccessful. While the Court held that the New South Wales State department's representations that cotton trash was suitable for consumption by cattle were misleading and deceptive, given the contamination problem, they were not made by the State in the course of carrying on business.

## 2.3 MANAGEMENT OF THE WORKLOAD OF THE COURT

### Caseflow management

As mentioned in last year's report, the Court has embarked on a complete and fundamental review of its practice and procedure, particularly having regard to caseflow management principles. During the reporting year the Court continued to develop and refine its practice and procedure proposals and in particular its decision to adopt the Individual Docket System as the basis of its listing and case management system throughout Australia.

The Individual Docket System is intended to produce substantial benefits for litigants and the legal profession. It will be simpler than the present system and more certain. It will facilitate case management by greater involvement of the Court's officers and judges' staff. Some routine case management issues may be dealt with without the necessity of a court hearing.

Most importantly, the design of the new procedures has placed an emphasis upon the requirement to minimise cost to the parties. The new procedures are expected to take much less time before the Court and much less preparation time by practitioners. Less time and less work is expected to reduce costs.

In developing the Individual Docket System, the Court identified key case management events and proposed time standards as to when these events should ordinarily occur, although the requirements of each individual case will, of course, continue to be the paramount consideration. These key case management events are designed to allow sufficient time for work to be conducted to assist in the disposition of the case but not too much time which might permit case preparation to result in a disposition taking place outside of the Court's time goal.

One of the key caseflow management principles is the establishment of a time goal within which cases will be disposed, together with procedures designed to dispose of cases within the time goal. The Court has set the period of 18 months from commencement as the goal within which it should dispose of at least 98% of its cases. The Court recognises, however, that the majority of cases will be disposed of well within this period, while some particularly large and or difficult cases will require more time. During the reporting year 84.2% of matters were completed in less than 18 months, 75% in less than 12 months and 57.3% in less than 6 months.

The Court expects that the key events in the new case management procedures should reduce the number of appearances and thus reduce costs. The aim is to minimise the number of events and to maximise the results of each appearance before the Court.

The Court has conducted a program of Assisted Dispute Resolution (ADR) since 1987. The Court's ADR program is integrated with its program of caseflow management under which a new matter must ordinarily come before a judge for directions within a short time of filing and before any further procedural steps are taken. This enables matters suitable for ADR to be identified early and referred to mediation at an appropriate stage.

The Individual Docket System with case management by the same judge from commencement to disposition will put a greater emphasis on referral to mediation and is expected to lead to a greater identification of cases suitable for referral to ADR.

Creditors' petitions under the *Bankruptcy Act*, most of which are not contested, are generally dealt with by registrars. In 1996-97 3,261 petitions were presented (see figure 6.10 in Appendix 6 on page 108). This practice saves a substantial amount of judicial time as does those matters under the *Corporations Law* which are also dealt with by registrars. Registrars' decisions may be reviewed by a judge of the Court on the application of a party.

### Appellate jurisdiction

The Court has a substantial appellate workload. During the year, 298 appeals to the Full Court were filed. (See Figure 6.9 in Appendix 6 on page 107 for comparative filings.) Towards the end of each calendar year, the Court publishes its program of Full Court Sittings for the following year. In the 1997 calendar year, four Full Court Sittings have been programmed for Sydney, three each for Melbourne, Brisbane, Perth and Canberra, two for Adelaide and Hobart and one for Darwin. Once appeal books are prepared by the parties, an appeal can usually be listed for hearing at the next hearing in the capital city where the matter was heard at first instance. During the reporting year, 11 special Full Court hearings were held to enable the early disposition of urgent appeals. On occasions when matters have been sufficiently urgent, it has been necessary to convene an urgent sitting of a Full Court in a capital city other than that in which the case was originally heard.

As previously mentioned, the Court will be introducing a new Full Court rostering system in 1998.

### Allocation of hearing dates

In addition to the time goal mentioned above, the Court's objective is to have matters listed for hearing within two to three months of a judge being satisfied that a case is ready for trial.

Table 2a shows the position, at the end of the reporting year, in each of the registries.

**Table 2a**  
**Estimated periods between readiness and hearing date**

Registry	Short matters (up to 3 days)	Long matters (more than 3 days)
Australian Capital Territory	2 - 3 months	2 - 3 months
New South Wales	6 months	7 months
Northern Territory	1 - 3 months	1 - 3 months
Queensland	4 - 5 months	9 months
South Australia	3 - 4 months	5 - 7 months
Tasmania	2 - 3 months	3 - 4 months
Victoria	6 months	7 months
Western Australia	2 - 3 months	2 - 3 months

The table shows that the Court has not been able to meet its objective in New South Wales, Queensland, South Australia, Tasmania and Victoria.

Difficulties in meeting the objective are the result of a number of factors, including the needs of other courts and tribunals upon which Federal Court judges hold commissions or appointments as well as a trend towards an increasing number of long, complex matters. It is not unusual for single cases to occupy individual judges for many weeks (sometimes many months) and long cases have a serious impact on the Court's capacity to deal with its workload. Although the frequency of long cases has increased and has been reported upon in previous years, urgent cases are still given priority and the Court continues to hear them as promptly as possible. Nevertheless, it is becoming increasingly difficult to meet the time demands of long cases on the one hand and the time demands of urgent matters on the other. These issues have been under consideration by the Practice and Procedure Committee and it is hoped that the implementation of the Individual Docket System will lead to a significant improvement in the time that elapses between readiness for trial and the commencement of the hearing.

### **Delivery of judgments**

In the reporting period, 1,266 Full Court and single judge judgments were delivered. This figure includes both written judgments and judgments delivered on the day of the hearing. When decisions are published, they are immediately made available to the parties and the media.

The Court has implemented a system of providing electronic copies of judgments for legal publishers via the Judgments Bulletin Board. Judgments are also available on the Internet on the AustLII site. The availability of judgments electronically will assist in reducing delays in disseminating the Court's judgments to the legal and wider community. At the end of the reporting year, the Judgments Bulletin Board had 12 external users.

The nature of the Court's workload means that a substantial proportion of the matters coming before the Court will go to trial and that the decision of the trial judge will be reserved at the conclusion of the trial. The nature of the Court's appellate work also means that a substantial proportion of appeals require reserved judgments.

For the reporting period, the median time between reserving and delivery of judgments, in both single judge matters and Full Court appeals, was between 30 and 60 days. Some 52% of all reserved judgments in single judge matters were delivered within 30 days. It is important to note that these figures do not take into account the significant number of single judge and Full Court judgments delivered on the day of the hearing.

Any party having a concern about delay in delivery of a reserved judgment may direct an inquiry to the President of the appropriate Bar Association or Law Society. The President then refers the inquiry to the Chief Justice for attention without disclosing which of the parties has raised the matter.

Court policy continues to allow fixed periods out of court to write reserved judgments. This policy is difficult to maintain and comes into conflict with the necessity to hear listed matters, as well as fresh matters which require urgent disposition. The workload of the Court is dealt with below in Section 2.4.

## 2.4 WORKLOAD TRENDS

### General trends

During the reporting year there were a number of factors which affected the Court's workload and the manner in which it reported upon it. These factors were as follows:

- 381 matters were transferred from the Industrial Relations Court of Australia (IRCA) to the Court on 26 May 1997 on account of legislative changes.
- The transfer to Insolvency and Trustee Service, Australia, on 16 December 1996 of administrative functions undertaken by officers of the Court, including the issue of bankruptcy notices and the processing of debtors' petitions, pursuant to the *Bankruptcy Legislation Amendment Act*. Prior to 16 December 1996 creditors' petitions and other bankruptcy applications were recorded in a specific bankruptcy database. Since that date they have been recorded in the Court's general applications database. For this reporting year the bankruptcy statistics are shown separately, however, in future years it is expected that they will be incorporated into the general statistical workload of the Court.
- Amendments to the Federal Court of Australia Regulations changing fees and introducing a number of new fees, which took effect in September and December 1996, probably led to the decline in *Corporations Law* matters, and in particular winding up applications.
- On 17 April 1997 the *Federal Court of Australia Act* was amended. One of the amendments removed the Divisional structure from the Court. In this reporting year the Court's report and the statistics contained therein will refer to General Division, however, that will not occur in future years.

Table 6.1 on page 96 shows that with the exception of the reporting year, there have been increases in the Courts incoming work in each of the five previous reporting years. For example, in 1991-92, 1994-95 and 1995-96 the number of the actions commenced in the General Division (including *Corporations Law* matters) was 2,679, 4,155 and 4,307 respectively.

In the reporting year the number of incoming matters decreased to 3,855. The major reason for the decrease can be directly attributable to the decline in *Corporations Law* matters from 1,946 in 1995-96 to 1,096 in the reporting year. For the same periods, the General Division incoming matters (excluding *Corporations Law* matters) increased from 2,361 to 2,759, however, as mentioned above, 381 matters were transferred from the IRCA on 26 May 1997.

The number of matters commenced must, however, also be compared with the number completed and on hand. The number of General Division matters (including *Corporations Law* matters) finalised during the reporting year was 3,996 compared with 3,879 in the previous year. The increase in the number of matters finalised is a trend that has existed in all of the five previous reporting years, for example, in 1991-92 and 1993-94, 2,410 and 3,306 matters were finalised respectively. The number of matters on hand continued to increase for all years, with the exception of the reporting year, for example, in 1994-95 and 1995-96 there were 3,359 and 3,787 current matters respectively. In the reporting year there were 3,627

matters, the number of current matters being affected by the large decline in corporations law filings however, the decline in current matters between 1995-96 and 1996-97 (160) was not as great as the decline in filings between the two reporting periods (452). The underlying trend therefore, in the reporting year, is also for the number of matters on hand to increase.

A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 6 to this report commencing at page 95. It should be noted that the number of appeals to the Full Court filed in 1996-97 (298) is the highest in the past five years (Figure 6.9 at page 107). This should not be surprising as it is a reflection of the increase in the number of first instance matters disposed. It is also important to record that Federal Court appeal benches are usually constituted by three judges. Thus as the number of appeals increase, there are fewer judges available for first instance work.

As mentioned above, in 1998 the Court will be adopting a change to the roster of Full Court sittings. The change will enable the Court's judges to have long periods of time without Full Court sittings in which they can deal with first instance matters in their individual dockets. The Court is also considering the role of Assisted Dispute Resolution (ADR) in the disposal of Full Court appeals. Figure 6.9 on page 107 provides statistical information concerning the number of Full Court appeals in the last five years.

### Age of pending caseload

Table 2b shows the comparative age of matters that were pending as at 30 June for each of the previous five years.

**Table 2b**  
**General Division current matters (including Corporations Law matters) - historical**

Age of matters	Matters current as at 30 Jun 93	Matters current as at 30 Jun 94	Matters current as at 30 Jun 95	Matters current as at 30 Jun 96	Matters current as at 30 Jun 97
under 6 months	1,029	1,039	1,547	1,444	1,427
6-12 months	775	650	573	754	729
12-18 months	357	368	310	769	390
under 18 months	2,161	2,057	2,430	2,967	2,546
1.5 - 2 years	227	374	280	232	256
over 2 years	271	387	649	588	825
over 1.5 years	498	761	929	820	1,081
<b>Total</b>	<b>2,659</b>	<b>2,818</b>	<b>3,359</b>	<b>3,787</b>	<b>3,627</b>

With the exception of the reporting year ending 30 June 1996, each reporting year in the Table has shown an increase in the number of cases more than 18 months old. In addition for all years with the exception of the reporting year the number of pending matters has also

increased. The Court will continue to focus upon avoiding delay and in reducing existing delays.

### **Native title matters**

The Court's jurisdiction in native title cases has the potential to have a major impact upon the Court's workload and resources.

In 1992-93 only one native title matter was commenced in the Court, with the number increasing to 13 in 1994-95, 12 in 1995-96 and 11 in the reporting year. It should be noted, however, that in the reporting year the Court also heard five *Administrative Decisions (Judicial Review) Act* matters involving native title, as well as four appeals from the National Native Title Tribunal. In addition, four Full Courts were constituted to hear appeals in native title matters from the decisions of judges of the Court at first instance.

In terms of time, size, cost, location of hearings and general impact on the Court's resources, native title cases are an important and resource-intensive addition to the Court's workload. Two cases illustrate this, namely the cases of *Ward (on behalf of the Miriuwung Gajerrong Peoples) v State of Western Australia* and the *Members of the Yorta Yorta Aboriginal Community v State of Victoria*.

The application in the case of *Ward* filed in the Court in February 1995 has involved site visits and hearings in the Kimberley region of Western Australia. The hearings which were expected to take approximately eight weeks are now likely to involve a further month of hearings for the purpose of taking respondents' evidence. Most of the evidence has been taken in the field where the applicants reside and where the land the subject of the claim is situated.

The *Yorta Yorta* case which was also filed in 1995 has involved 12 weeks of hearings in the reporting year with at least a further eight weeks of hearings listed for the rest of calendar year 1997. As in the *Ward* case, the Court is hearing the matter at the actual sites of contention, the Court, for example, sitting on some occasions in a marquee tent on the grounds of Aboriginal centres in towns of the Murray-Goulburn rivers region.

The above two cases are included among the Court's pending cases and it is expected that some of the other pending cases will take similar time to complete.

More importantly, based upon the predictions given to the Court about future native title workload, it has been assumed that the Court will receive up to 20 cases per annum of similar size to the two large cases mentioned above. This will have a very substantial impact on the Court's resources, which is expected to be met by additional funds from government for native title cases.

The administrative costs, not including salaries' costs, associated with hearings of these types are quite high. The Court will monitor very carefully the rate at which new native title cases are commenced so as to be able to identify the resource costs and needs of the Court.

## 2.5 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 Law.*

During 1996-97, 39 matters were remitted or transferred to the Court:

9 from the High Court of Australia  
30 from State or Territory Supreme Courts.

Matters may be transferred from the Court under:

*Federal Court of Australia Act 1976*  
*Jurisdiction of Courts (Cross-vesting) Act 1987*  
*Administrative Decisions (Judicial Review) Act 1977*  
*Bankruptcy Act 1966*  
*Trade Practices Act 1974*  
*Corporations Act 1989.*

During 1996-97, 58 matters were transferred from the Court:

1 to the Family Court of Australia  
23 to State or Territory Supreme Courts  
34 to District or County Courts.

## 2.6 ASSISTED DISPUTE RESOLUTION (ADR)

The Court's program of Assisted Dispute Resolution, which commenced in 1987, is of the type described as a court-annexed mediation program. The only matters dealt with in the program arise out of proceedings in the Court. Mediations are conducted by those of the Court's registrars who have been trained as mediators. The program has proved popular, with 90 matters being referred for mediation during the reporting year.

Prior to 17 April 1997 the program was based on parties consenting to mediation, however, from that date s 53A of the *Federal Court of Australia Act* was amended to provide for non-consensual mediation.

With the introduction of individual docketing and the various procedural reforms to be introduced at the same time, it is likely that there will be a further increase in the number of cases referred to mediation and in other forms of assisted dispute resolution. Greater importance will be attached to the identification, at an early stage, of cases suitable for assisted dispute resolution.

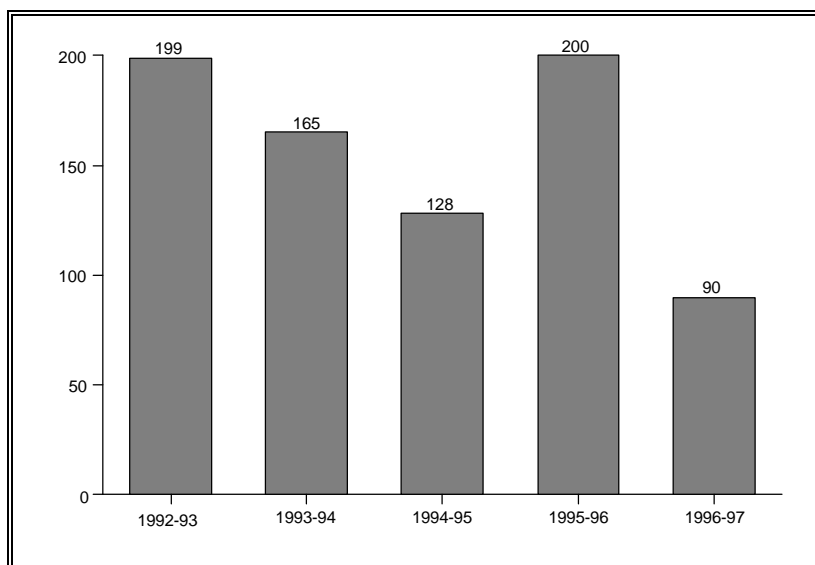
The settlement rates of cases referred to mediation since the commencement of the program in 1987 is 68%. Settlement rates at mediation should not, however, be the sole criteria by which the program is evaluated. Many matters which do not settle proceed to trial with issues better

defined, or on the basis of agreed facts, the facts being settled in cooperation with the mediator. In some instances the parties also agree that the Court should only be asked to determine liability or quantum. These types of results also mean savings in costs to the parties and court time.

Figure 1 shows the number of matters referred to mediation since 1992-93.

**Figure 1**

**Assisted Dispute Resolution (ADR)  
1992-93 to 1996-97  
(matters referred for mediation)**



## Chapter 3

### MANAGEMENT OF THE ADMINISTRATIVE AFFAIRS OF THE COURT

During the year the administrative affairs of the Court were managed to achieve the Court's objectives.

#### 3.1 EQUAL EMPLOYMENT OPPORTUNITY

The Court is committed to the creation of a working environment where different skills, approaches and cultural perspectives are respected. In 1996-97 the Court continued the implementation of a number of Equal Employment Opportunity (EEO) initiatives. Major achievements were:

- The Court's 1996-99 Equal Employment Opportunity Plan was finalised following consultation with staff and unions. This Plan identifies key action areas, objectives and strategies designed to increase organisational efficiency by providing all staff with opportunities.
- Work commenced on the development of a number of policies relating to home based work and family responsibilities.
- Work on an information package for permanent part-time staff was completed and has been distributed throughout the Court.

The Court continues to have a high proportion of women occupying Senior Executive Service positions (30% at the end of the reporting period). Women comprised 61.53% of the professional staff as at 30 June 1997 compared to 48.4% at 30 June 1996. These included Professional Officers, Senior Professional Officers and Legal Officers. Women comprised 58.71% of the Court's staff.

Detailed EEO Statistics are shown in Appendix 7 at page 117.

#### 3.2 INDUSTRIAL DEMOCRACY

The Court is committed to a process of Industrial Democracy (ID) and its Industrial Democracy Plan has been in operation for 18 months. The primary objectives of the plan are to improve communications across the Court and to further promote participative work and management practices.

During 1996-97 the plan was promoted to staff through the maintenance of a network of local Industrial Democracy Committees overseen by the National ID Committee. The National Committee last met on 14 March 1997. Registries were required to incorporate in their Business Plans ID objectives which support the national plan.

The Court has also undertaken a program of change which included a national redundancy program and a restructure of the Court's operations. The local and national industrial democracy mechanisms were used extensively to provide an opportunity for the exchange of information and consultation between management, staff and union representatives.

