

# 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 120 statutes of the Parliament. A list of these Acts appears in Appendix 5 to this report on page 100.

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.

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 1999 there were 50 judges of the Court. They are listed on pages 3 to 6 in order of seniority. The list gives details about each judge and any other commissions or appointments held on courts or tribunals. Of the 50 judges, there were 6 whose work as members of other courts or tribunals occupied all or most of their time.

## JUDGES OF THE COURT

(as at 30 June 1999)

Judge	Location	Other Commissions/Appointments
<b>Chief Justice</b>		
The Hon Michael Eric John BLACK AC	Melbourne	
<b>Judges</b>		
The Hon John Foster GALLOP AM, RFD	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 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 Tongan Court of Appeal and Privy Council – 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	15 December, 1999– 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
The Hon James Charles Sholto BURCHETT	Sydney	Privy Councillor of Tonga Court of Appeal of Tonga – Judge Copyright Tribunal – President
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
The Hon Robert Shenton FRENCH	Perth	National Native Title Tribunal – President (retired 31.12.98) 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 AO	Sydney	Supreme Court of the ACT – Additional Judge Eastern Caribbean Supreme Court – Judge High Court of Justice, Dominica – Judge
The Hon Alastair Bothwick NICHOLSON AO, RFD	Melbourne	Family Court of Australia – Chief Justice

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
The Hon Malcolm Cameron LEE	Perth	Industrial Relations Court of Australia Australia – Judge Supreme Court of the Cocos (Keeling) Islands – Additional Judge
The Hon Howard William OLNEY	Melbourne	Supreme Court of the NT – Additional Judge National Native Title Tribunal – Deputy President Administrative Appeals Tribunal – Presidential Member Federal Police Disciplinary Tribunal – Deputy President Aboriginal Land Commissioner
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 Supreme Court of Vanuatu – Acting Judge Court of Appeal
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	Administrative Appeals Tribunal – 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 Federal Police Disciplinary Tribunal – President
The Hon Christopher John Seymour Metford CARR	Perth	
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia – Judge
The Hon Catherine Margaret BRANSON	Sydney	
The Hon Jane Hamilton MATHEWS	Sydney	National Native Title Tribunal – Deputy President
The Hon Kevin Edmund LINDGREN	Sydney	

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
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	Australian Competition Tribunal – Deputy President
The Hon Arthur Robert EMMETT	Sydney	
The Hon Raymond Antony FINKELSTEIN	Melbourne	Copyright Tribunal – Deputy President
The Hon Geoffrey Michael GIUDICE	Melbourne	Australian Industrial Relations Commission – President
The Hon Mark Samuel WEINBERG	Melbourne	Australian Law Reform Commission – Commissioner
The Hon John Alfred DOWSETT	Brisbane	
The Hon Leslie Sydney KATZ	Sydney	

Judge	Location	Other Commissions/Appointments
The Hon Peter Graham HELY	Sydney	
The Hon Susan Coralie KENNY	Melbourne	
The Hon Roger Vincent GYLES	Sydney	

In June 1999 the Chief Justice was absent from Australia. During his absence, Justice Beaumont acted as Chief Justice from 14 to 25 June, and Justice Spender acted as Chief Justice from 26 to 30 June.

The judges of the Court must devote an increasing proportion of their time to other courts and tribunals on which they hold commissions or appointments. 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 a member of the Steering Committee of the Supreme Court and Federal Court Judicial Conference and has been Chair of the Steering Committee of the Australian Judicial Conference since January 1995.

Justice Beaumont is a member of the South Pacific Judicial Committee Sub-Committee for the Establishment of a Centre for Judicial Education in the South Pacific, Convenor of the Council of Chief Justices Sub-Committee on Harmonisation of Appellate Practice and Procedure, and a member of the American Law Institute Advisory Committee on its Transnational Civil Procedural Law Project.

Justice Burchett is a member of the Commonwealth Evidence Act Advisory Committee.

Justice French was a Member of the Council and Board of Management of the Australian Institute of Judicial Administration and Convenor of its Research Committee during the reporting period. He is a member of the Council of the Australian Association of Constitutional Law.

Justice von Doussa is a part-time Commissioner of the Australian Law Reform Commission, Chair of the Advisory Committee that oversees the South Australian Practical Legal Training Course conducted by the Law Society of South Australia, a member of the Advisory Board of the Centre for Legal Education (NSW) and a member of the Legal Practitioners Education and Admission Council (SA).