The Court will continue to place importance on industrial democracy principles and will review the ID Plan in December 1997.

### 3.3 OCCUPATIONAL HEALTH AND SAFETY

During the reporting period the Court continued its commitment to Occupational Health & Safety (OH&S) practices. Major achievements during the year were:

- External consultants were contracted to conduct health and safety audits of the Principal, New South Wales, Queensland and Victoria Registries. As a result of these audits an OH&S Action Plan was developed to ensure the ongoing health, safety and welfare of the Court's staff. The majority of the recommendations made in the Action Plan were implemented during the reporting period.
- A national training program is being developed which addresses OH&S issues. The Court's Orientation Portfolio for new staff includes information on harassment prevention and OH&S issues.
- A national Employee Assistance Program was implemented during the year to assist staff with work-related and personal problems. This included the establishment of links to specialist service providers.
- An investigation of the Queensland District Registry was undertaken by Comcare Australia which reported a satisfactory assessment.
- Issues addressed by the National OH&S Committee included the health and safety audits (noted above), and eyesight testing.
- No provisional improvement notices were issued under s 30 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*. No directions under s 45 or notices under s 46 of the Act were served on the Court during the year. There was one notification under s 68 of the Act.

The Court closely monitors and manages its occupational health claims and lost time due to injuries and has strategies in place to facilitate an early return to work by injured staff.

Time off work due to injury declined for the third year in succession. A total of 45.4 weeks was lost during the year compared with 53.6 weeks during 1995-96.

Comcare premiums have been reduced, dropping from 1.57% of the Court's total salary and wage costs in 1995-96 to 1.12% in 1996-97. This is less than the average Comcare premium of 1.67% of salaries during the reporting period.

### 3.4 WORKPLACE BARGAINING

The Federal Court of Australia Enterprise Agreement 1994-95 expired on 31 December 1995, but continues in force until replaced. Consideration of the issues associated with amendments to the *Workplace Relations Act* (formerly the *Industrial Relations Act 1988*) by the *Workplace Relations and Other Legislation Amendment Act* were undertaken during the latter part of the reporting period with a view towards development of an agreement during 1997-98.

### 3.5 TRAINING AND DEVELOPMENT

The Court maintained a strong commitment to staff training and development throughout the reporting period. In order to ensure the maximum value from the available funding, internal and external training was carefully targeted towards core needs of the Court and essential skill and development needs of staff.

Training included attendances at the following programs:

- **General Management Development**  
Financial Information and Resource Management, Leading and Managing People, Team Effectiveness and Business Planning, Emergency Control Planning and Procurement Competencies, Performance Management, Policy Formulation and Advice
- **Technical and Professional Skills**  
Litigation Case Management, Discovery, Privilege and Confidentiality, Mediation and Negotiation, Federal Court Practice and Procedure, FEDCAMs
- **People Skills**  
Deafness Awareness, Gender Awareness, Team Effectiveness, Harassment Contact Officer Training, Health and Safety Training
- **Change Management**  
Managing Cultural and Organisational Change, Workplace Relations, Managing Multiple Priorities, Managing Towards 2000, Change and Renewal
- **Client Service**  
Providing Excellent Client Service
- **Computing**  
Microsoft Windows 3.11, Microsoft Word, Microsoft Excel, GroupWise

The focus was on ensuring that staff skills are competitive and maintained to a high standard, that the levels and types of skills available are relevant and that the service-delivery capability meets the needs of the community.

The Court spent \$267,000 on training and development of a corporate nature during the reporting period. Important skills-based training also took place in each registry to deal with the introduction of the Individual Docket System and the introduction of new Rules of Court for bankruptcy matters. During the year, the Court supported 24 staff in continuing tertiary education through the studybank program.

### **3.6 STAFFING OVERVIEW**

At 30 June 1997 the Court employed 327 employees under the *Public Service Act: 192* permanent full-time officers, 11 permanent part-time officers and 124 temporary employees. There were significant changes in temporary staffing levels due to staff being employed as part-time court attendants to meet Court sitting requirements. The average staffing level during the reporting period was 283.6.

Table 3a on page 48 contains an overview of the full-time and part-time staff of the Court at 30 June 1997. Table 3b on page 49 contains details of the number of staff in each District Registry and the Principal Registry who assist the judges and judicial registrars of the Court. Table 3c on page 50 contains details of the Court's staff who are members of the Senior Executive Service.

During the year the Court continued to provide administrative support to the Industrial Relations Court of Australia and assistance to the National Native Title Tribunal.

During the reporting period there were no grievances lodged by staff of the Court.

Table 3a

**Staffing overview - full-time and part-time staff  
(Registry and Judges' personal staff - actual occupancy as at 30 June 1997)**

Level	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	Total
SES1	2	3	2	1	1	1	-	-	10
L2	1	3	2	1	1	2	1	1	12
L1	-	1	1	1	-	1	-	-	4
SPAO1	-	-	1	-	-	-	-	-	1
SOGA	2	-	-	-	-	-	-	-	2
SOGB	4	1	1	1	1	1	-	-	9
SOGC	9	3	2	-	-	-	-	1	15
SITOB	1	-	-	-	-	-	-	-	1
SITOC	1	-	-	-	-	-	-	-	1
ITO2	3	-	-	-	-	-	-	-	3
ITO1	1	-	-	-	-	-	-	-	1
SPOB	1	-	-	-	-	-	-	-	1
SPOC	-	-	1	1	1	1	-	-	4
PO2	2	-	-	-	-	-	-	-	2
PO1	2	-	-	-	1	-	-	-	3
ASO6	3	4	2	1	1	1	1	-	13
ASO4/5	9	48	40	10	5	5	1	3	121
ASO3	3	13	10	9	2	6	2	-	45
ASO2	-	26	15	9	6	6	5	1	68
ASO1	1	6	1	1	-	1	-	-	10
GSO3	-	-	1	-	-	-	-	-	1
<b>Total</b>	45	108	79	35	19	25	10	6	327

Notes: (1) The Court has no staff in the Northern Territory. Registry services to the Court for the Northern Territory are provided on a fee for service basis by the Family Court of Australia.  
(2) The Registrar and one Deputy Registrar, who are holders of public office, are not included in this table.

Table 3b

Judges and Court staff  
as at 30 June 1997

	Judges and Judicial Registrars	Staff
<b>Principal Registry</b>		1 Registrar 3 Deputy Registrars 43 Staff
<b>New South Wales</b>	17 Judges 3 full-time Judicial Registrars 3 part-time Judicial Registrars	1 District Registrar 107 Staff
<b>Victoria</b>	Chief Justice 9 Judges 4 full-time Judicial Registrars	1 District Registrar 78 Staff
<b>Queensland</b>	4 Judges 1 part-time Judicial Registrar	1 District Registrar 34 staff
<b>South Australia</b>	3 Judges 1 part-time Judicial Registrar	1 District Registrar 18 Staff
<b>Western Australia</b>	3 Judges 1 full-time Judicial Registrar 2 part-time Judicial Registrars	1 District Registrar 24 Staff
<b>Australian Capital Territory</b>	1 Judge	1 District Registrar 5 Staff
<b>Tasmania</b>		1 District Registrar 9 Staff
<b>Northern Territory*</b>		

Note: Only judges whose main work is as a judge of the Federal Court are included in this table.

\* During the reporting year, registry services for the Northern Territory including the staff of the Federal Court were transferred to the Family Court of Australia. The Family Court now provides these services under a Service Contract.

**Table 3c**  
**Senior Executive Service**  
**as at 30 June 1997**

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<b>Principal Registry</b>		<b>(SES Grading occupied)</b>
Senior Deputy Registrar	Alan Dawson	Senior Executive Band 1
Manager, Court Resources	Rod Tout	Senior Executive Band 1
<b>New South Wales District Registry</b>		
District Registrar	John Mathieson	Senior Executive Band 1
Deputy District Registrar	Margaret Quinn PSM	Senior Executive Band 1 (Specialist)
Deputy District Registrar	Jennifer Hedge	Senior Executive Band 1 (Specialist)
<b>Victoria District Registry</b>		
District Registrar	Peter Seccombe	Senior Executive Band 1
Deputy District Registrar	Susan Agnew	Senior Executive Band 1 (Specialist)
<b>Queensland District Registry</b>		
District Registrar	Graham Ramsey	Senior Executive Band 1
<b>South Australia District Registry</b>		
District Registrar	Peter Carey	Senior Executive Band 1
<b>Western Australia District Registry</b>		
District Registrar	Martin Jan PSM	Senior Executive Band 1

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## Performance management

A draft Performance Appraisal Program for Senior Executive Service Officers and Senior Officer and equivalent classifications was developed for use over the 12 month performance appraisal cycle which commenced on 1 July 1996. Revision of this draft through the latter part of the year resulted in the development of a new Performance Management Program for Senior Executive Service Officers and Senior Officer and equivalent classifications. The 1996-97 program provided for performance pay for Senior Executive Service Officers whose performance was rated as outstanding or highly satisfactory.

As provided for in the Court's 1994-95 Enterprise Agreement, work was undertaken to develop a performance management program for Administrative Service Officers (and equivalent classifications). This program will be introduced in September 1997.

## Performance pay

Performance pay for Senior Executive Service Officers and staff in equivalent positions was paid this financial year for the appraisal period ending 30 June 1996. The maximum for the different classifications were as follows:

Senior Executive Service Officers Band 1     \$10,000

Twelve Senior Executive Service Officers were eligible for performance pay, and a total of \$44,880 was paid to these 12 officers.

Details of payments made during the year are shown in Table 3d.

**Table 3d**

Classification	Rating	No of staff	Male	Female	Rating point
Senior Executive Service Officers	4	12	8	4	#
	3	Nil	Nil	Nil	N/A

Note: Some of the officers covered in this Table were on duty with the Court for only a portion of the Financial Year.

(# Amounts determined at Registrar's discretion)

### **3.7 INTERNAL AND EXTERNAL SCRUTINY**

#### **Audit and fraud control**

Activities and achievements during the year included:

- the Court finalised and implemented its 1997-99 Fraud Control Policy. This policy meets the requirements of the *Fraud Control Policy of the Commonwealth* and consists of information on the methodology for assessing the risk of fraud throughout the Court, the procedures for reporting instances of fraud and a Fraud Action Plan.
- the Court's Internal Audit Charter was implemented. This Charter confirms the Court's commitment to ensuring the integrity and efficiency of its accounting, financial and management systems and practices.

#### **Internal and external audit**

During the reporting period comprehensive audits covering aspects of personnel and financial management operations were conducted in all registries. The audits, conducted by private sector auditors, continue to confirm that the Court has effective control systems in place. No significant deficiencies were identified by the audits.

Staff of the Australian National Audit Office performed an inspection and audit of the Court's 1995-96 financial statements and provided an unqualified audit certificate.

### **3.8 PROPERTY MANAGEMENT**

The major outcomes during 1996-97 were:

- a security review of all Court premises;
- refurbishment of the courtrooms, library and public areas in the South Australia District Registry;
- relocation and refurbishment of the Australian Capital Territory District Registry; and
- refurbishment of the Court Resources Branch of the Principal Registry and the New South Wales District Registry, and removal of asbestos.

As a self-administering body, the Court is directly responsible for property and security matters relating to its registries and courts, except in the Northern Territory. Representatives of the Court participated in National and Local Law Courts Building Management Committees.

During the year, a security review of all Court premises was undertaken by the Protective Security Co-ordination Centre of the Attorney-General's Department. The threat assessment of Court premises and environs was confirmed as low and security for each registry at the time of the review was considered satisfactory. The review identified minor issues that required rectification and these were being addressed at the end of the reporting period.

The refurbishment project in the Court's South Australia registry was undertaken to improve facilities for judges, staff, litigants and the public. The project included the redesign and enlargement of courtrooms, provision of secure access between courtrooms and chambers, improved interview room facilities and public waiting areas and enhanced library facilities. Although commercial buildings are difficult and expensive to make suitable for courts, the refurbishment will provide enhanced facilities until a purpose-built Law Courts Building is constructed in Adelaide.

Following the relocation of the Australian Capital Territory Magistrates' Court to a new building, the Court undertook a refurbishment project to provide a new registry in the area vacated by the Magistrates' Court. The new facility now provides improved facilities for staff in line with the Court's OH&S responsibilities in addition to improved facilities for litigants and the public.

The asbestos removal and fit-out project for the Court Resources Branch of the Principal Registry enabled the Branch to relocate to improved facilities in line with the Court's OH&S responsibilities. This project also enabled the New South Wales District Registry to expand into the area vacated by the Court Resources Branch thus providing improved public and operating facilities.

Planning and design work along with the signing of the tender documents for construction of a purpose-built court building in Melbourne was completed. The Court anticipates that it will take up occupation of the building early in 1999.

### **3.9 INFORMATION TECHNOLOGY DEVELOPMENTS**

#### **Information technology strategy**

The Technology Services Section focused on two key strategies in the Information Technology (IT) Strategic Plan during the reporting period. Both involved the Windows and Network Project.

The first strategy involved the upgrading of the PC equipment from DOS to Microsoft Windows. This has allowed the Court to take full advantage of modern software applications and facilitate cost-effective and timely services.

The second strategy involved the Court establishing internal communications networks (Local Area Networks or LANs) linking judges and staff. Each District Registry LAN is being connected to form a Wide Area communications Network (WAN). These connections facilitate faster communications within the Court, provide for the transmission of documents electronically and reduce administrative costs.

These strategies also position the Court to take better advantage of developments in Internet technologies and software applications.

### **Computer equipment**

The Court has selected the Pentium P-166 PC and Pentium Laptop for its personal computer equipment. At the end of the reporting period 60% of all judges and staff were using this equipment. As a result of the vesting of the jurisdiction of the Industrial Relations Court of Australia to the Court, economies were achieved in establishing the LAN structure following the integration of the Industrial Relations Court's computer assets within the Court.

### **Windows and network project**

Implementation of the Windows and Network Project has been the main initiative during this year. At the end of the reporting period the project was under budget and ahead of schedule. Approximately 260 staff now have GroupWise e-Mail access via the WAN.

### **Client service**

A full-time Help Desk and Technology Support service was established during the year to support the Court during the introduction of the new technology. The move to a Windows environment involved an extensive training program for most people within the Court and it was essential that an effective and timely support service was established to deal with questions arising following implementation and training.

Problems are logged and a target of resolving 75% of all help requests within 16 working hours has been set. The target was consistently achieved during the reporting period.

## **3.10 VIDEO-CONFERENCING**

The Court's video-conferencing network was introduced during the 1993-94 year. In the first full year of operation (1994-95) the facility was used on 200 occasions by the Federal Court and other courts and tribunals.

The video-conferencing facility was utilised on more than 300 occasions during 1996-97, involving nearly 550 individual links to Federal Court video-conferencing sites. For court-related matters, video-conferencing was used on 275 occasions during 1996-97, including use by other courts. The remaining use was to assist the internal administration of the Court. A number of multi-site video-conferences were conducted involving the linking of all registries as a means of conveying information and discussing matters of significance.

The number of international video links conducted for court purposes, both for the Court and for a number of State Supreme Courts, increased from 15 in 1995-96 to 30 in the reporting year. Links were made to a wide range of countries: France, Germany, Hong Kong, New Zealand, Switzerland, United Kingdom (London and Glasgow) and the United States of America (10 States).

A major benefit from the use of video-conferencing in the Court is the savings to the parties of the costs that would normally otherwise be incurred when interstate or overseas travel to the Court is required. Although costs savings are difficult to determine accurately, it is possible to estimate some of the savings. For example, the potential saving from a one-hour video link within Australia is likely to be between \$500 and \$750 for a Sydney - Melbourne link (including airfare, ground transport, accommodation etc) and to be between \$1,500 and \$2,000 for a link between Melbourne and Perth. These figures should, of course, be multiplied if travel is saved for more than one person. The savings increase dramatically when there is an overseas link.

It is also interesting to note that the use of the video-conferencing facility by other courts increased by almost 50% during 1996-97. The Court is able make the video facility available to other courts however, that ability is limited by the increased use by the Court. It is expected that increased use of video-conferencing will coincide with the introduction of the Individual Docket System. In future judges sitting away from their home State or Territory will use the video-conference facility to manage their dockets by conducting directions hearings and interlocutory hearings.

The Court expects to be in a position to upgrade its video-conferencing facility during the 1997-98 year. The upgrade will improve the quality and effectiveness of the facility.

### **3.11 LIBRARY AND INFORMATION SERVICES**

The Court manages access to a national library network which provides a comprehensive library service to all judges and staff of the Court. In Brisbane, Perth and Sydney library access is also available to the legal profession and litigants in person.

Highlights of Federal Court Library achievements in 1996-1997 included:

#### **Internet Home Page**

A World Wide Web Internet Home Page commenced operation on 16 December 1996. The address is <http://www.austlii.edu.au/au/other/fca/>.

The Home Page contains brief judicial biographical information, information about the Court, its objectives and the Acts which confer jurisdiction on the Court. Practice directions and links to the Court forms including an index, the Acts and the Rules are also available to make access to the Court's services easier. The Court believes this will improve both access to justice and wider community knowledge about the justice system.

At 30 June 1997 over 4,500 people had accessed the Court's Home Page.

#### **CD-ROM network**

A new CD-ROM stacker has been connected to the Court's computer network with 20 titles available for searching. Information includes High Court, Federal Court and other Commonwealth Court and Tribunal decisions; Commonwealth and State Statutes and Regulations for New South Wales, Victoria, Queensland and Western Australia; New South Wales, Victoria, Queensland and Western Australia State Supreme Court decisions; the Commonwealth Attorney-General's

Information Service (Austlaw) and taxation and company law services. Access to the CDs will also be extended as the network is hooked up nationally. Library staff have prepared brief search guides which are distributed to the judges and staff as they gain access to the network. It is planned to add other suitable titles to the network as they become available.

### **Judgment template**

A word-processing template has been developed to standardise the format of judgments. Advantage was taken of the change from WordPerfect to Microsoft Word to introduce the template which is to be trialed over the next few months. The use of a template will improve the ease with which judgments can be made available from the Internet.

### **Library databases**

During the year database software was upgraded to the Windows version. Previously, databases could only be updated in batch mode which delayed both the indexing of judgments and their availability for searching. Both functions can now be performed quickly and the data is available for searching on the same day.

### **Library collections**

During the year Judges, assisted by court staff, reviewed the needs of chambers and floor libraries which has allowed rationalisation of separate facilities and greater use of shared libraries. Estimated cost savings to the Court are \$190,000 per annum.

### **Records management**

Major record management initiatives commenced during the year included projects to upgrade to a Windows record management system and to develop a thorough archival policy for the protection of valuable and historical records of the Court.

### **Library assistance to the South Pacific**

To assist law libraries in the South Pacific the Court has a program to donate library materials in the form of text books and bound law reports to law libraries in Vanuatu, Kiribati, Western Samoa and Tonga. The program is assisted by an AusAid grant for a five-year period.

In order to keep the material as up to date as possible, the Court has developed a policy of providing shipments every six months.

## **Judgment distribution and storage**

During the 1996-97 year the Library received 1,266 judgments for indexing and distribution. This was 3% more than the previous year. The statistics show a gradual but continual increase. As an example, the number of judgments received for indexing in 1990 was 823, compared with 1,187 in 1996.

Judgments are now available electronically on the Internet, many within hours of being handed down. One of the benefits of this has been a substantial reduction in the provision of hard copy judgments. 93.6% of paper used for this purpose is no longer required with an estimated annual cost saving to the Court of \$100,000. Judgments are also available on a Bulletin Board which provides publishers and Federal Court libraries across Australia with electronic access to the Court's judgments. Approximately 70% of public enquiries received by Principal Registry Library staff relate to judgments.

## **Library subscriptions**

Library subscriptions have risen continuously in previous years but quite significantly in 1996-97. Although the cost of subscriptions rose between 15% and 29% compared to 1995-96 expenditure, the Court, through careful management of its subscription requirements, has reduced the increase in the cost of subscriptions to 7.5% of the previous year's expenditure.

### **3.12 ADVERTISING AND MARKET SURVEY SERVICES**

Payments of \$26,082 for recruitment advertising, including the actual cost of newspaper advertisements, were made to the following agencies during the reporting year:

- TMP Worldwide           \$11,833
- Alectus Personnel       \$12,638
- Neville Jeffress         \$1,358
- Riverine Herald         \$252

The Court does not use market research organisations, polling organisations, direct mail organisations or media advertising agencies.

### 3.13 CONSULTANCY SERVICES

The Registrar may engage consultants under s 18R of the *Federal Court of Australia Act*. When consultants are engaged, the Court follows Commonwealth Procurement Guideline No 13: *Contracting for Consultancy Services*. Table 3e shows the consultants engaged during 1996-97.

**Table 3e**

<b>Consultant</b>	<b>Amount</b>	<b>Purpose</b>
Coopers & Lybrand	\$ 9,960	Organisational Review
Nagel Consulting	\$ 9,531	Business Management/ Team Management Training
Workplace Solutions	\$ 429	Ergonomic assessment
Susan Tarua	\$ 570	Editorial work on Annual Report
Workcover New South Wales	\$ 14,183	OH&S Assessment
Communication Networks International	\$ 48,750	National Implementation of LAN/WAN
Price Waterhouse Urwick	\$ 6,000	IT Consultancy Advice
Davis Computer Consultants	\$ 2,000	Programming
Latcom Pty Ltd	\$ 2,000	Programming
Department of Finance	\$ 22,000	Strategic Plan Cost/Benefit Analysis
Maureen Solomon Court Management Consultant	\$ 1,200	Assistance in simplification of the Court's Rules and procedures
Attorney-General's Department	\$ 10,000	National security review of Federal Court premises
AG Lifestyle Management Pty Ltd	\$ 4,800	Presentation and training program
RR & MG Collins & Associates P/L	\$ 10,700	Presentation and training program

### 3.14 FINANCIAL MANAGEMENT SERVICES

Financial management was a key focus of the Court during the year. Improved financial reporting including:

- monthly analysis of expenditure trends by responsible managers;
- a focus on fiscal management strategies by all managers; and
- the development of new financial management initiatives,

all contributed to the Court meeting its budget limit.

The budget outcome was particularly pleasing for the Court given the number of significant changes that occurred during the year including:

- a decreased Budget allocation;
- the requirement to integrate the Industrial Relations Court of Australia;
- the transfer of bankruptcy functions to Insolvency and Trustee Service, Australia;
- the consequential structural changes arising from the integration and transfer mentioned above; and
- the implementation of the Individual Docket System.

### **Financial management systems**

The 1996-97 financial year was the second year of operation for the Court's financial management information system known as FINEST. The users became increasingly familiar with the benefits of the system. During the year, additional software releases were periodically received that provided system modifications and enhancements, including an accrual accounting version.

A FINEST help desk was established to resolve problems, to ensure that the delivery of financial management services to Court staff was maintained at a high standard and to monitor compliance and appropriateness of procedures.

### **Program budgeting**

The Federal Court of Australia is a sub-program of the Attorney-General's portfolio program entitled "Administration of Justice". Sub-program financial and staffing resources outcome information is set out in Tables 3f to 3i on pages 60 to 62.

**Table 3f**

**Financial and staffing resources summary (all programs)  
\$('000) and actual staff years**

	<b>Actual (1995-96)</b>	<b>Budget (a) 1996-97</b>	<b>Actual (1996-97)</b>
<b>BUDGETARY (CASH) BASIS</b>			
<u>Components of Appropriations</u>			
Program costs (excl running costs)	476	379	358
Running costs	38,327	42,855	40,669
<b>Total Appropriations</b>	<b>38,803</b>	<b>43,234</b>	<b>41,027</b>
Less adjustments	946	1,091	904
<b>Total Outlays</b>	<b>37,857</b>	<b>42,143</b>	<b>40,123</b>
Revenue	9,957	20,294	10,127
<b>STAFFING</b>			
Staff years (actual)	321.2		320.3

Note: For comparative purposes 1995-96 accommodation expenses have been transferred to running costs.

(a) includes additional estimates appropriations.

Table 3g

**Financial and staffing resources summary (4.1 Federal Court)  
\$('000) and actual staff years**

	<b>Actual (1995-96)</b>	<b>Budget (a) 1996-97</b>	<b>Actual (1996-97)</b>
<b>BUDGETARY (CASH) BASIS</b>			
<u>Components of Appropriations</u>			
Program costs (excl running costs)	476	379	358
Running costs	38,163	42,601	40,432
<b>Total Appropriations</b>	<b>38,639</b>	<b>42,980</b>	<b>40,790</b>
Less adjustments	946	1,091	904
<b>Total Outlays</b>	<b>37,693</b>	<b>41,889</b>	<b>39,886</b>
Revenue	9,957	20,294	10,127
<b>STAFFING</b>			
Staff years (actual)	320.2		318.8

Note: For comparative purposes 1995-96 accommodation expenses have been transferred to running costs.

(a) includes additional estimates appropriations.

**Table 3h**

**Financial and staffing resources summary (4.6 Tribunals)  
\$('000) and actual staff years**

	<b>Actual (1995-96)</b>	<b>Budget (a) 1996-97</b>	<b>Actual (1996-97)</b>
<b>BUDGETARY (CASH) BASIS</b>			
<u>Components of Appropriations</u>			
Program costs (excl running costs)	NIL	NIL	NIL
Running costs	164	254	238
<b>Total Appropriations</b>	164	254	238
Less adjustments	NIL	NIL	NIL
<b>Total Outlays</b>	164	254	238
Revenue	NIL	NIL	NIL
<b>STAFFING</b>			
Staff years (actual)	1		1.5

Note: For comparative purposes 1995-96 accommodation expenses have been transferred to running costs.

(a) includes additional estimates appropriations.

**Table 3i**

**Summary table of resources  
Reconciliation of programs and appropriation elements for 1996-97**

Sub-program Number	Approp Bills + Nos 1 and 3	Approp Bills + Nos 2 and 4	Special + Approps	Annotated = Approps *	Program - Approps	Adjustments= (1)	Program Outlays
4.1	42,070	NIL	NIL	910	42,980	1,091	41,889
4.6	254	NIL	NIL	NIL	254	NIL	254
<b>Total</b>	42,324	NIL	NIL	910	43,234	1,091	42,143

## Appendix 1

### FINANCIAL STATEMENTS 1996-97

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#### FEDERAL COURT OF AUSTRALIA INDEPENDENT AUDIT REPORT

#### To the Attorney-General

#### Scope

I have audited the financial statements of the Federal Court of Australia for the year ended 30 June 1997. The financial statements comprise:

Statement by the Registrar and Principal Accounting Officer

Departmental and Administered statements of:

- Revenues and Expenses
- Assets and Liabilities
- Revenues and Expenses by Program
- Assets and Liabilities by Program
- Cash Flows
- Schedule of Commitments
- Schedule of Contingencies
- Transactions by Fund, and
- Notes to and forming part of the Financial Statements.

The Registrar and Principal Accounting Officer are responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to the Attorney-General.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial reports, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Australian

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Accounting Standards, other mandatory professional reporting requirements (Urgent Issues Group Consensus Views) and statutory requirements so as to present a view of the Court which is consistent with my understanding of its financial position, its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

**Audit Opinion**

In accordance with sub-section 18S(3) of the Federal Court of Australia Act 1976 and sub-section 51(1) of the Audit Act 1901, I now report that in my opinion, the financial statements:

- are based on proper accounts and records;
- are in agreement with the accounts and records;
- are in accordance with the Guidelines for Financial Statements of Commonwealth Departments;
- present fairly in accordance with applicable Accounting Standards and other mandatory reporting requirements, the information required by the Guidelines including the results of the departmental and administered financial operations and cash flows for the year ended 30 June 1997 and the departmental and administered assets and liabilities as at that date; and
- the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, during the year have been in accordance with the Federal Court of Australia Act 1976.

Australian National Audit Office



Russ Chantler  
Executive Director

For the Auditor-General

Sydney  
2 September 1997

**FEDERAL COURT OF AUSTRALIA**  
**Statement by the Registrar and**  
**Principal Accounting Officer**

**FEDERAL COURT OF AUSTRALIA**  
**DEPARTMENTAL REVENUES AND EXPENSES**  
*for the year ended 30 June 1997*

	Notes	1996-97 \$'000	1995-96 \$'000
<b>NET COST OF SERVICES</b>			
<b>Expenses</b>			
Employees	3	25,491	24,309
Suppliers	4	16,880	18,245
Depreciation and amortisation	2(d)	1,536	733
Net losses from sales of assets	5	165	58
<b>Total Expenses</b>		<b>44,072</b>	43,345
<b>Revenues from independent sources</b>			
Sales of goods and services	6	181	128
Other revenues from independent sources	6	780	548
<b>Total revenues from independent sources</b>		<b>961</b>	676
Abnormal revenue	2(c)(2)	-	27,487
<b>Net cost of services</b>		<b>43,111</b>	15,182
<b>REVENUES FROM GOVERNMENT</b>			
Appropriations used for:			
Ordinary annual services (net appropriations)	7	42,320	37,832
Other services	7	-	228
Liabilities assumed by other departments	2(h)(2)	3,596	3,273
Resources received free of charge	8	148	96
<b>Total revenues from government</b>		<b>46,064</b>	41,429
<b>Operating surplus before extraordinary items</b>		<b>2,953</b>	26,247
Net revenues from extraordinary items:			
Restructuring	9	1,674	-
<b>Operating surplus</b>		<b>4,627</b>	26,247
Accumulated results at 1 July		24,372	(1,875)
<b>Accumulated results at 30 June</b>		<b>28,999</b>	24,372

<b>ADMINISTERED REVENUES AND EXPENSES</b>			
<i>for the year ended 30 June 1997</i>			
<b>REVENUES</b>			
Court fees		10,709	9,922
Court fines		78	-
Other		174	211
<b>Total revenues</b>		<b>10,961</b>	10,133
<b>EXPENSES</b>			
Refund of Court fees		246	31
Refund of Court fines		75	-
Refunds other		3	3
Other expenses	4	12	-
<b>Total expenses</b>		<b>336</b>	34
<b>Net contribution to government</b>		<b>10,625</b>	10,099
<b>TRANSFERS</b>			
Cash from Commonwealth Public Account		323	34
Cash to Commonwealth Public Account		10,664	10,199
<b>Net change in administered assets</b>		<b>285</b>	(66)
Accumulated results at 1 July		5	71
<b>Accumulated results at 30 June</b>		<b>290</b>	5

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

**FEDERAL COURT OF AUSTRALIA**  
**DEPARTMENTAL ASSETS AND LIABILITIES**  
*as at 30 June 1997*

	Notes	<b>1996-97</b> \$'000	1995-96 \$'000
<b>PROVISIONS AND PAYABLES</b>			
Employees	10	7,972	7,334
Suppliers	11	471	457
Other	12	1,801	579
<b>Total provisions and payables</b>		<u>10,244</u>	<u>8,370</u>
<b>EQUITY</b>			
Accumulated results	13	28,999	24,372
<b>Total equity</b>		<u>28,999</u>	<u>24,372</u>
<b>Total liabilities and equity</b>		<u>39,243</u>	<u>32,742</u>
<b>FINANCIAL ASSETS</b>			
Cash	14	13	35
Receivables	15	2,030	67
<b>Total financial assets</b>		<u>2,043</u>	<u>102</u>
<b>NON-FINANCIAL ASSETS</b>			
Land and buildings	16	4,613	1,657
Infrastructure, plant and equipment	16	31,992	29,778
Other	17	595	1,205
<b>Total non-financial assets</b>		<u>37,200</u>	<u>32,640</u>
<b>Total assets</b>		<u>39,243</u>	<u>32,742</u>
<b>Current liabilities</b>		2,887	2,525
<b>Non-current liabilities</b>		7,357	5,845
<b>Current assets</b>		2,637	1,307
<b>Non-current assets</b>		36,606	31,435

**ADMINISTERED ASSETS AND LIABILITIES**  
*as at 30 June 1997*

<b>PROVISIONS AND PAYABLES</b>			
Other	12	1	75
<b>Total provisions and payables</b>		<u>1</u>	<u>75</u>
<b>EQUITY</b>			
Accumulated results	13	290	5
<b>Total equity</b>		<u>290</u>	<u>5</u>
<b>Total liabilities and equity</b>		<u>291</u>	<u>80</u>
<b>FINANCIAL ASSETS</b>			
Cash	14	23	66
Receivables	15	268	14
<b>Total financial assets</b>		<u>291</u>	<u>80</u>
<b>Current liabilities</b>		1	75
<b>Non-current liabilities</b>		-	-
<b>Current assets</b>		291	80
<b>Non-current assets</b>		-	-

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

**FEDERAL COURT OF AUSTRALIA**  
**DEPARTMENTAL REVENUES AND EXPENSES BY PROGRAM**  
*for the year ended 30 June 1997*

	Program 4.1 Federal Court		Program 4.6 Tribunals		Total	
	1996-97 \$'000	1995-96 \$'000	1996-97 \$'000	1995-96 \$'000	1996-97 \$'000	1995-96 \$'000
<b>NET COST OF SERVICES</b>						
<b>Expenses</b>						
Employees	25,328	24,156	163	153	25,491	24,309
Suppliers	16,795	18,209	85	36	16,880	18,245
Depreciation and amortisation	1,528	732	8	1	1,536	733
Net losses from sales of assets	164	58	1	-	165	58
<b>Total Expenses</b>	<b>43,815</b>	<b>43,155</b>	<b>257</b>	<b>190</b>	<b>44,072</b>	<b>43,345</b>
<b>Revenues from independent sources</b>						
Sales of goods and services	181	128	-	-	181	128
Other revenues from independent sources	780	548	-	-	780	548
<b>Total revenues from independent sources</b>	<b>961</b>	<b>676</b>	<b>-</b>	<b>-</b>	<b>961</b>	<b>676</b>
Abnormal revenue	-	27,370	-	117	-	27,487
<b>Net cost of services</b>	<b>42,854</b>	<b>15,109</b>	<b>257</b>	<b>73</b>	<b>43,111</b>	<b>15,182</b>
<b>REVENUES FROM GOVERNMENT</b>						
Appropriations used for:						
Ordinary annual services (net appropriations)	42,082	37,755	238	77	42,320	37,832
Other services	-	228	-	-	-	228
Liabilities assumed by other departments	3,573	3,252	23	21	3,596	3,273
Resources received free of charge	147	96	1	-	148	96
<b>Total revenues from government</b>	<b>45,802</b>	<b>41,331</b>	<b>262</b>	<b>98</b>	<b>46,064</b>	<b>41,429</b>
<b>Operating surplus before extraordinary items</b>	<b>2,948</b>	<b>26,222</b>	<b>5</b>	<b>25</b>	<b>2,953</b>	<b>26,247</b>
Net revenues from extraordinary items:						
Restructuring	1,664	-	10	-	1,674	-
<b>Operating result</b>	<b>4,612</b>	<b>26,222</b>	<b>15</b>	<b>25</b>	<b>4,627</b>	<b>26,247</b>

<b>ADMINISTERED REVENUES AND EXPENSES BY PROGRAM</b>						
<i>for the year ended 30 June 1997</i>						
<b>REVENUE</b>						
Court fees	10,709	9,922	-	-	10,709	9,922
Court fines	78	-	-	-	78	-
Other	174	210	-	-	174	210
<b>Total revenues</b>	<b>10,961</b>	<b>10,133</b>	<b>-</b>	<b>-</b>	<b>10,961</b>	<b>10,133</b>
<b>EXPENSES</b>						
Refund of Court fees	246	31	-	-	246	31
Refund of Court fines	75	-	-	-	75	-
Refunds other	3	3	-	-	3	3
Other expenses	12	-	-	-	12	-
<b>Total expenses</b>	<b>336</b>	<b>34</b>	<b>-</b>	<b>-</b>	<b>336</b>	<b>34</b>
<b>Net contribution to government</b>	<b>10,625</b>	<b>10,098</b>	<b>-</b>	<b>-</b>	<b>10,625</b>	<b>10,098</b>
<b>TRANSFERS</b>						
Cash from Commonwealth Public Account	323	34	-	-	323	34
Cash to Commonwealth Public Account	10,664	10,199	-	-	10,664	10,199
<b>Net increase (decrease) in administered assets</b>	<b>285</b>	<b>(66)</b>	<b>-</b>	<b>-</b>	<b>285</b>	<b>(66)</b>
Accumulated results at 1 July	5	71	-	-	5	71
<b>Accumulated results at 30 June</b>	<b>290</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>290</b>	<b>5</b>

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

**FEDERAL COURT OF AUSTRALIA**  
**DEPARTMENTAL ASSETS AND LIABILITIES BY PROGRAM**  
*as at 30 June 1997*

	Program 4.1		Program 4.6		Total	
	Federal Court		Tribunals			
	1996-97	1995-96	1996-97	1995-96	1996-97	1995-96
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>PROVISIONS AND PAYABLES</b>						
Employees	7,946	7,322	26	12	7,972	7,334
Suppliers	469	455	2	2	471	457
Other	1,792	576	9	3	1,801	579
<b>Total provisions and payables</b>	<b>10,207</b>	<b>8,353</b>	<b>37</b>	<b>17</b>	<b>10,244</b>	<b>8,370</b>
<b>EQUITY</b>						
Accumulated results	28,935	24,323	64	49	28,999	24,372
<b>Total equity</b>	<b>28,935</b>	<b>24,323</b>	<b>64</b>	<b>49</b>	<b>28,999</b>	<b>24,372</b>
<b>Total liabilities and equity</b>	<b>39,142</b>	<b>32,676</b>	<b>101</b>	<b>66</b>	<b>39,243</b>	<b>32,742</b>
<b>FINANCIAL ASSETS</b>						
Cash	13	35	-	-	13	35
Receivables	2,019	66	11	1	2,030	67
<b>Total financial assets</b>	<b>2,032</b>	<b>101</b>	<b>11</b>	<b>1</b>	<b>2,043</b>	<b>102</b>
<b>NON-FINANCIAL ASSETS</b>						
Land and buildings	4,591	1,650	22	7	4,613	1,657
Infrastructure, plant and equipment	31,924	29,721	68	57	31,992	29,778
Other	595	1,204	-	1	595	1,205
<b>Total non-financial assets</b>	<b>37,110</b>	<b>32,575</b>	<b>90</b>	<b>65</b>	<b>37,200</b>	<b>32,640</b>
<b>Total assets</b>	<b>39,142</b>	<b>32,676</b>	<b>101</b>	<b>66</b>	<b>39,243</b>	<b>32,742</b>