Justice Hill is the Challis Lecturer in Taxation (part time) at the Faculty of Law, University of Sydney (LLM degree).

Justice O'Connor is Chair, Communications Law Centre Limited.

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

Justice Moore is a member of the Commonwealth Evidence Act Advisory Committee.

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

Justice Lindgren is Chair of the Legal Education Committee of the New South Wales Bar Association, Convenor of the Council of Chief Justices Committee on Harmonisation of Practice and Procedure under the Corporations Law, Chair of the Advisory Board of the Centre for Legal Education (NSW) and a member of the Board of Directors of the College of Law (NSW).

Justice Tamberlin is involved in legal education; working with the College of Law; and participating in the Bangkok Seminar for Judges on Intellectual Property Law organised by the University of Technology, Sydney.

Justice Kiefel is a member of the National Institute for Law, Ethics and Public Affairs Advisory Board.

Justice R D Nicholson is a member of the Council of the Australian Institute of Judicial Administration, Secretary of the LAWASIA Judicial Section, Deputy Convenor of the Trustees of the Francis Burt Law Education Centre, Member of the Advisory Panel of the Murdoch University School of Law and Member of the Advisory Board to the Journal of Law and Medicine.

Justice Finn is a member of the Unidroit Working Group for the preparation of the Second Edition of the Unidroit Principles.

Justice Lehane is an occasional lecturer in Principles of Equity and in Corporate Finance at the Sydney University Law School.

Justice Mansfield is Chair of the Professional Development Advisory Group, Law Society of South Australia; Member of the Faculty of Law, University of Adelaide and Chair, Board of Examiners, National Course in Arbitration and Mediation.

Justice Emmett is the Challis Lecturer in Roman Law and a member of the Faculty of Law at the University of Sydney.

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

Justice Dowsett is a member of a sub-committee established by the Judicial Conference of Australia and the Australian Institute of Judicial Administration to consider questions associated with judicial education. He is also Chairman of the Bar Association of Queensland's committee dealing with issues in relation to vocational training and continuing education of barristers.

In addition, many of the Judges are regularly involved in presiding over moot competitions run by the Law Schools and other bodies.

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

## **Appointments and retirements**

During the year six judges were appointed to the Court:

The Hon Mark Samuel Weinberg (resident in Melbourne) appointed on 15 July 1998.

The Hon John Alfred Dowsett (resident in Brisbane) appointed on 14 September 1998.

The Hon Leslie Sydney Katz (resident in Sydney) appointed on 30 September 1998.

The Hon Peter Hely (resident in Sydney) appointed on 2 October 1998.

The Hon Susan Coralie Kenny (resident in Melbourne) appointed on 16 October 1998.

The Hon Roger Vincent Gyles (resident in Sydney) appointed on 11 June 1999.

The Hon Raymond Moyle Northrop retired as a judge of the Court on 31 August 1998. The Hon John Daryl Davies retired as a judge of the Court on 31 August 1998. The Hon Michael Leader Foster retired as a judge of the Court on 27 November 1998. The Hon John Stanley Lockhart AO resigned his commission as a judge of the Court on 4 June 1999.

## 1.5 JUDICIAL REGISTRARS

On 26 May 1997, the jurisdiction of the Industrial Relations Court of Australia was transferred to 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 continue for the balance of the term of each judicial registrar's appointment as a judicial registrar of the Industrial Relations Court of Australia. The appointments were usually for periods of up to five years as either a full-time or part-time judicial registrar. A list of the judicial registrars of the Court as at 30 June 1999 appears in Appendix 3 at page 97.

## 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 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.

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.

The registries of the Federal Court are also registries for the Industrial Relations Court of Australia until the work of that Court is completed.

The Northern Territory District Registry is administered by the Family Court of Australia which provides registry services to the Federal Court, the Administrative Appeals Tribunal and the 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.

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 18 Y of the Federal Court of Australia Act). A schedule of registrars appears in Appendix 4 on page 98 and a list of District Registrars appears in Table 1a below.

**Table 1a  
District Registrars**

<b>Registry</b>	<b>District Registrar</b>
Australian Capital Territory	John Mathieson
New South Wales	John Mathieson
Northern Territory	Vacant*
Queensland	Graham Ramsey
South Australia	Peter Carey
Tasmania	Alan Parrott
Victoria	Peter Seccombe
Western Australia	Martin Jan PSM

\* The South Australia District Registrar has delegations which allow for the performance of statutory and judge directed functions for the Northern Territory when required.