**ADMINISTERED ASSETS AND LIABILITIES BY PROGRAM**  
*as at 30 June 1997*

<b>PROVISIONS AND PAYABLES</b>						
Other	1	75	-	-	1	75
<b>Total provisions and payables</b>	<b>1</b>	<b>75</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>75</b>
<b>EQUITY</b>						
Accumulated results	290	5	-	-	290	5
<b>Total equity</b>	<b>290</b>	<b>5</b>	<b>-</b>	<b>-</b>	<b>290</b>	<b>5</b>
<b>Total liabilities and equity</b>	<b>291</b>	<b>80</b>	<b>-</b>	<b>-</b>	<b>291</b>	<b>80</b>
<b>FINANCIAL ASSETS</b>						
Cash	23	66	-	-	23	66
Receivables	268	14	-	-	268	14
<b>Total financial assets</b>	<b>291</b>	<b>80</b>	<b>-</b>	<b>-</b>	<b>291</b>	<b>80</b>

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

**FEDERAL COURT OF AUSTRALIA**  
**DEPARTMENTAL CASH FLOWS**  
*for the year ended 30 June 1997*

	Notes	1996-97 \$'000	1995-96 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations		40,312	38,060
Sales of goods and services		714	740
<b>Total cash received</b>		<u>41,026</u>	<u>38,800</u>
<b>Cash used</b>			
Employees		22,237	20,816
Suppliers		16,970	17,221
<b>Total cash used</b>		<u>39,207</u>	<u>38,037</u>
<b>Net cash from operating activities</b>	18	<u>1,819</u>	<u>763</u>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		1	-
<b>Total cash received</b>		<u>1</u>	<u>-</u>
<b>Cash used</b>			
Purchase of property, plant and equipment		1,842	756
<b>Total cash used</b>		<u>1,842</u>	<u>756</u>
<b>Net cash from investing activities</b>		<u>(1,841)</u>	<u>(756)</u>
<b>Net increase (decrease) in cash held</b>		(22)	7
<b>add cash at 1 July</b>		35	28
<b>Cash at 30 June</b>	14	<u>13</u>	<u>35</u>

<b>ADMINISTERED CASH FLOWS</b>			
<i>for the year ended 30 June 1997</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Court fees		10,443	9,912
Court fines		4	76
Other		175	209
Cash from Commonwealth Public Account		323	34
<b>Total cash received</b>		<u>10,945</u>	<u>10,231</u>
<b>Cash used</b>			
Refund of Court fees		245	31
Refund of Court fines		75	-
Refund other		4	3
Cash to Commonwealth Public Account		10,664	10,199
<b>Total cash used</b>		<u>10,988</u>	<u>10,233</u>
<b>Net cash from operating activities</b>	18	<u>(43)</u>	<u>(2)</u>
<b>Net decrease in cash held</b>		(43)	(2)
<b>add cash at 1 July</b>		66	68
<b>Cash at 30 June</b>	14	<u>23</u>	<u>66</u>

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

**FEDERAL COURT OF AUSTRALIA**  
**SCHEDULE OF COMMITMENTS**  
*as at 30 June 1997*

	Departmental		Administered	
	1996-97 \$'000	1995-96 \$'000	1996-97 \$'000	1995-96 \$'000
<b>BY TYPE</b>				
<b>OTHER COMMITMENTS</b>				
Operating Leases	61,691	62,677	-	-
Project commitments	35	86	-	-
Other commitments	24	212	-	-
<b>Total other commitments</b>	<b>61,750</b>	<b>62,975</b>	<b>-</b>	<b>-</b>
<b>COMMITMENTS RECEIVABLE</b>				
	-	-	-	-
<b>Net commitments</b>	<b>61,750</b>	<b>62,975</b>	<b>-</b>	<b>-</b>
<b>BY MATURITY</b>				
One year or less	6,955	7,135	-	-
From one to two years	6,088	3,932	-	-
From two to five years	18,265	20,804	-	-
Over five years	30,442	31,104	-	-
<b>Net commitments</b>	<b>61,750</b>	<b>62,975</b>	<b>-</b>	<b>-</b>

**SCHEDULE OF CONTINGENCIES**  
*as at 30 June 1997*

	Departmental		Administered	
	1996-97 \$	1995-96 \$	1996-97 \$	1995-96 \$
CONTINGENT LOSSES	-	-	-	-
CONTINGENT GAINS	-	-	-	-
<b>Net contingencies</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

**SCHEDULE OF UNQUANTIFIABLE CONTINGENCIES**

A claim for damages has been lodged in the Supreme Court of Queensland against the Commonwealth. The liability to the Commonwealth, if any, cannot be estimated at this time as it is subject to the outcome of the legal proceedings.

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

**FEDERAL COURT OF AUSTRALIA**  
**TRANSACTIONS BY FUND**  
*for the year ended 30 June 1997*

	Notes	1996-97 Budget \$	1996-97 Actual \$	1995-96 Actual \$
<b>Consolidated Revenue Fund</b>				
<b>RECEIPTS</b>				
Court fees		20,294,000	<b>10,198,030</b>	9,881,235
Court fines			<b>(71,240)</b>	75,560
Other		181,000	<b>171,322</b>	206,061
Section 35 receipts		953,000	<b>715,563</b>	740,030
<b>Total receipts</b>		<u>21,428,000</u>	<u><b>11,013,675</b></u>	<u>10,902,886</u>
<b>EXPENDITURE</b>				
Expenditure from annual appropriations				
Appropriation Act No. 1		41,124,000	<b>40,311,850</b>	37,832,267
Appropriation Act No. 4		-	-	228,000
Audit Act 1901 (section 35)		953,000	<b>715,563</b>	740,030
<b>Total expenditure</b>	7	<u>42,077,000</u>	<u><b>41,027,413</b></u>	<u>38,800,297</u>
<b>Loan Fund</b>			<u><b>NIL</b></u>	<u><b>NIL</b></u>
<b>Trust Fund</b>				
Trust Funds and Other Trust Moneys (private moneys):				
Receipts	19(a)		<b>776,689</b>	1,092,778
Expenditure			<b>662,493</b>	1,015,982
Comcare (Commonwealth activities):				
Receipts	19(b)		<b>24,378</b>	16,880
Expenditure			<b>24,378</b>	17,729
<b>Total receipts</b>			<u><b>801,067</b></u>	<u>1,109,658</u>
<b>Total expenditure</b>			<u><b>686,871</b></u>	<u>1,033,711</u>

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

**FEDERAL COURT OF AUSTRALIA  
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS  
FOR THE YEAR ENDED 30 JUNE 1997**

**NOTE 1: COURT OBJECTIVES**

The Federal Court of Australia forms a single sub-program (4.1) within the Attorney-General's portfolio. The objectives of this sub-program are contained in the objectives section of the Court's Annual Report.

The Federal Court of Australia also provides administrative support to the following Tribunals under sub-program 4.6: Copyright Tribunal; Defence Force Discipline Appeal Tribunal; Federal Police Disciplinary Tribunal; and the Australian Competition Tribunal.

**NOTE 2: SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**(a) Basis of Accounting**

The financial statements are required by s 50 of the *Audit Act 1901* and are a general purpose financial report.

The financial statements have been prepared in accordance with:

- Guidelines titled *Financial Statements of Commonwealth Departments* issued by the Minister for Finance in June 1997 (the Guidelines), which require that the financial statements are prepared in compliance with Australian Accounting Standards and Accounting Guidance Releases issued by the Australian Accounting Research Foundation, and having regard to Statements of Accounting Concepts; and
- the Consensus Views of the Urgent Issues Group.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention. Except where stated they do not take account of changing money values.

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.

**(b) Asset Capitalisation Threshold**

All depreciable non-current assets with historic costs equal to or in excess of \$2,000 are capitalised in the year of acquisition. Assets with historical costs of \$2,000 are expensed in the year of acquisition unless they form a large group of similar assets which is significant in total.

In accordance with AAS 29 "Financial Reporting by Government Departments" assets acquired as a result of administrative restructures are recognised at the amounts at which those assets were shown in the financial statements of the transferor department immediately prior to their transfer. A number of items with a net book value of less than \$2,000 at transfer date have been included on the Court's assets register on the basis that their original acquisition cost was equal to or in excess of \$2,000.

**(c) Measurement of Assets**

1. 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.

Assets recognised in these statements for the first time, as well as assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of recognition.

2. The Court's library holdings were valued by the Australian Valuation Office during the 1995-96 financial year. In accordance with Australian Accounting Standard AAS 1, the resulting revenue is shown as an abnormal item in the Statement of Expenses and Revenues for the 1995-96 financial year. All purchases during the reporting period have been capitalised and the aggregate holdings are shown in the Statement of Assets and Liabilities at their current depreciated value.

(d) **Depreciation of Non-Current Assets**

Depreciable non-current assets are written-off over their estimated useful lives. Estimated useful lives are reviewed annually. Depreciation is calculated using the straight-line method which reflects the pattern of usage of the Court's depreciable non-current assets.

Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

In accordance with Australian Accounting Standard AAS 4 "Depreciation of Non-Current Assets", depreciation rates used by the Court were reviewed during the reporting period. As a consequence of this review, the useful life of computer equipment was reduced to 48 months (from 72 months) to reflect changes in usage and the increased rate of technical and commercial obsolescence. This change resulted in a depreciation expense adjustment of \$320,246 during the reporting period.

(e) **Employee Entitlements**

The provision for employee entitlements encompasses 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 Federal Court's estimated liability at balance date for long service leave entitlements of its employees. Court staff employed under the *Public Service Act* accrue 3 months long service leave after 10 years service, and progressively thereafter on a proportional basis. The Federal Court accrues this provision for each employee (bar Judges) based on the probability that long service leave will be taken in the future or paid out once the employee meets the qualifying 10 years. The provision for long service leave reflects the value of the estimated future cash flows to be made in respect of all employees. In determining the present value of the liability, the Court has taken into account attrition rates and pay increases through promotion and inflation.

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

(f) **Rounding**

Amounts have been rounded to the nearest \$1,000 except in relation to the following:

- Statement of Transactions by Fund and associated notes;
- act of grace payments and waivers;
- bank accounts and investments outside the Commonwealth Account; and
- remuneration of executives.

(g) **Cash**

Cash includes cash on hand and deposits at call which are readily convertible to cash on hand and used in the day-to-day management of the Court.

(h) **Superannuation**

1. Staff of the Court contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Employer contributions including the Employer Superannuation Productivity Benefit amounting to \$1,797,338 (1995-96 \$1,838,734) in relation to these schemes have been expensed in these financial statements. No liability is shown for superannuation in the Statement of Assets and Liabilities as the employer contributions fully extinguish the accruing liability which is assumed by the Commonwealth.
2. Under the *Judges' Pension Act 1968* Federal Court judges are entitled to a non-contributory pension of 60% of current judicial salary after attaining the age of 60 years and having served 10 years or more as a judge or upon retirement on the ground of invalidity. Pro rata pension is payable after 6 years service as a judge upon retirement. As the liability for these pension payments is assumed by the Commonwealth the Court has not recognised a liability for unfunded superannuation liability.

The Court has, however, recognised both an expense and a corresponding revenue item ("Liabilities assumed by other Departments") in respect of the notional amount of the employer's superannuation contribution for the year amounting to \$3,595,736 (1995-96 \$3,272,791). The amount has been calculated as 56% of the total salary expenditure in respect of Federal Court judges.

(i) **Lease Incentives**

Lease incentives taking the form of "free" leasehold improvements and rent free holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

(j) **Taxation**

The Federal Court's activities are exempt from all forms of taxation except fringe benefits tax.

(k) **Insurance**

In accordance with Commonwealth Government policy, assets are not insured and losses are expensed as they are incurred.

(l) **Leased Assets**

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets, and operating leases under which the lessor effectively retains all such risks and benefits. All leased assets have been classified as operating leases. Operating lease payments are charged to the Revenues and Expenses Statement on a basis which is representative of the pattern of benefits derived from the leased assets.

(m) **Bad and Doubtful Debts**

Debts are written off as bad when so identified. The write-off is to expense or, to the extent that a provision for a doubtful debt already existed, as a reversal of the provision.

A provision is raised for any doubtful debts based on a review of all outstanding accounts at year end.

(n) **Departmental and Administered Items**

Departmental assets, liabilities, revenues and expenses are those items that are controlled by the Court including:

- property, plant and equipment used in providing goods or services;
- liabilities for employee entitlements;
- revenues from running costs appropriations and from user charging where the proceeds are deemed appropriated under s 35 of the *Audit Act 1901*; and
- employee expenses and other administrative expenses incurred in providing goods and services.

Administered items are those items which are controlled by the Government and managed in a fiduciary capacity by the Court on behalf of the Government. These include fees and fines revenue.

The purposes of the separation of administered and departmental items is to enable the assessment of administrative efficiency of the Court in providing services. Administered items are distinguished from departmental items in the financial statements by shading.

(o) **Appropriations**

From 1 July 1996, the Guidelines require that amounts received as appropriations for Court running costs operations be recognised according to their nature under the Running Costs Arrangements. Under these arrangements, the Court receives a base amount of funding by way of appropriation for running costs each year. The base amount may be supplemented in any year by a carryover from the previous year of unspent appropriations up to allowable limits, as well as by borrowings at a discount against future appropriations of

the base amount. The repayment of a borrowing is effected by an appropriate reduction in the appropriation actually received in the year of repayment.

The Court now recognises:

- as revenue an amount equal to the base funding spent in the year or carried over to the next year;
- as a receivable, an amount equal to the amount of unspent appropriation carried over to the next financial year; and
- as a liability, outstanding amounts of running costs borrowings. The interest cost of the borrowing is expensed over the life of the borrowing.

Previously, an amount equal to the running costs appropriations received was credited as revenue. This change in policy means that the carryover from 1995-96 of \$1,927,206 is recognised as revenue in 1996-97 in addition to the carryover for 1996-97.

(p) **Allocation of Costs and Revenues and Assets and Liabilities to Court Programs**

An attribution model based on expenditure is used by the Court for reporting a notional share of the total running costs expenditure to each sub-program.

(q) **Comparative Figures**

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

(r) **Resources Received Free of Charge**

Resources received free of charge are recognised in the Revenues and Expenses Statement as revenue where the amounts can be reliably measured. Use of these resources is recognised in the Net Cost of Services or where there is a long-term benefit an asset is recognised.

**NOTE 3: EMPLOYEE EXPENSES**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
Salaries and wages	<b>18,434</b>	18,411
Superannuation	<b>5,393</b>	5,112
Separation and redundancy payments	<b>861</b>	-
Fringe benefits tax	<b>642</b>	632
Other	<b>161</b>	154
Total employee expenses	<b><u>25,491</u></b>	<u>24,309</u>

**NOTE 4: SUPPLIERS EXPENSES**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
Supply of goods and services	<b>9,653</b>	12,269
Operating lease rentals	<b>7,227</b>	5,976
Total supplier expenses	<b><u>16,880</u></b>	<u>18,245</u>

<b>ADMINISTERED</b>		
Bad and doubtful debts expense	<b>12</b>	-
Total	<b><u>12</u></b>	<u>-</u>

**NOTE 5: NET LOSSES (GAINS) FROM SALES OR DISPOSALS OF ASSETS**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
Non-financial assets:		
Computer equipment	17	(1)
Office equipment	2	43
Fitout	146	13
Furniture	-	3
Total net losses from sales or disposals	<u>165</u>	<u>58</u>

**NOTE 6: REVENUE FROM INDEPENDENT SOURCES**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
<b>Sales of goods and services comprise:</b>		
Section 35 receipts	<u>181</u>	<u>128</u>
	<u>181</u>	<u>128</u>
<b>Other revenues from independent sources comprise:</b>		
Resources received free of charge - non government		
- Frequent Flyer	38	18
- Non-Current Assets	-	15
Assets not previously recognised	208	-
Reimbursement of ACT Supreme Court Judges' remuneration	<u>534</u>	<u>515</u>
	<u>780</u>	<u>548</u>

**NOTE 7: EXPENDITURE FROM ANNUAL APPROPRIATIONS**

	1996-97	<b>1996-97</b>	1995-96
	Appropriation	Actual	Actual
<b>ORDINARY ANNUAL SERVICES OF GOVERNMENT</b>			
<b>APPROPRIATION ACT NO 1</b>			
Division 134			
1. Running Costs	42,677,339	<b>40,669,318</b>	38,096,844
2. Judges Long Leave	355,116	<b>355,116</b>	210,918
3. Other Services			
01. Library Assistance to South Pacific Nations	3,000	<b>2,979</b>	1,670
02. Compensation and Legal Expenses	21,000	-	261,690
03. Payments made under s 34A (i) of the <i>Audit Act 1901</i>	-	-	1,175
<b>Total - Appropriation Acts Nos 1</b>	<u>43,056,455</u>	<u>41,027,413</u>	<u>38,572,297</u>
Represented by:			
Annual Appropriation			
- Act No 1	42,340,892	<b>40,311,849</b>	37,832,267
- Section 35	715,563	<b>715,563</b>	740,030
	<u>43,056,455</u>	<u>41,027,413</u>	<u>38,572,297</u>
<b>OTHER ANNUAL SERVICES OF GOVERNMENT</b>			
<b>APPROPRIATION ACT NO 4</b>			
Division 805 - CAPITAL WORKS AND SERVICES			
1. Building and Works	-	-	228,000
<b>Total Appropriation Act No 4</b>	<u>-</u>	<u>-</u>	<u>228,000</u>
<b>Total Appropriation Act Nos 1 &amp; 4</b>	43,056,454	<b>41,027,413</b>	38,800,297
Less s 35 payments		<b>(715,563)</b>	(740,030)
Add unexpended 1996-97 appropriations		<b>2,008,020</b>	-
		<u>42,319,870</u>	<u>38,060,267</u>

**NOTE 8: RESOURCES RECEIVED FREE OF CHARGE**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
Australian National Audit Office		
- Provision of audit services	75	67
Department of Finance		
- Provision of accounting services - payroll processing and ledger transactions	8	9
Australian Archives		
- Storage and disposal facilities	7	2
Department of Defence		
- Provision of staff assistance	35	-
Various libraries	23	18
	<u>148</u>	<u>96</u>

**NOTE 9: RESTRUCTURING**

Two administrative restructures occurred during the reporting period.

- I. Legislation passed by Federal Parliament in late November 1996, specifically Schedule 16 of the *Workplace Relations and Other Legislation Amendment Act 1996 (WROLA)*, provided for the jurisdiction previously exercised by the Industrial Relations Court of Australia to be transferred to the Federal Court on 26 May 1997. In addition to the transfer of jurisdiction, the Industrial Relations Court's assets and liabilities were also transferred to the Federal Court. The Federal Court has therefore recognised in these statements revenues in respect of assets and expenses in respect of liabilities (on a net basis). The net revenue from this restructure was \$1,792,885.
- II. The responsibility for the management of the Northern Territory District Registry was transferred to the Family Court of Australia on 30 November 1996. The Federal Court previously managed the Northern Territory District Registry on behalf of the Administrative Appeals Tribunal, the Family Court of Australia, the Industrial Relations Court of Australia, and the National Native Title Tribunal. The net expenses from this restructure was \$119,028.

In respect of these changes the following net assets and net liabilities were recognised by the Federal Court during the reporting period.

**PROVISIONS AND PAYABLES**

Employees	1,047,031
Suppliers	156,821
Other	31,800
<b>Total provisions and payables</b>	<u>1,235,652</u>
<b>Total liabilities recognised</b>	<u>1,235,652</u>

**FINANCIAL ASSETS**

Receivables	411
<b>Total financial assets</b>	<u>411</u>

**NON-FINANCIAL ASSETS**

Land and buildings	1,034,595
Infrastructure, plant and equipment	1,798,677
Other	75,826
<b>Total non-financial assets</b>	<u>2,909,098</u>
<b>Total assets recognised</b>	<u>2,909,509</u>

<b>NET ASSETS RECOGNISED/NET REVENUE FROM RESTRUCTURING</b>	<u>1,673,857</u>
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Despite the transfer of the industrial relations jurisdiction to the Federal Court, the Industrial Relations Court of Australia continues to have jurisdiction over certain matters where a substantive hearing in the proceedings had commenced, or where hearings had been completed before the transfer date. Schedule 16 of the *Workplace Relations and Other Legislation Amendment Act* provides that the Chief Justice of the Federal Court may arrange with the Chief Justice of the Industrial Relations Court for staff, facilities and any other necessary support to be made available to the Industrial Relations Court for the purposes of the Industrial Relations Court. It is estimated that the cost of the resources provided free of charge by the Federal Court to the Industrial Relations Court during the period 26 May 1997 to 30 June 1997 was \$755,074.

**NOTE 10: EMPLOYEE PROVISIONS**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
<b>Current</b>		
Annual leave	<b>1,348</b>	1,168
Annual leave bonus	<b>33</b>	174
Long service leave	<b>247</b>	213
Judges' long leave	<b>126</b>	126
Accrued Performance Pay	<b>45</b>	35
Accrued Salary	<b>160</b>	113
Accrued Superannuation	<b>19</b>	15
Separations and Redundancies	<b>23</b>	-
Accrued Fringe Benefits Tax	<b>178</b>	160
Total provisions - current liabilities	<b><u>2,179</u></b>	<u>2,004</u>
<b>Non-Current</b>		
Long service leave	<b>1,518</b>	1,750
Judges' long leave	<b>4,275</b>	3,580
Total provisions - non-current liabilities	<b><u>5,793</u></b>	<u>5,330</u>
Aggregate employee entitlements liability	<b><u>7,972</u></b>	<u>7,334</u>

**NOTE 11: SUPPLIERS**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
Trade Creditors	<b><u>471</u></b>	<u>457</u>

ADMINISTERED		
Other	<b><u>1</u></b>	<u>75</u>
Total	<b><u>1</u></b>	<u>75</u>

**NOTE 12: OTHER PROVISIONS AND PAYABLES**

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
<b>Current</b>		
Lease Incentive	<b><u>236</u></b>	<u>64</u>
Total	<b><u>236</u></b>	<u>64</u>
<b>Non-Current</b>		
Lease Incentive	<b><u>1,565</u></b>	<u>515</u>
Total	<b><u>1,565</u></b>	<u>515</u>
Total Other Provisions and Payables	<b><u>1,801</u></b>	<u>579</u>

**NOTE 13: EQUITY**

	<b>Accumulated Results</b>	<b>Total Equity</b>
	<b>\$</b>	<b>\$</b>
As at 1 July 1996	24,372,248	24,372,248
Operating surplus	4,626,404	4,626,404
Balance as at 30 June 1997	<u>28,998,652</u>	<u>28,998,652</u>

<b>ADMINISTERED EQUITY</b>	<b>Accumulated Results</b>	<b>Total Equity</b>
	<b>\$</b>	<b>\$</b>
As at 1 July 1996	5,535	5,535
Net change in administered assets	284,856	284,856
Balance as at 30 June 1997	<u>290,391</u>	<u>290,391</u>

**NOTE 14: CASH**

	<b>1996-97</b>	<b>1995-96</b>
	<b>\$'000</b>	<b>\$'000</b>
Cash on hand	12	9
Cash at bank	1	26
Total	<u>13</u>	<u>35</u>

<b>ADMINISTERED</b>		
Cash on hand	26	62
Cash at bank	(3)	4
Total	<u>23</u>	<u>66</u>

**NOTE 15: RECEIVABLES**

**15.1 Current**

	<b>1996-97</b>	<b>1995-96</b>
	<b>\$'000</b>	<b>\$'000</b>
Goods and services	22	67
Appropriations	2,008	-
<b>Total Current Receivables</b>	<u>2,030</u>	<u>67</u>

Receivables are aged as follows:

Not overdue	2,008	66
Overdue by:		
- Less than 30 days	3	1
- 30 to 60 days	3	-
- More than 60 days	16	-

<b>ADMINISTERED</b>		
Fees	274	15
Less: provision for doubtful debts	(6)	(1)
Total	<u>268</u>	<u>14</u>
Receivables (gross) are aged as follows:		
Not overdue	-	-
Overdue by:		
- Less than 30 days	55	3
- 30 to 60 days	93	5
- More than 60 days	126	7

**15.2 Non-Current**

ADMINISTERED	1996-97	1995-96
	\$'000	\$'000
Fees	4	1
Fines	2	-
Less: provision for doubtful debts	(6)	-
<b>Total</b>	<b>-</b>	<b>1</b>

**NOTE 16: PROPERTY, PLANT AND EQUIPMENT**

Item	Leasehold improvements	Total land and buildings	Computer equipment	Office equipment	Furniture and fittings	Library holdings	Total infrastructure, plant and equipment	Total
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>Gross Value:</b>								
As at 1 July 1996	2,179	2,179	2,546	1,160	527	27,487	31,720	33,899
Additions:								
- restructure	1,179	1,179	664	255	509	419	1,847	3,026
- reclassification	-	-	-	64	-	-	64	64
- other	2,341	2,341	303	14	2	1,379	1,698	4,039
Disposals:								
- restructure	(192)	(192)	(34)	(65)	-	-	(99)	(291)
- reclassification	-	-	(64)	-	-	-	(64)	(64)
- other	(205)	(205)	(61)	(50)	-	-	(111)	(316)
<b>As at 30 June 1997</b>	<b>5,302</b>	<b>5,302</b>	<b>3,354</b>	<b>1,378</b>	<b>1,038</b>	<b>29,285</b>	<b>35,055</b>	<b>40,357</b>
<b>Accumulated Depreciation/Amortisation:</b>								
As at 1 July 1996	522	522	1,325	428	190	-	1,943	2,465
Depreciation charge for:								
- assets held at 1 July	260	260	328	146	64	344	882	1,142
- additions	14	14	49	-	-	11	60	74
Adjustment for:								
- change to useful lives	-	-	320	-	-	-	320	320
- restructure	(48)	(48)	(26)	(25)	-	-	(51)	(99)
- other disposals	(59)	(59)	(44)	(47)	-	-	(91)	(150)
- reclassification	-	-	(19)	19	-	-	-	-
<b>As at 30 June 1997</b>	<b>689</b>	<b>689</b>	<b>1,933</b>	<b>521</b>	<b>254</b>	<b>355</b>	<b>3,063</b>	<b>3,752</b>
<b>Net Book Value as at 30 June 1997</b>	<b>4,613</b>	<b>4,613</b>	<b>1,421</b>	<b>857</b>	<b>784</b>	<b>28,930</b>	<b>31,992</b>	<b>36,605</b>
<b>Net Book Value as at 1 July 1996</b>	<b>1,657</b>	<b>1,657</b>	<b>1,222</b>	<b>732</b>	<b>337</b>	<b>27,487</b>	<b>29,778</b>	<b>31,435</b>

**NOTE 17: OTHER NON-FINANCIAL ASSETS****Prepayments:**

	1996-97	1995-96
	\$'000	\$'000
Library Expenses	219	236
Accommodation Expenses	201	562
Other	175	407
<b>Total Prepayments</b>	<b>595</b>	<b>1,205</b>

**NOTE 18: CASH FLOW RECONCILIATION**

Reconciliation of net cost of services to net cash from operating activities.

	<b>1996-97</b>	1995-96
	<b>\$'000</b>	\$'000
NET COST OF SERVICES - GAIN/(LOSS)	<b>(43,111)</b>	(15,182)
Changes in assets and liabilities		
Decrease (increase) in receivables	<b>(1,963)</b>	30
Decrease in prepayments	<b>610</b>	330
Increase (decrease) in creditors	<b>15</b>	(28)
Increase in provisions for employee entitlements	<b>638</b>	368
Increase in other liabilities	<b>1,222</b>	517
Capitalisation of library holdings	<b>-</b>	(27,487)
Assets not previously recognised	<b>(208)</b>	-
Other changes in non-current assets	<b>(4,823)</b>	49
Depreciation expense	<b>1,536</b>	733
Losses on disposal of non-current assets	<b>165</b>	4
Restructure	<b>1,674</b>	-
Resources received free of charge	<b>148</b>	96
Liabilities assumed by other departments	<b>3,596</b>	3,273
Ordinary appropriations	<b>42,320</b>	37,832
Special service appropriations	<b>-</b>	228
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>1,819</b>	763

ADMINISTERED		
Reconciliation of net change in administered assets to net cash from operating activities.		
NET CHANGE IN ADMINISTERED ASSETS - GAIN/(LOSS)	<b>285</b>	(66)
Changes in assets and liabilities		
Decrease (increase) in receivables	<b>(254)</b>	(11)
Increase (decrease) in provisions	<b>(74)</b>	75
<b>NET CASH FROM OPERATING ACTIVITIES</b>	<b>(43)</b>	(2)

**NOTE 19: RECEIPT AND EXPENDITURE OF THE TRUST FUNDS**

The Federal Court has two trust funds, Trust Funds and Other Trust Moneys (TFOTM) and COMCARE.

**Group 1 - Moneys Held in Trust for Persons and Authorities other than the Commonwealth**

(a) TRUST FUNDS AND OTHER TRUST MONEYS (TFOTM)

This trust fund is established under s 60 of the *Audit Act 1901* and is one of the three major funds in the Commonwealth's financial accounting and management system.

The Trust Funds and Other Trust Moneys is used to account for funds held by the Commonwealth while acting as trustee for private moneys in its possession.

	<b>1996-97</b>	1995-96
	<b>\$</b>	\$
Balance at 1 July	<b>101,896</b>	25,100
Receipts	<b>776,689</b>	1,092,778
Expenditure	<b>662,493</b>	1,015,982
Balance at 30 June	<b>216,092</b>	101,896
Represented by:		
Cash	<b>216,092</b>	101,896

Investments	-	-
Total	<u>216,092</u>	<u>101,896</u>

**(b) COMCARE**

This trust fund is established under s 60 of the *Audit Act 1901* and is one of the three major funds in the Commonwealth's financial accounting and management system.

The COMCARE trust fund is used to account for funds held by the Commonwealth pending finalisation of compensation determinations by COMCARE.

	1996-97	1995-96
	\$	\$
Balance at 1 July	-	849
Receipts	24,378	16,880
Expenditure	24,378	17,729
Balance at 30 June	<u>-</u>	<u>-</u>
Represented by:		
Cash	-	-
Investments	-	-
Total	<u>-</u>	<u>-</u>

**NOTE 20: AUDITOR'S REMUNERATION**

	1996-97	1995-96
	\$'000	\$'000
Financial statement audit services are provided by the Australian National Audit Office free of charge. The fair value of audit services provided was:	<u>75</u>	<u>67</u>

No other services were provided by the Auditor-General during the financial year.

**NOTE 21: BANK ACCOUNTS AND INVESTMENTS OUTSIDE THE COMMONWEALTH ACCOUNT****Federal Court of Australia Litigants' Fund**

- \* Legal Authority - Order 63 rule 2 of the Federal Court Rules
- \* Purpose - to hold private moneys for litigants pending acceptance of moneys paid into Court by litigants; security for costs or pursuant to some order of a Federal Court Judge.
- \* Each District Registry of the Federal Court administers a Litigants' Fund account.

<b>Receipts and Expenditure</b>	<b>1996-97</b>	<b>1995-96</b>
	\$	\$
Balance at 1 July	549,140	1,412,686
Receipts	4,867,821	2,482,717
Expenditure	4,825,467	3,346,263
Balance at 30 June	<u>591,494</u>	<u>549,140</u>

**Other Investments**

- \* Legal Authority - Order 63 rule 4 of the Federal Court Rules
- \* Purpose - to invest private moneys paid by litigants pursuant to an order of a Federal Court Judge, pending an order for payment out by a Federal Court Judge.

<b>Receipts and Expenditure</b>	<b>1996-97</b>	<b>1995-96</b>
	\$	\$
Invested Balance at 1 July	33,698,160	1,276,734
Purchase of Investments	4,022,827	51,174,702
Realisation of Investments	34,293,068	18,753,276

Balance at 30 June	<u><u>3,427,919</u></u>	<u><u>33,698,160</u></u>
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\* Investments - The cash balance of investments as at 30 June 1997 consisted of cash management and fixed term bank accounts to which various interest rates apply. Money is paid out pursuant to orders of the Court. A summary of these accounts is set out below:

	<b>Face Value Investment</b>	<b>Cost of Investment</b>	<b>Rate of Interest</b>	<b>Date of Maturity</b>
	\$	\$	%	
Cash Management Accounts	2,824,986	2,613,486	Various	Various
Fixed Deposits	602,933	577,000	Various	Various
Balance at 30 June 1997	<u><u>3,427,919</u></u>	<u><u>3,190,486</u></u>		

## NOTE 22: WAIVERS AND ACT OF GRACE PAYMENTS

### (a) WAIVERS

No payments were waived during the financial year 1996-97 under ss 70C (2) of the *Audit Act 1901*.

The following details are furnished in relation to amounts waived during the financial year under legislation administered by the Court. Registrars are given the authority to waive or postpone fees where payment would cause hardship or where the potential payer is in receipt of legal aid from an approved organisation.

	<b>1996-97</b>		1995-96	
	Number	Amount \$	Number	Amount \$
Sub-rule 183(3) Bankruptcy Rules	57	30,079	141	49,185
Sub-regulation 2(4) Federal Court Regulations				
- Sub-regulation 2(4)(a) (Legal Aid)	141	90,025	128	53,212
- Sub-regulation 2(4)(b) (Holder of Pension or Health Card or Prison Inmate)	212	129,945	93	28,374
- Sub-regulation 2(4)(c) (Waive on basis of level of income)	263	150,544	111	33,012
Sub-regulation 2A Federal Court Regulations	see note (a)		104	58,522
Sub-regulation 2A(2) Federal Court Regulations				
- Sub-regulation 2A(2)(e) (Legal Aid)	21	11,139	-	-
- Sub-regulation 2A(2)(f) (Holder of Pension or Health Card or Prison Inmate)	24	11,916	-	-
- Sub-regulation 2A(2)(g) (Waive on basis of level of income)	43	40,330	-	-
Sub-regulation 2AA(2) Federal Court Regulations				
- Sub-regulation 2AA(2)(f) (Legal Aid)	39	38,400	-	-
- Sub-regulation 2AA(2)(g) (Holder of Pension or Health Card or Prison Inmate)	37	44,462	-	-
- Sub-regulation 2AA(2)(h) (Waive on basis of level of income)	76	78,439	-	-
Total <sup>(b)</sup>	<u><u>913</u></u>	<u><u>625,279</u></u>	<u><u>577</u></u>	<u><u>222,305</u></u>

(a) Amendments to the Court's regulations have resulted in the creation of Sub-regulations specifically dealing with the waiver of hearing fees (Sub-regulation 2A(2)) and setting down fees (Sub-regulation 2AA(2)).

(b) Existing fees were increased and new fees introduced during the reporting period.

### (b) ACT OF GRACE PAYMENTS

	<b>1996-97</b>		1995-96	
	Number	Amount \$	Number	Amount \$
Act of Grace payments made were	-	-	1	1,175

Total	<u>-</u>	<u>-</u>	<u>1</u>	<u>1,175</u>
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**NOTE 23: REMUNERATION OF EXECUTIVES**

The number of executive officers of the Court whose total fixed remuneration (including non salary components) received, or due and receivable, in relation to the financial year, directly or indirectly from the Court or any related body, whether as executive officer or otherwise, that exceeded \$100,000 is as follows:

<b>Fixed Remuneration</b>	<b>1996-97 No.</b>	<b>1995-96 No.</b>
\$100,000 to \$110,000	-	6
\$110,001 to \$120,000	7	4
\$120,001 to \$130,000	1	-
\$160,001 to \$170,000	-	1
\$170,001 to \$180,000	1	-

The aggregate amount of fixed remuneration of executive officers shown above was \$1,099,687 (1995-96 \$1,262,648).

The aggregate amount of performance pay paid during the year to executive officers shown above was \$36,360 (1995-96 \$63,900).