### **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 1999 there were 335 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 57 to 59.

## **1.7 MANAGEMENT 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 16 standing committees which assist in the administration of the Court:

Admiralty	Corporations
Assisted Dispute Resolution	Equality and the Law
Audit	Federal Court Reports
Bankruptcy	Finance

Information Technology	Remuneration
Library	Rules
Native Title Coordination	Security
Practice and Procedure	Transcript

An ad hoc Enterprise Bargaining Steering Committee was convened to assist in the development of the Court's Workplace Agreement for the Court under the *Workplace Relations Act 1996*. This Agreement was certified on 21 October 1998. The Committee endorsed the parameters of the negotiations, considered implications of proposals for the Agreement, and ensured the process was fair to all stake holders.

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 all judges of the Court during the year. The matters dealt with included reforms to the Court's practice and procedure and amendments to the Rules of Court.

## **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, property management and support to the judges' committees.

## **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 its work of developing and refining changes to practice and procedure.

Some of the issues considered by the Committee were as follows.

- **Court appointed referral for legal assistance (commonly known as Pro-bono assistance)**  
The purpose of the referral for legal assistance is to facilitate, where it is in the interests of the administration of justice, the provision of legal assistance to litigants who are otherwise unable to obtain legal assistance. Order 80 of the Federal Court Rules sets out the mechanism, procedures and practice with regard to referral for legal assistance. The Order came into effect on 7 December 1998.
- **Experts**  
The Committee continued its work on proposals regarding the role and purpose of experts giving evidence. The Court has consulted extensively with representatives of the Law Council of Australia and various professional associations regarding its proposals.

In September 1998 a Practice Direction and Guidelines titled "Guidelines for Expert Witnesses in proceedings in the Federal Court of Australia" were issued. The Guidelines, which were not intended to

address exhaustively all aspects of an expert's duties, refer to (a) the general duty of the expert to the Court, (b) the form of the expert evidence and (c) the experts' conference. The Guidelines are available on the Court's web site at <http://www.fedcourt.gov.au>.

A further proposal of the Committee for the empanelling of experts in the manner successfully trialed by the Australia Competition Tribunal was adopted in a new Rule of Court, Order 34A Evidence of expert witnesses, which came into effect on 7 December 1998.

The Committee has developed a proposal that, in appropriate cases, judges, with the consent of the parties, should have the power to appoint a Court expert, to consult with the judges on issues within the expert's field. The Committee and the Rules Committee have been asked to draft a Rule of Court, and to consult with the Law Council of Australia, as to the proposed rule change. The Committee expects that consultations with the Law Council will lead, in the next reporting year, to a new Rule of Court allowing for the appointment of a Court expert.

- **Discovery**

The work of the Committee concerning the management of discovery continued during the reporting year. The Committee, in consultation with the Rules Committee, drafted an amended Practice Note and an amended Rule replacing the Peruvian Guano test, which often led to the discovery of numerous documents that were never used in evidence in the case, with the direct relevance test. Under the direct relevance test, discovery should ordinarily be confined to documents which are directly relevant, being documents on which a party relies; or documents which, to a material extent, undermine that party's case or support another party's case.

The Committee expects the new Practice Note and Rule of Court to issue in the next reporting year.

- **Responsibility for pleadings**

During the reporting year the judges agreed in principle, subject to consultation with the Law Council of Australia, with the Committee's proposals that (a) pleadings be verified by the party on whose behalf the pleading is filed, and (b) a pleading filed by a lawyer be accompanied by a Certificate of the Legal Practitioner.

- **Management of Appeals**

The Court is concerned at the possible effects of the increase in the number of appeals on its ability to continue to hear its appellate workload efficiently, effectively and in a timely manner. The Committee is considering a number of issues including, in appropriate cases, the possibility of Full Courts delivering short form judgments and promoting the use of Assisted Dispute Resolution for appeals. The Committee is also examining possible legislative amendments to broaden the categories of decisions requiring leave to appeal, and to allow certain categories of appeals to be determined by two Judge benches.

- **Long cases**

The Committee is considering the effect of long cases on the Individual Docket System and the Court's ability to constitute Full Court benches.