**NOTE 24: 1997-98 APPROPRIATIONS**

	<b>1997-98 Appropriation \$'000</b>
Division 134:	
1. Running costs	<b>52,764</b>
Section 35 receipts deemed to be appropriated	<b>979</b>
2. Judges' long leave	<b>350</b>
3. Other services	
01. Library assistance to South Pacific Nations	<b>3</b>
02. Compensation and legal expenses	<b>21</b>
Total appropriation	<b>54,117</b>

**Appendix 2**

**FEDERAL COURT OF AUSTRALIA**

**MANAGEMENT STRUCTURE**

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**Appendix 3**

**JUDICIAL REGISTRARS OF THE COURT  
(as at 30 June 1997)**

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<b>Judicial Registrar</b>	<b>Location</b>
William McLean BOULTON	Brisbane
Irene Maria LINKENBAGH	Sydney
James Anthony RYAN	Melbourne
Kim Michelle PARKINSON	Melbourne
Robert Allen WALKER	Sydney
Elizabeth Joan TOMLINSON	Sydney
Richard Damian FARRELL	Perth
Mark Timothy RITTER	Perth
Leonie Jane FARRELL	Adelaide
Joan Marie LOCKE	Sydney
Garry David MCILWAINE	Sydney
Frances MILLANE	Melbourne
Michael Damian MURPHY	Melbourne
David Hugh PATCH	Sydney
Jenny May BLOKLAND	Darwin
Maria Helena BOON	Perth

## Appendix 4

### REGISTRARS OF THE COURT (as at 30 June 1997)

Registry	Name	Appointments under other Acts
<b>Principal Registry</b>		
Registrar	Warwick Soden	
Senior Deputy Registrar	Alan Dawson	
Deputy Registrar, Sheriff of the Federal Court of Australia	Michael Whitehead	Marshal in Admiralty (under <i>Admiralty Act 1988</i> )
<b>New South Wales</b>		
District Registrar	John Mathieson	
Deputy District Registrars	Margaret Quinn PSM	
	Jennifer Hedge	
	Geoffrey Segal	Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Anthony Tesoriero	Secretary, Copyright Tribunal
	Ann Sexton	Registrar, Federal Police Disciplinary Tribunal Deputy Registrar, Australian Competition Tribunal
	Anna Quilter	
	Kathleen O'Neill	
<b>Victoria</b>		
District Registrar	Peter Secombe	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal
Deputy District Registrars	Susan Agnew	Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Jamie Wood	
	John Efthim	
	Karen Moore	

Registry	Name	Appointments under other Acts
<b>Queensland</b>		
District Registrar	Graham Ramsey	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal
Deputy District Registrars	Mary McQuaid PSM	
	Robert Allen	
<b>Western Australia</b>		
District Registrar	Martin Jan PSM	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal
Deputy District Registrars	Corryn Rayney	
	Elizabeth Stanley	
<b>South Australia</b>		
District Registrar	Peter Carey	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal
Deputy District Registrar	Greg Fisher	
<b>Australian Capital Territory</b>		
District Registrar	John Madden	Registrar, Defence Force Discipline Appeal Tribunal Deputy Registrar, Australian Competition Tribunal
<b>Tasmania</b>		
District Registrar	Janet Cooper PSM	District Registrar, Administrative Appeals Tribunal Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal Deputy Registrar, National Native Title Tribunal
Deputy District Registrar	Alan Parrott	Deputy Registrar, Administrative Appeals Tribunal

Registry	Name	Appointments under other Acts
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**Northern Territory**

District Registrar	Peter Liddle	Registrar, Family Court of Australia District Registrar, Administrative Appeals Tribunal Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal Deputy Registrar, National Native Title Tribunal
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## **Appendix 5**

### **STATUTES UNDER WHICH THE FEDERAL COURT OF AUSTRALIA MAY EXERCISE JURISDICTION**

**as at 30 June 1997**

**[only Principal Acts are included]**

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*Aboriginal and Torres Strait Islander  
Commission Act 1989*

*Australian Wine and Brandy Corporation  
Act 1980*

*Aboriginal and Torres Strait Islander  
Heritage Protection Act 1984*

*Banking Act 1959*

*Aboriginal Councils and Associations Act  
1976*

*Bankruptcy Act 1966*

*Aboriginal Land (Lake Condah and  
Framlingham Forest) Act 1987*

*Bankruptcy Amendment Act 1991*

*Aboriginal Land Rights (Northern Territory)  
Act 1976*

*Broadcasting Act 1942*

*Administrative Appeals Tribunal Act 1975*

*Building Industry Act 1985*

*Administrative Decisions (Judicial Review)  
Act 1977*

*Cash Transaction Reports Act 1988*

*Admiralty Act 1988*

*Charter of the United Nations Act 1945*

*Advance Australia Logo Protection Act 1984*

*Circuit Layouts Act 1989*

*Agricultural and Veterinary Chemicals Act  
1994*

*Close Corporations Act 1989*

*Air Navigation Act 1920*

*Commonwealth Electoral Act 1918*

*ANL Sale Act 1995*

*Complaints (Australian Federal Police) Act  
1981*

*Australian Federal Police Act 1979*

*Copyright Act 1968*

*Australian National Railways Commission  
Sale Act 1997*

*Corporations Act 1989*

*Australian Postal Corporation Act 1989*

*Crimes Act 1914*

*Australian Securities Commission Act 1989  
Australian Sports Drug Agency Act 1990*

*CSL Sale Act 1993*

*Customs Act 1901*

*Dairy Produce Act 1986*

*Debits Tax Administration Act 1982*

<i>Defence Act 1903</i>	<i>Fringe Benefits Tax Assessment Act 1986</i>
<i>Defence Force Discipline Appeals Act 1955</i>	<i>Gift Duty Assessment Act 1941</i>
<i>Designs Act 1906</i>	<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i>
<i>Diplomatic and Consular Missions Act 1978</i>	<i>Health Insurance Act 1973</i>
<i>Disability Discrimination Act 1992</i>	<i>Health Insurance Commission Act 1973</i>
<i>Employment Service Act 1994</i>	<i>Income Tax Assessment Act 1936</i>
<i>Endangered Species Protection Act 1992</i>	<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>
<i>Estate Duty Assessment Act 1914</i>	<i>Industrial Relations Reform Act 1993</i>
<i>Evidence Act 1995</i>	<i>Insurance Acquisition and Takeovers Act 1991</i>
<i>Evidence and Procedure (New Zealand) Act 1994</i>	<i>Insurance (Deposits) Act 1932</i>
<i>Export Markets Development Grants Act 1997</i>	<i>International War Crimes Tribunals Act 1995</i>
<i>Extradition Act 1988</i>	<i>Judiciary Act 1903</i>
<i>Federal Court of Australia Act 1976</i>	<i>Jurisdiction of Courts (Cross-vesting) Act 1987</i>
<i>Federal Court of Australia (Consequential Provisions) Act 1976</i>	<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1987</i>
<i>Federal Proceedings (Costs) Act 1981</i>	<i>Lands Acquisition Act 1989</i>
<i>Financial Corporations Act 1974</i>	<i>Lemonthyme and Southern Forests (Commission of Inquiry) Act 1987</i>
<i>Fisheries Management Act 1991</i>	<i>Life Insurance Act 1995</i>
<i>Foreign Acquisitions and Takeovers Act 1975</i>	<i>Liquid Fuel Emergency Act 1984</i>
<i>Foreign Evidence Act 1994</i>	<i>Migration Act 1958</i>
<i>Foreign Judgments Act 1991</i>	<i>Moomba/Sydney Pipeline System Sale Act 1994</i>
<i>Foreign Proceedings (Excess of Jurisdiction) Act 1984</i>	<i>National Crime Authority Act 1984</i>
<i>Foreign States Immunities Act 1985</i>	

<i>National Health Act 1953</i>	<i>Referendum (Machinery Provisions) Act 1984</i>
<i>Native Title Act 1993</i>	<i>Removal of Prisoners (Australian Capital Territory) Act 1968</i>
<i>Navigation Act 1912</i>	<i>Retirement Savings Account Act 1997</i>
<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>	<i>Royal Commissions Act 1902</i>
<i>Olympic Insignia Protection Act 1987</i>	<i>Sales Tax Assessment Act (No 1) 1930</i>
<i>Ombudsman Act 1976</i>	<i>Service and Execution of Process Act 1901</i>
<i>Ozone Protection Act 1989</i>	<i>Sex Discrimination Act 1984</i>
<i>Patents Act 1990</i>	<i>Shipping Registration Act 1981</i>
<i>Petroleum (Australia-Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990</i>	<i>Superannuation Industry (Supervision) Act 1993</i>
<i>Petroleum Products Pricing Act 1981</i>	<i>Superannuation (Resolution of Complaints) Act 1993</i>
<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	<i>Sydney 2000 Games (Indicia and Images) Protection Act 1996</i>
<i>Petroleum Retail Marketing Franchise Act 1980</i>	<i>Taxation Administration Act 1953</i>
<i>Petroleum Retail Marketing Sites Act 1980</i>	<i>Taxation (Unpaid Company Tax) Assessment Act 1982</i>
<i>Petroleum (Submerged Lands) Amendment Act 1991</i>	<i>Taxation (Unpaid Company Tax-Promoters) Act 1982</i>
<i>Plant Breeder's Rights Act 1994</i>	<i>Taxation (Unpaid Company Tax-Vendors) Act 1982</i>
<i>Prices Surveillance Act 1983</i>	<i>Telecommunications Act 1991</i>
<i>Privacy Act 1988</i>	<i>Telecommunications Act 1997</i>
<i>Private Health Insurance Incentives Act 1997</i>	<i>Telecommunications (Interception) Act 1979</i>
<i>Protection of the Sea (Oil Pollution Compensation Fund) Act 1993</i>	<i>Trade Marks Act 1995</i>
<i>Racial Discrimination Act 1975</i>	<i>Trade Practices Act 1974</i>
<i>Radiocommunications Act 1992</i>	

*Training Guarantee (Administration) Act  
1990*

*Treasury Bills Act 1914*

*Wool Tax (Administration) Act 1964*

*Workplace Relations Act 1996*

*World Heritage Properties Conservation Act  
1983*

## Appendix 6

### WORKLOAD STATISTICS

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#### Introduction

The statistics in this appendix provide comparative historical information in relation to the work of the Court, in particular, comparative statistics concerning aspects of the Court's jurisdiction.

It should be noted that, in this report, the figures reported may be marginally different from figures reported in previous reports. During the year as part of the process of implementation of the Individual Docket System, the Court conducted an audit of its pending caseload. The reasons for the audit were to ensure that the Court could account for all its pending caseload, and could ensure that the management of the inventory would be conducted in a way so that cases would not be delayed beyond the 18 months time goal set by the Court. The audit also identified the number and types of cases which would be likely to be allocated at first instance to Judges' Individual Dockets.

The audit disclosed a number of matters which had been settled or disposed and had not been so identified by the parties or the Court and consequently the identification of these matters may have affected marginally the statistics of disposed and pending matters in previous reporting years.

During the 1996-97 year several Acts commenced which affected the way the Court recorded the statistics reported on pages 96 to 116.

The *Bankruptcy Act* was amended by the *Bankruptcy Legislation Amendment Act* which commenced on 16 December 1996. Many of the administrative functions previously performed by the Registrars in Bankruptcy were transferred to Insolvency and Trustee Service, Australia and the office of Registrar in Bankruptcy was abolished. The functions transferred include the acceptance of debtors' petitions and issuing of bankruptcy notices. Prior to 16 December 1996 matters under the *Bankruptcy Act* were recorded in BIOS, a specific bankruptcy database. From 16 December 1996 bankruptcy matters are included in the FEDCAMS database.

The *Industrial Relations Act* was amended by the *Workplace Relations and Other Legislation Amendment Act*, including a change of name to the *Workplace Relations Act*. The jurisdiction of the Industrial Relations Court of Australia was transferred to the Court on 26 May 1997. The effect of this was that matters part-heard in the Industrial Relations Court remained in that Court but 381 other matters were transferred to the Federal Court. New matters under the *Workplace Relations Act* were commenced in the Federal Court from that date.

The *Workplace Relations and Other Legislation Amendment Act* also amended the *Federal Court of Australia Act* by deleting references to the Divisional structure of the Court. For this reporting year matters which would previously have been recorded in the Industrial Division have been recorded in the General Division. For the next reporting year the reference to General Division will be deleted.

**Table 6.1**  
**Summary of Workload Statistics**

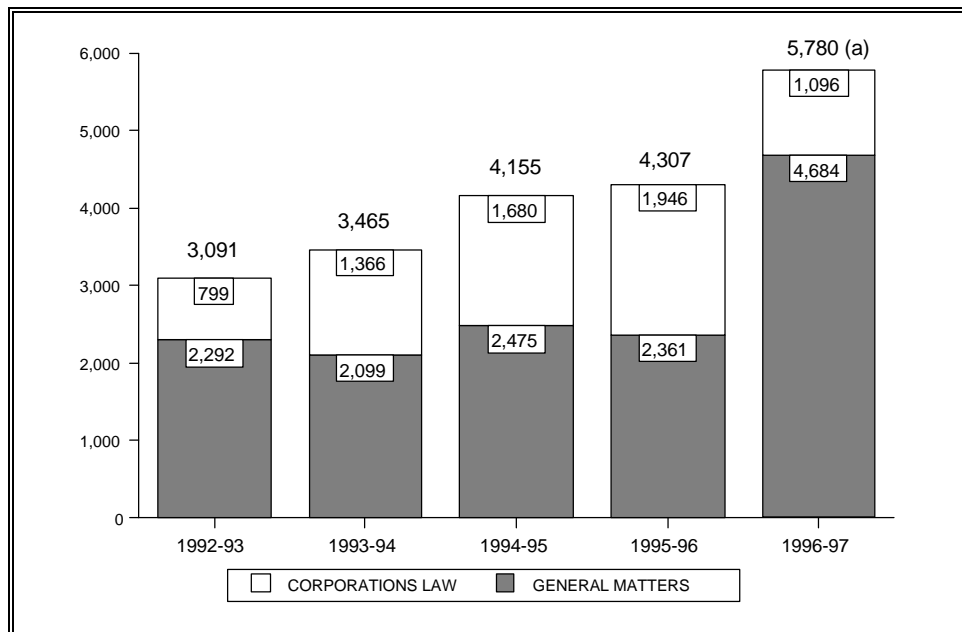
Workload	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97
Total General Division matters - including Corporations Law, and Workplace Relations matters (including Industrial Relations Court transfers) from 26/5/97						
Filed	2,679	3,091	3,465	4,155	4,307	3,855
Completed	2,410	2,585	3,306	3,614	3,879	3,996
Current	2,153	2,659	2,818	3,359	3,787	3,627
Corporations Law matters only						
Filed	711	799	1,366	1,680	1,946	1,096
Completed	510	709	1,178	1,589	1,836	1,420
Current	263	353	541	632	742	439
Total General Division matters (excluding Corporations Law matters)						
Filed	1,968	2,292	2,099	2,475	2,361	2,759
Completed	1,900	1,876	2,128	2,025	2,043	2,576
Current	1,890	2,306	2,277	2,727	3,045	3,188

For comparative purposes the creditors' petitions now filed in the FEDCAMS database since 16 December 1996 have not been included for 1996-97 to enable a true comparison with previous years.

The number of creditors' petitions filed in 1996-97 was 1,925. Creditors' petitions have been included in relevant graphs that follow.

**Figure 6.1**

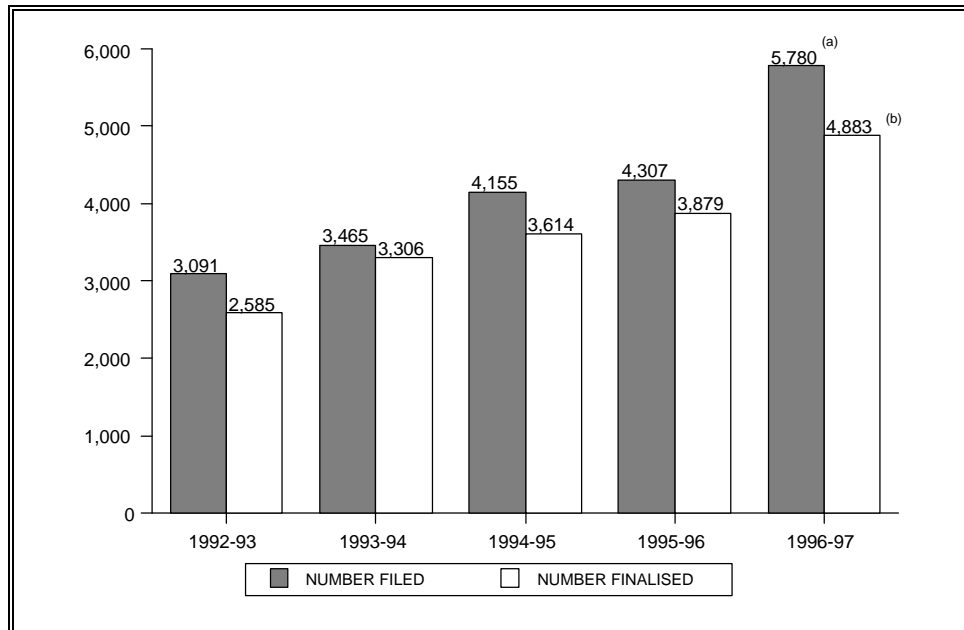
**General Division matters filed  
1992-93 to 1996-97  
(excluding bankruptcy to 15 December 1996)**



The *Bankruptcy Act* was amended in December 1996 by the *Bankruptcy Legislation Amendment Act*. Following the amendments, creditors' petitions and other applications relating to bankruptcy estates are included in the Court's FEDCAMs database. Previously this information was included in BIOS, a specific bankruptcy database.

Note: (a) For 1996-97, 1,925 creditors' petitions filed since 16 December 1996 have been included as have 381 industrial matters transferred from the Industrial Relations Court of Australia on 26 May 1997.

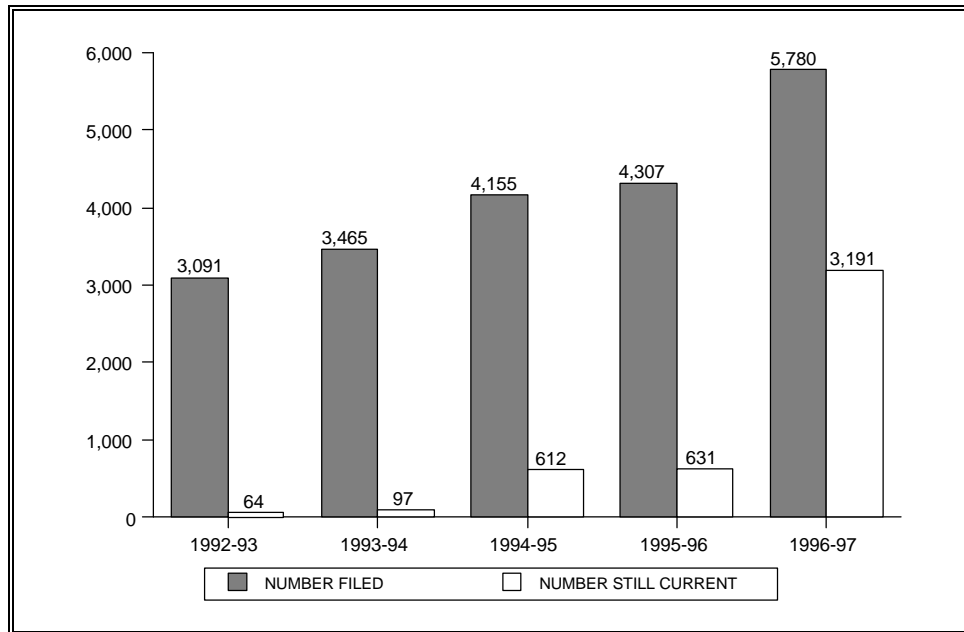
**Figure 6.2**  
**General Division matters finalised**  
**1992-93 to 1996-97**  
**(excluding bankruptcy)**



- Note: (a) For 1996-97, 1,925 creditors' petitions filed since 16 December 1996 and 381 industrial matters transferred from the Industrial Relations Court of Australia on 26 May 1997 are included in the total of 5,780.
- (b) For 1996-97 the number finalised at 30 June 1997 includes 887 creditors' petitions and 35 industrial matters.

Figure 6.3

**General Division current matters  
1992-93 to 1996-97  
(excluding bankruptcy to 15 December 1996)**



A total of 4,669 matters remain current as at 30 June 1997. The age of these are shown in the graph above. In addition, there were 74 matters still current relating to periods before those shown on the graph.