- **Other issues**

The Committee also considered the following issues.

- Reduction of documents on Court files.

This involves consideration of whether all the documents currently filed with the Court are necessary or need to be filed; and whether documents which need to be filed could not be included in an interlocutory Bench Book or a Trial Bench Book, to be supplied by the parties when the matter is ready for hearing.

- Withdrawal of a solicitor.

The Committee and the Rules Committee are considering a Rule change which would require a withdrawing solicitor to advise the Court and the former client of certain matters, such as the time, date and place when the matter is next before the Court, and an address for service of the former client.

- Amicus curiae (“a friend of the Court”).

The Committee is looking at issues concerning the circumstances in which people may intervene or appear as amicus in proceedings, and the consequences of them doing so.

- Judge delegated functions to Registrars.

The number and range of Judge delegated functions carried out by the Court’s Registrars are being considered to ascertain whether there is national uniformity, and whether there is any need to expand the delegations or to make Rule changes.

- Electronic discovery and electronic appeal books.

The Committee is considering all aspects of electronic discovery, including e-mails and the use of electronic appeal books and procedures in appropriate cases.

- Individual Docket System.

The Committee monitors and, where necessary, suggests improvements to the system.

The Committee met during the reporting year with the Law Council of Australia’s Federal Court Practice and Procedure Committee to discuss matters concerning the Court’s current and proposed changes to practice and procedure.

## **Gender issues**

Since 1993 there has been a standing committee of judges of the Court which considers and advises the Chief Justice and other judges about a wide range of issues related to gender, including gender issues within the administration of the Court and the provision of its services. Advice is also provided on relevant judicial studies on gender issues.

In 1998 the previous Gender Issues Committee was incorporated into a new judges committee, the Equality and the Law Committee. This Committee has broad terms of reference to consider issues related to gender equity in both the Court’s internal operations and in external matters which impact upon the Court. For example, during the reporting year, the Committee considered the report commissioned by the Victorian Bar Association, titled *Equality of Opportunity for Women at the Victorian Bar*. In particular, the Committee was engaged in considering the report’s recommendations and the extent to which the Court could contribute to assisting with their implementation, including their wider application to women at the Bar across Australia.

During the year the Court also implemented its Workplace Diversity Plan which is intended to recognise and value the diverse skills and background of staff of the Court and inform and educate staff on issues such as gender awareness and harassment in the workplace. Further details on the Plan are outlined under 3.1 of this report.

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

During the year the Registrar and officers from the Principal Registry continued their regular meetings with 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 (No. 1) 1999. The Registrar and officers paid particular attention to the expectations of the people likely to be affected by 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*. Draft Court rules and forms have been prepared in anticipation of the possible amendments.

The Equality and the Law Committee's terms of reference include oversight of the provision of the Court's services to ensure that, in all aspects of the Court's operations, persons who have contact with the Court are treated fairly and equitably and that, where necessary, special services are provided to persons who face particular disadvantage in accessing the Court. The Committee's terms of reference also extend to considering disability, race and sex discrimination issues as they may affect staff of the Court. During the reporting year the Committee was heavily involved in a revision of the Court's Harassment Policy which applies to all staff of the Court and aims to ensure that the Court provides a workplace which is free of all forms of harassment. In this context, the Committee has progressed the involvement of judges of the Court in the implementation of the policy across the Court.

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

The Federal Court registries are centrally located in each of the State and Territory capital cities. The locations and business hours of the registries are set out in the front of this report. Pamphlet guides on Federal Court registry services are available from each of the registries.

The Court is conscious of the need for its facilities to be available to all members of the community and is committed to ensuring that there are no access problems for those with disabilities.

The Court shares many of its buildings with other jurisdictions, and facilities are managed by Local Building Management Committees representing the organisations sharing the facilities in each jurisdiction. A National Building Management Committee sets budgets, deals with matters of common interest and maintains an overall management brief. The Court contributes to capital, maintenance and operating costs of shared buildings.

In 1997-98, the National Committee commissioned a national audit of court buildings to identify areas where access could be improved. The audit included registries, courtrooms and other facilities used by the Court. The report provided detailed recommendations. These were prioritised by local committees and developed into a national works program.

Work continued in the current year and, by the end of the reporting period, \$668,792 had been spent on buildings occupied by the Court. Works included upgrading of access ramps, new handrails, non-slip surfaces, signage, toilet facilities, upgrading lifts and relocating information boards. The upgrade program will ensure that all the Court's accommodation has these services fully available.