**Figure 6.4**  
**General Division matters - time span to complete**  
**(excluding bankruptcy)**  
**For matters completed in the period 1 July 1992 to 30 June 1997**

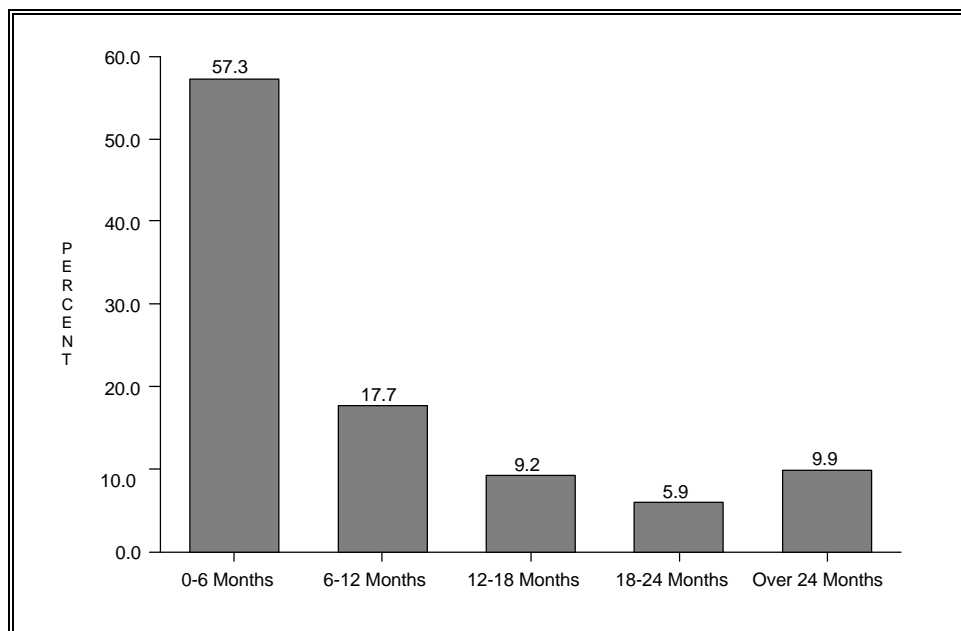
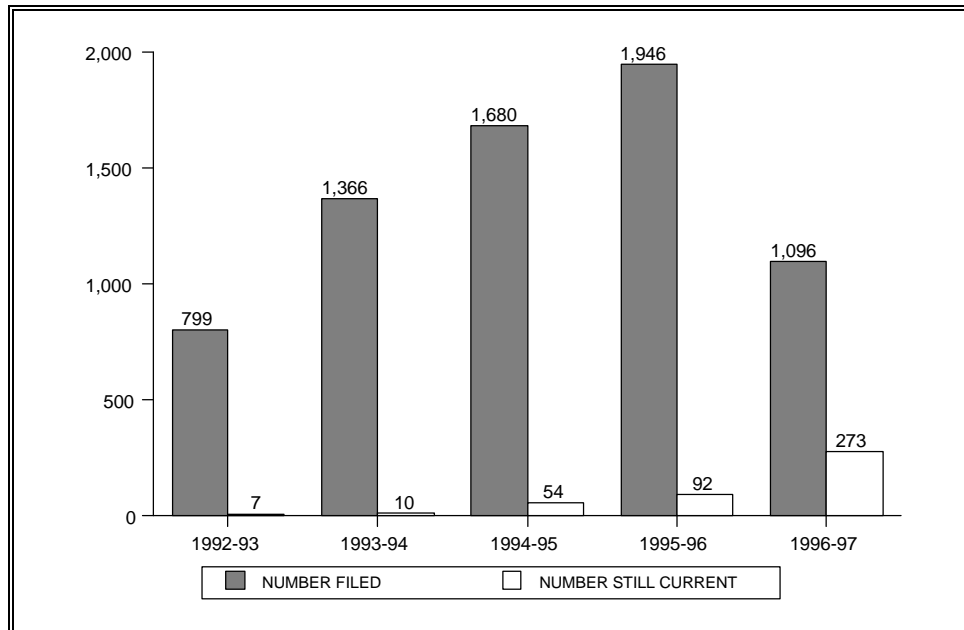


Figure 6.5

Corporations Law current matters  
1992-93 to 1996-97



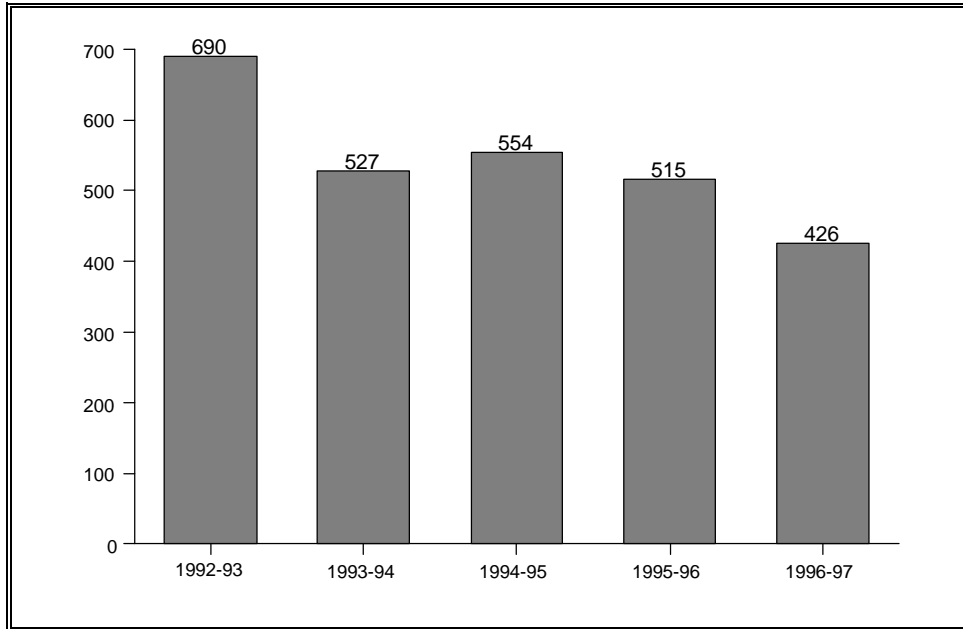
This figure shows that at the end of the reporting year 273 matters commenced in 1996-97 were still pending and, by comparison, 7 matters commenced in 1992-93 were still pending at the end of the reporting year. (NB: There are 3 matters pending from 1991-92.)

**Table 6.2****Corporations Law current matters - historical**

Age of matters	Matters current as at 30 Jun 93	Matters current as at 30 Jun 94	Matters current as at 30 Jun 95	Matters current as at 30 Jun 96	Matters current as at 30 Jun 97
under 6 months	202	344	394	468	194
6-12 months	65	92	96	129	79
12-18 months	58	42	48	74	44
under 18 months	325	478	538	671	317
1.5 - 2 years	21	23	29	30	57
over 2 years	7	40	65	41	65
over 1.5 years	28	63	94	71	122
<b>Total</b>	353	541	632	742	439

**Figure 6.6**

**Trade Practices Act 1974 matters  
1992-93 to 1996-97**

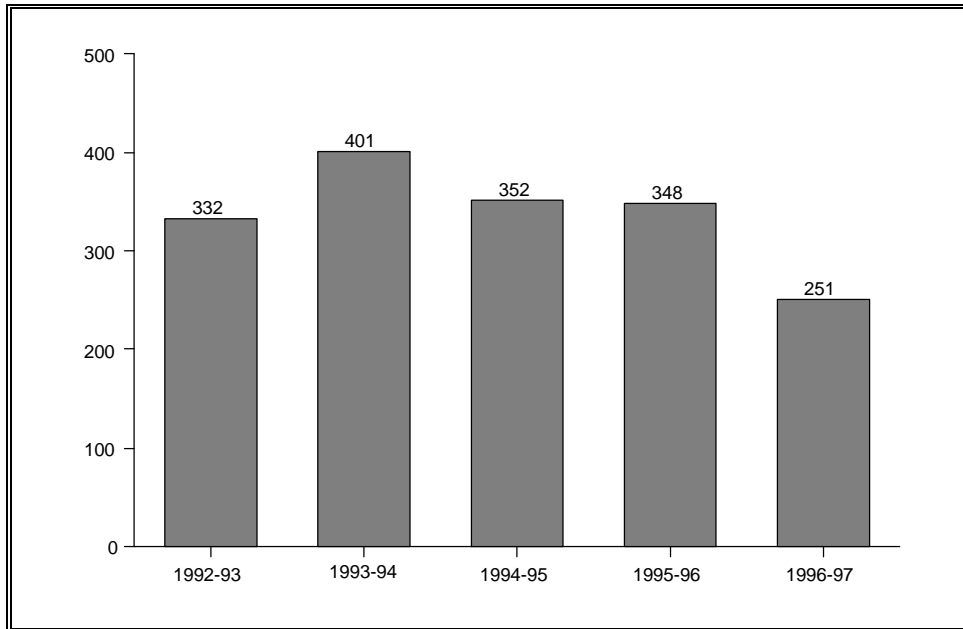


**Table 6.3****Trade Practices Act current matters - historical**

Age of matters	Matters current as at 30 Jun 93	Matters current as at 30 Jun 94	Matters current as at 30 Jun 95	Matters current as at 30 Jun 96	Matters current as at 30 Jun 97
under 6 months	249	169	206	180	153
6-12 months	255	180	154	166	142
12-18 months	123	128	87	116	86
under 18 months	627	477	447	462	381
1.5 - 2 years	88	132	98	98	82
over 2 years	126	143	213	186	177
over 1.5 years	214	275	311	284	259
<b>Total</b>	841	752	758	746	640

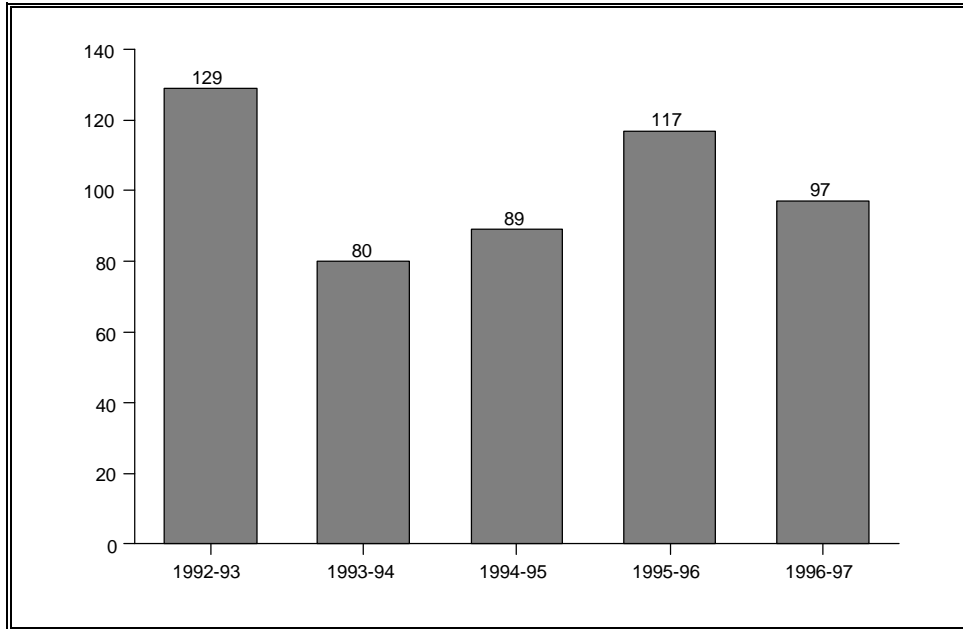
**Figure 6.7**

**Administrative Decisions (Judicial Review) Act 1977 matters  
1992-93 to 1996-97**



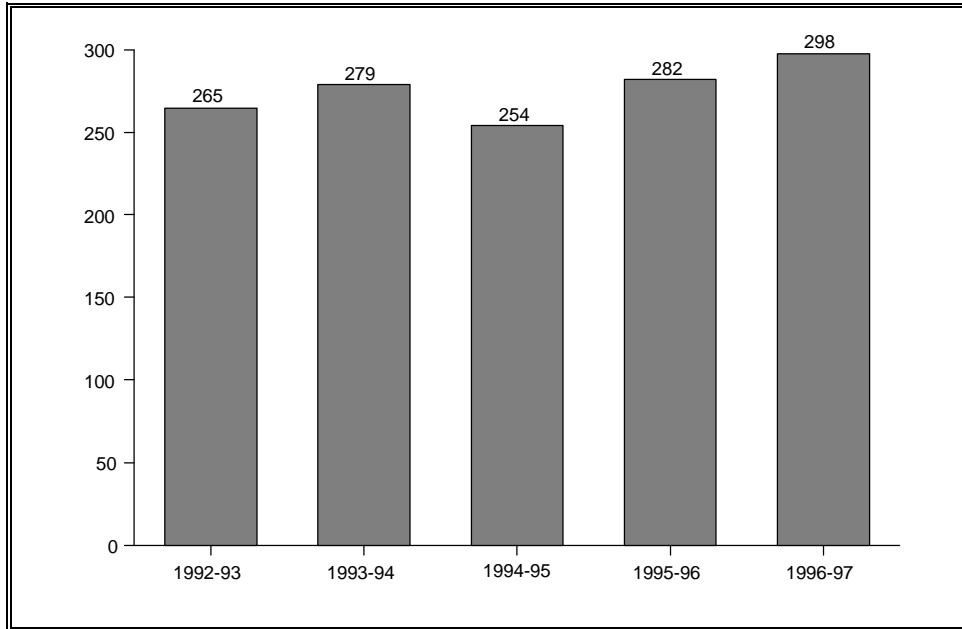
**Figure 6.8**

**Admiralty Act 1988 matters  
1992-93 to 1996-97**



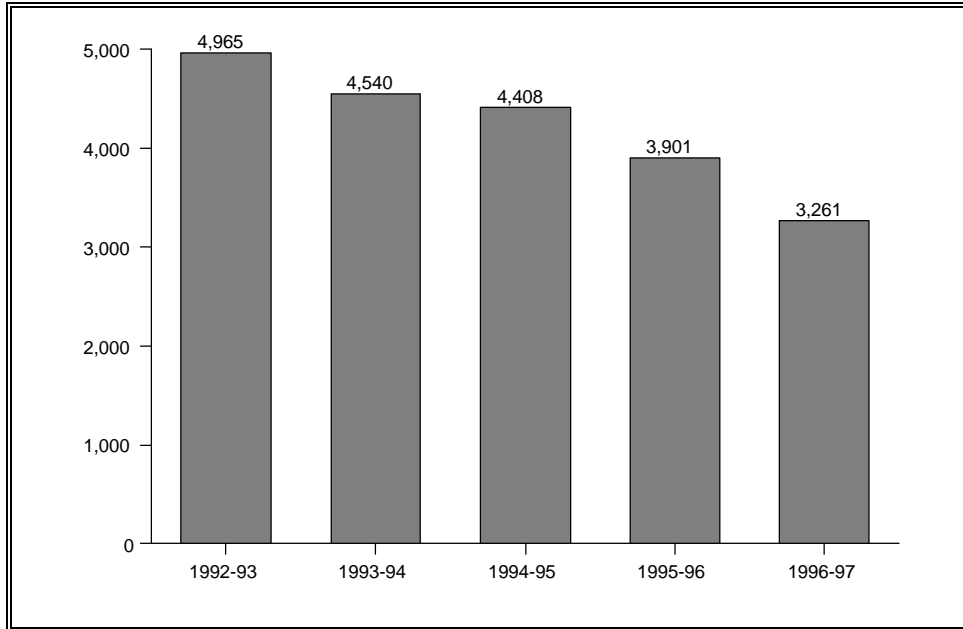
**Figure 6.9**

**Appeals to the Full Court  
General Division  
1992-93 to 1996-97**



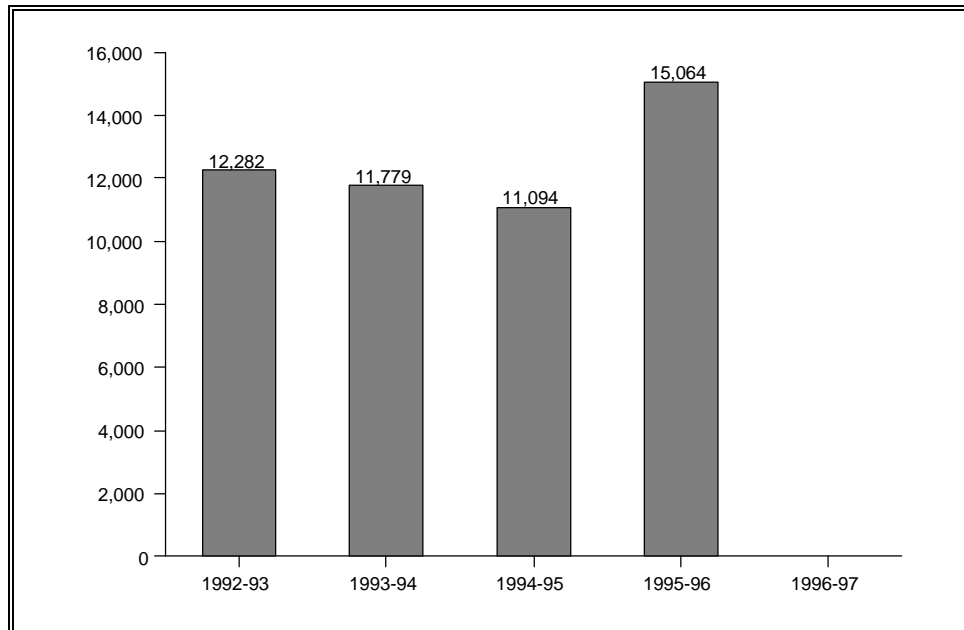
**Figure 6.10**

**Bankruptcy Act 1966 - creditors' petitions presented  
1992-93 to 1996-97**



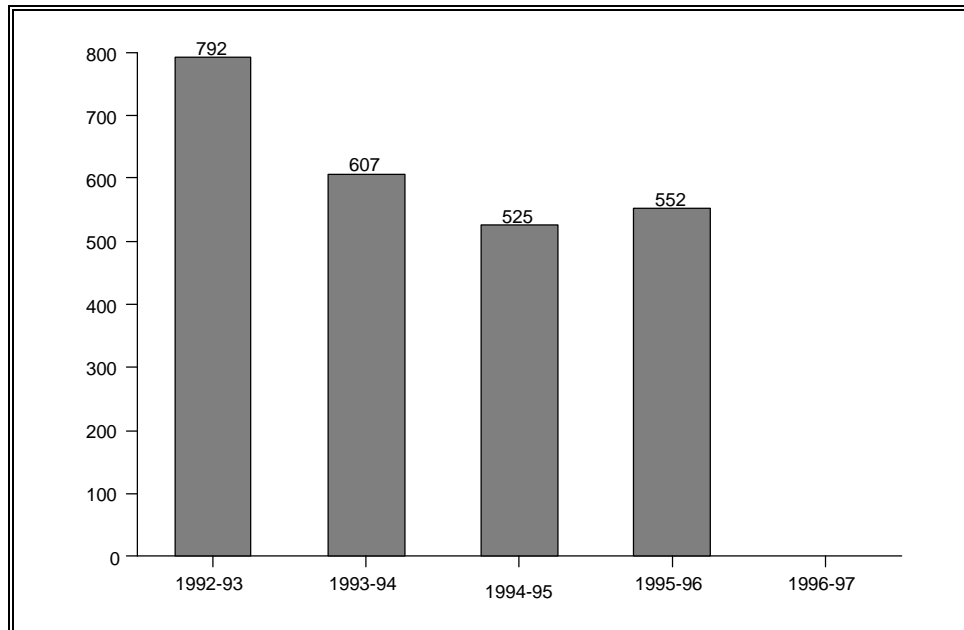
**Figure 6.11**

**Bankruptcy Act 1966 - debtors' petitions presented  
1992-93 to 1996-97**



On 16 December 1996 the *Bankruptcy Act* was amended by the *Bankruptcy Legislation Amendment Act*. As a result of the amendments, debtors' petitions are required to be filed at Insolvency and Trustee Service, Australia. At the date of transfer 8,874 debtors' petitions had been presented during the period 1 July to 15 December 1996. This is the last time that the Court will be reporting the number of debtors' petitions presented.

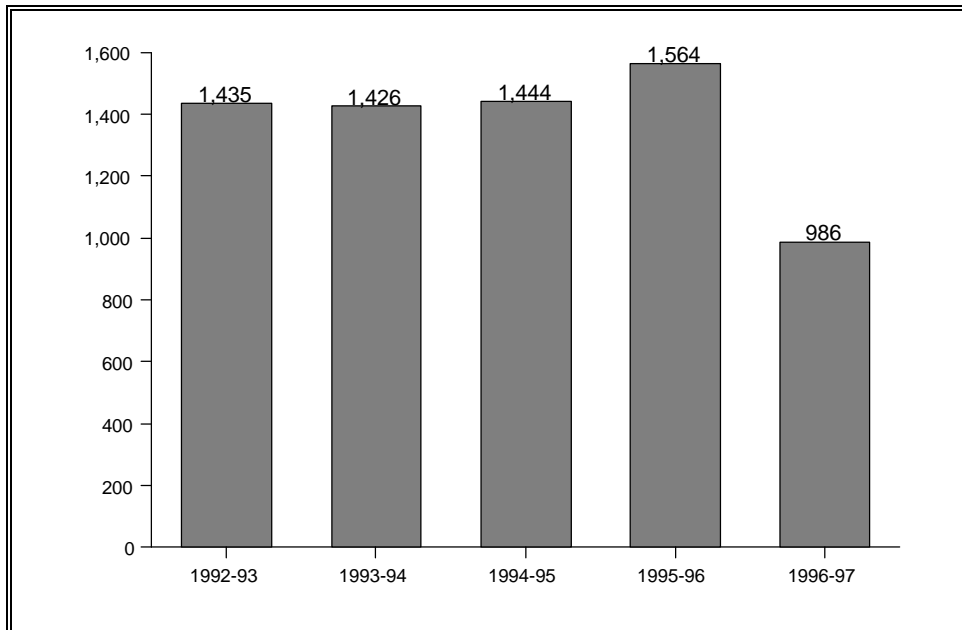
Figure 6.12

**Bankruptcy Act 1966 - Part X matters  
1992-93 to 1996-97**

On 16 December 1996 the *Bankruptcy Act* was amended by the *Bankruptcy Legislation Amendment Act*. Following the amendments, documents in matters under Part X of the *Bankruptcy Act* are required to be filed at Insolvency and Trustee Service, Australia. At the date of transfer, 214 Part X matters had been presented during the period 1 July to 15 December 1996. This is the last time that the Court will be reporting the number of Part X matters.

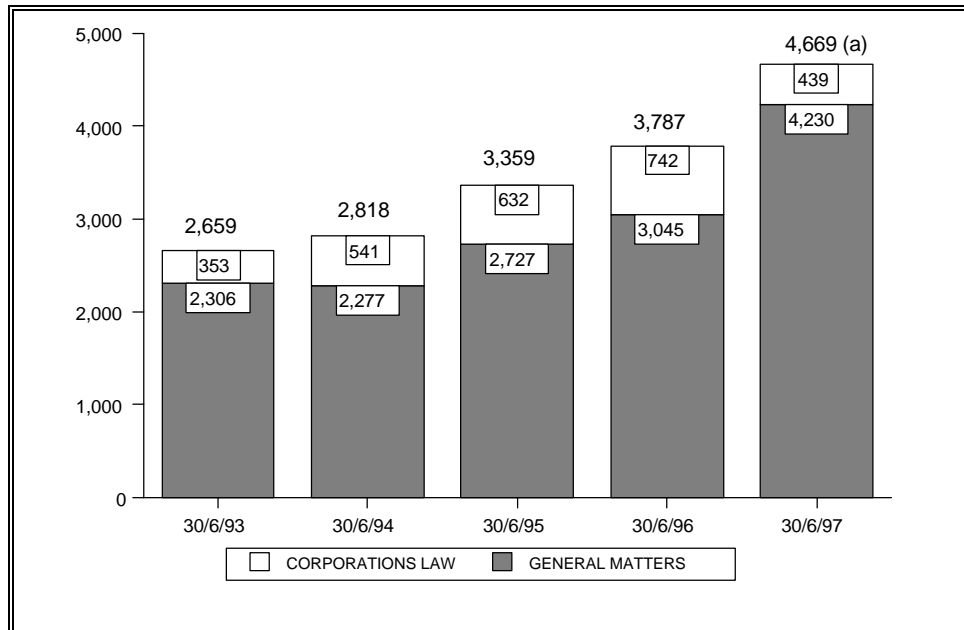
**Figure 6.13**

**Bankruptcy Act 1966 - applications made to the Court  
1992-93 to 1996-97  
(other than petitions)**



**Figure 6.14**

**Matters current as at 30 June each year  
1992-93 to 1996-97**



Note: (a) For 1996-97, 1,042 creditors' petitions and 346 industrial matters current at 30 June 1997 are included.

Table 6.4

**Applications filed under the Administrative Decisions (Judicial Review) Act 1977  
from 1992-93 to 1996-97.**

<b>ENACTMENT UNDER WHICH DECISION MADE</b>	<b>1992-93</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>
Aboriginal and Torres Strait Islander Commission	1	2	3	5	9
Aboriginal and Torres Strait Islander Heritage Protection	2	8	2	3	3
Aboriginal Councils and Associations	-	1	1	1	2
Aboriginal Land Rights (NT)	2	1	-	1	1
Administrative Appeals Tribunal	2	2	2	7	3
Aged or Disabled Persons	-	-	-	1	-
Air Force	-	-	-	1	-
Air Navigation	2	1	2	1	-
Anti-Dumping Authority	1	-	-	-	-
Appropriation	1	-	-	-	-
Audit	-	-	-	-	2
Australia Council	-	-	1	-	-
Australian Citizenship	-	-	2	4	-
Australian Federal Police	-	1	1	-	-
Australian Heritage Commission	-	1	-	1	1
Australian Meat and Livestock Corporation	1	-	-	-	-
Australian National Railways Commission	1	1	-	-	-
Australian Securities Commission	6	3	6	6	3
ACT Ordinances and Acts	-	-	-	3	1
Banking	-	1	-	-	-
Bankruptcy	1	-	3	3	2
Broadcasting	4	2	2	1	-
Broadcasting Services	-	-	-	4	7
Child Care	-	-	-	1	-
Child Support (Registration and Collection)	-	-	1	-	-
Christmas Island Ordinances and Acts	-	-	-	-	1
Civil Aviation	2	1	-	-	-

<b>ENACTMENT UNDER WHICH DECISION MADE</b>	<b>1992-93</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>
Classification (Publications, Films & Computer Games)	-	-	-	-	1
Commonwealth Employees (Redeployment and Retirement)	1	1	-	-	-
Commonwealth Employees' Rehabilitation and Compensation	-	1	-	-	-
Companies (NSW) Code	1	-	-	-	-
Companies Securities (Interpretation and Miscellaneous Provisions)	-	-	1	-	-
Compensation (Commonwealth Government Employees)	1	-	2	-	-
Corporations	4	6	-	5	2
Crimes	4	7	7	5	2
Customs	23	14	5	2	8
Customs Tariff (Anti-Dumping)	1	6	-	-	-
Dairy Produce	-	1	-	-	-
Defence	1	3	1	-	-
Defence Force Discipline	-	1	-	1	-
Defence Force Retirement and Death Benefits	1	-	1	-	-
Defence Service Homes	-	1	-	-	-
Development Allowance Authority	-	-	-	-	1
Director of Public Prosecutions	1	-	-	-	1
Disability Discrimination	-	-	-	-	4
Distillation	1	-	-	-	-
Employment, Education and Training	1	-	4	-	1
Environment Protection (Impact of Proposals)	-	-	1	2	1
Environment Protection (Sea Dumping)	-	-	-	1	-
Excise	1	-	-	-	-
Export Control	2	-	8	-	-
Export Market Development Grants	-	-	-	1	-
Extradition	-	-	-	-	2
Family Law	-	-	-	2	-
Federal Airports Corporation	-	1	1	2	1
Federal Court of Australia	-	-	1	3	2

<b>ENACTMENT UNDER WHICH DECISION MADE</b>	<b>1992-93</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>
Fisheries	10	1	-		-
Fisheries Management	-	-	-	3	-
Freedom of Information	1	-	-	-	-
Health Insurance	4	4	3	34	7
Higher Education Funding	-	-	-	1	-
Human Rights and Equal Opportunity Commission	-	-	3	3	5
Income Tax Assessment	8	28	8	8	5
Industrial Research and Development Incentives	-	-	-	2	2
Judiciary	4	3	8	11	6
Jurisdiction of Courts (Cross-Vesting)	-	1	-	-	-
Lands Acquisition	-	1	-	-	-
Life Insurance	-	-	-	-	1
Marine Insurance	1	-	-	-	-
Marriage	-	-	1	-	-
Members of Parliament (Staff)	-	2	-	-	-
Merit Protection (Australian Government Employees)	1	3	2	1	-
Meteorology	-	-	1	-	1
Migration	186	192	132	113	95
Migration Act (Refugee Status)	18	71	89	63	25
Mutual Assistance in Criminal Matters	-	-	-	-	1
National Crime Authority	-	-	-	8	-
National Health	4	5	5	7	4
National Health and Medical Research Council	-	1	-	-	1
National Parks and Wildlife Conservation	2	-	-	-	-
Native Title	-	-	3	1	5
Ombudsman	-	-	1	-	-
Patents	-	-	-	1	-
Petroleum (Submerged Lands)	-	-	1	-	2
Prices Surveillance	-	-	1	1	-
Public Service	8	7	7	5	7
Quarantine	1	-	-	-	-

<b>ENACTMENT UNDER WHICH DECISION MADE</b>	<b>1992-93</b>	<b>1993-94</b>	<b>1994-95</b>	<b>1995-96</b>	<b>1996-97</b>
Racial Discrimination	1	2	2	1	2
Radiocommunications	2	-	-	1	-
Safety, Rehabilitation and Compensation	-	-	-	4	1
Sales Tax Assessment	-	-	1	2	1
Science and Industry Research	1	-	-	-	-
Securities Industries Code	-	-	-	1	-
Sex Discrimination	1	-	4	2	5
Social Security	1	4	3	1	2
States Grants (Schools Assistance)	-	-	1	-	-
Student Assistance	1	1	1	-	-
Superannuation	-	1	2	-	2
Superannuation (Resolution of Complaints)	-	-	-	-	1
Taxation Administration	1	2	2	1	-
Taxation (Unpaid Company Tax) Assessment	1	-	-	1	-
Telecommunications	1	3	-	-	1
Telecommunications (Interception)	-	-	-	1	-
Therapeutic Goods	-	1	2	-	1
Trade Practices	2	2	3	1	2
Veterans' Entitlements	4	3	8	3	2
Workplace Relations	-	-	-	-	2
World Heritage Properties Conservation	-	-	-	-	1
<b>TOTALS</b>	<b>332</b>	<b>401</b>	<b>352</b>	<b>348</b>	<b>251</b>

**APPENDIX 7**

**EQUAL EMPLOYMENT OPPORTUNITY STATISTICS**

**Representation of EEO groups within occupational groups**

<b>Occupational group</b>	<b>Total staff</b>	<b>Women</b>	<b>NESB1</b>	<b>NESB2</b>	<b>ATSI</b>	<b>PWD</b>
SES	10	3	1	-	-	-
ASO & Related	291	173	21	4	1	10
Professional	26	16	4	2	-	1
<b>Total</b>	<b>327</b>	<b>192</b>	<b>26</b>	<b>6</b>	<b>1</b>	<b>11</b>

**Representation of EEO groups within salary levels**

<b>Salary</b>	<b>Total staff</b>	<b>Women</b>	<b>NESB1</b>	<b>NESB2</b>	<b>ATSI</b>	<b>PWD</b>
Below \$26,457 (ASO 1)	11	6	2	-	-	-
\$27,091 - 30,042 (ASO 2)	68	31	4	-	1	5
\$30,857 - 33,304 (ASO 3)	48	25	2	3	-	1
\$34,391 - 40,675 (ASO 4/5 & equivalent)	123	94	8	1	-	2
\$41,430 - 47, 591 (ASO 6 & equivalent)	18	14	4	-	-	2
\$50,931 - 55,170 (SOG C & equivalent)	21	10	2	2	-	1
\$57,983 - 70,331 (SOG B - Lgl 2)	28	9	3	-	-	-
SES	10	3	1	-	-	-
<b>Total</b>	<b>327</b>	<b>192</b>	<b>26</b>	<b>6</b>	<b>1</b>	<b>11</b>

Note: EEO groups are not mutually exclusive. Any individual officer may be included in more than one group.  
 Key: NESB1 - People of non-English speaking background, first generation.  
 NESB2 - People of non-English speaking background, second generation.  
 ATSI - Aboriginals and Torres Strait Islanders  
 PWD - People with disabilities

## Appendix 8

### STATEMENT UNDER SECTION 8 OF THE FREEDOM OF INFORMATION ACT 1982

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Information on the particulars of the establishment, organisation, functions and powers of the Court is contained throughout this report.

#### Categories of documents

The Federal Court Registries maintain the following categories of documents:

- documents relating to matters heard by, or applications or appeals lodged with, the Court including applications, notices of appeal, affidavits, pleadings, transcripts and copies of judgments;
- registers and indexes in bound volumes of matters coming to the Court (documents dealing with matters coming to the Court are also generated by computer);
- statistical information;
- documents concerning staff matters;
- documents concerning the administrative and financial aspects of the Court's operations;
- internal working documents and correspondence; and
- registry manuals.

The District Registries also maintain a computer database containing details of matters commenced in the Court since 1 January 1984.

The following categories of documents are open to public access according to an enactment (other than the *Freedom of Information Act 1982*) where the access is subject to a fee or other charge:

- documents filed in a proceeding or purported proceeding; (available upon application, subject to the Rules of Court and upon payment of the fees set out in the Federal Court Regulations).

The following categories of documents are available for purchase by the public in accordance with arrangements referred to below:

- transcripts of proceedings (available upon application to the Commonwealth reporting service - Auscript);
- copies of documents filed in the Registry (available upon application, subject to the Rules of Court, and upon payment of the fees set out in the Federal Court of Australia Regulations) ; and

- reasons for judgment (available upon application and payment of the fees set out in the Federal Court of Australia Regulations).

The following categories of documents are open to public access according to an enactment (other than the *Freedom of Information Act*) free of charge on request:

- Registers of proceedings in the Court.

The following documents are available (otherwise than under the *Freedom of Information Act*) free of charge upon request:

- procedural guides to:
  - instituting appeals to the Federal Court of Australia;
  - commencing an action in the Federal Court of Australia (for litigants in person);
  - appearing in Court in relation to a creditor's petition (for unrepresented debtors);
- a list of Full Court sittings (published yearly);
- Court lists (published daily);
- various practice notes made by the Chief Justice; and
- Video-conference Protocol.

### **Facilities for access**

Facilities to examine documents and to obtain copies are available at the Court's registries as initial contact points.

Registers open to public inspection are available at all initial contact points. Transcript is available from the Commonwealth reporting service - Auscript.

### **FOI procedures and initial contact points**

FOI contact officers will assist applicants to identify the particular documents they seek. The only officer authorised to deny access to documents is the Registrar of the Court.

The availability of some documents under the *Freedom of Information 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.

Inquiries concerning access to documents or other matters relating to freedom of information should be directed to the District Registrar of the relevant District Registry or, in the case of the Principal Registry, to the Registrar. The addresses are listed on page iv at the front of this report.

## Appendix 9

### COMPLIANCE WITH GUIDELINES FOR ANNUAL REPORTS - SUMMARY

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Although the Court is, of course, neither a statutory authority nor a government department, it has complied where appropriate with the guidelines for annual reports of those bodies as specified below.

A. The Court has complied, where applicable, with the "Guidelines for the content, preparation and presentation of annual reports by statutory authorities", issued in 1982, as follows:

<b>Categories specified in "Guidelines for the content, preparation and presentation of annual reports by statutory authorities" (1982)</b>	<b>Location of material in annual report</b>
<b>1. Enabling legislation</b>	Section 1.1 and Appendix 5
<b>2. Responsible Minister</b>	Not applicable
<b>3. Powers functions and objects</b>	Sections 1.2 and 1.3
<b>4. Membership and staff</b>	Sections 1.6, 1.7, and 3.6; Appendix 2 and 4 Information c/o Deputy Registrar Principal Registry Federal Court of Australia Level 17 Law Courts Building Queens Square Sydney NSW 2000 Tel: (02) 9230 8336 Fax: (02) 9223 1906
<b>5. Financial statements</b>	Appendix 1
<b>6. Activities and reports</b>	Chapters 1, 2 and 3
<b>7. Operational comments</b>	Sections 1.8, 2.1, 2.2, 2.4 and 2.5
<b>8. Subsidiaries</b>	Not applicable

**B.** In addition, the Court has complied, where applicable, with the guidelines entitled "Requirements for departmental annual reports", issued in March 1995 (as amended), as follows:

<b>Categories specified in "Requirements for departmental annual reports" (1995)</b>	<b>Location of material in annual report</b>
<b>Letter of transmission to the Minister</b>	page iii
<b>Aids to access</b>	Contents, index, compliance with guidelines
<b>Contact officer</b>	page iv
<b>Corporate overview</b>	Chapters 1 and 3
Structure and senior management	Sections 1.4, 1.5, 1.6 and 1.7; Appendix 2
Significant developments in management	Chapter 3
Social justice and equity	Section 1.8
Internal and external scrutiny	Section 3.7
<b>Other</b>	
Industrial democracy	Section 3.2
Occupational health and safety	Section 3.3
Freedom of information	Appendix 8
Advertising and market research	Section 3.12
<b>Program performance reporting</b>	Chapter 2, Sections 3.1 and 3.14
Financial and staffing resources summaries	Tables 3f and 3i
<b>Staffing overview</b>	Section 3.6

Female staff	Section 3.1 and Appendix 7
SES profile	Table 3c
Performance pay	Section 3.6; Table 3d
<b>Categories specified in "Requirements for departmental annual reports" (1995):</b>	<b>Location of material in annual report</b>
Staff training	Section 3.5
Consultancy services	Section 3.13
<b>Financial statements</b>	Appendix 1

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