Hearing aid induction loops and amplification facilities are available in many of the Court's premises. In the Sydney Registry, hearing aid loops are now installed in all 15 courtrooms and at all registry counters. Loops are provided in the new Melbourne building and are included in new joint facilities currently under development with the Family Court in Darwin. All the Court's premises have wheelchair access.

In addition, 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

Under the Federal Court of Australia Regulations, fees are charged for commencing a proceeding and for setting a matter down for hearing (including a daily hearing fee). A setting down fee is not payable on all matters and the amount of the daily hearing fee will vary depending on the nature of the hearing. The court fees were increased on 1 July 1998 in accordance with Regulation 2AC, which provides a formula for increasing specific court fees every two years from 1 July 1996.

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 health care card, a health benefit card, a pensioner concession card, or a Commonwealth seniors health card; or
- is the holder of any other card issued by the Department of Social Security or the Department of Veterans Affairs certifying entitlement to Commonwealth health concessions; or
- is an inmate of a prison or is otherwise lawfully detained in a public institution; or
- is a child under the age of 18 years; or
- is in receipt of an AUSTUDY allowance; or
- is in receipt of an 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

The Court has a Director of Public Information to assist in the dissemination of information about the Court and its judgments. A series of brochures detailing services and facilities provided by District Registries is available. Updated versions of the Court's brochures on bankruptcy, mediation conferences and a guide for people who do not have a lawyer were drafted during the reporting year. 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 explore the use of electronic media in the coverage of its judgments. In December 1998 the Chief Justice released a landmark report on "Electronic Media Coverage of Courts" by Daniel Stepniak, a lecturer in law at the University of Western Australia. The report reviews recent developments in the televising of court proceedings in Australia and overseas, and makes recommendations regarding the future electronic media coverage of Federal Court proceedings. In light of the report's findings and recommendations, the Court appointed Mr Stepniak to conduct an evaluation project on the use of electronic media coverage in proceedings coming before it.

In March 1999 Justice Wilcox's judgment in *Ryan v Great Lakes Council & Others*, which concerned a class action in relation to poisonous oysters in Wallis Lake, was broadcast live on Sky News, a cable television service. The video and audio recordings were also made available to all mainstream electronic media.

Throughout the reporting year a number of judges continued to permit sound and visual recording of the handing down of their judgments. In one case a hearing was recorded for possible broadcast.

The Court's home page on the Internet has continued to enable access to judgments within hours, and sometimes within minutes of the handing down of a judgment. In addition, visitors to the home page can access, among other things, the Court Rules, Forms and Practice Directions, and can link to other legally related Internet sites. The Court is considering ways in which the Internet can be put to greater use to disseminate information about the Court and its work.

## Legal education programs

The Court is an active supporter of legal education programs, both in Australia and overseas. During the reporting year the Chief Justice and many judges, judicial registrars 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, Law Society meetings and many other public meetings.

Examples of the Court's significant contribution to legal education include the following.

Justice Beaumont spoke on native title to the Anglo-Australasian Lawyers Association in London, to law students at Emmanuel College in Cambridge, and to the NSW Bar Association. He also spoke to visiting Indonesian judges about the conduct of litigation in the Federal Court, and to visiting Chinese judges about the legal implications of electronic commerce. His Honour presented papers at the National Judicial Orientation Programme and the South Pacific Judicial Conference.

Justices Beaumont and Branson participated in the Supreme Court and Federal Court Judges' Conference. Justice Branson was also a Visiting Judicial Fellow at Flinders University, and lectured at the Australian Advocacy Institute during the reporting year.

Justice Gray delivered seminars at the Centre for Indigenous Natural and Cultural Resource Management, University of the Northern Territory.

Justice Hill delivered a paper on the role of the judiciary in the tax reform process in Australia to conferences in Potsdam and Canberra.

Justices Branson and Lindgren are advisory editors of a new loose-leaf service, *Federal Litigation Precedents*, which was published during the reporting year.

Justice Lindgren organised, under the auspices of the NSW College of Law, a series of seminars for legal practitioners under the title "The Judges' Series – Practical Litigation in the Supreme Court and the Federal Court". Each seminar was presented by a Supreme Court Judge and a Federal Court Judge. Justice Lindgren, with Justice Young of the NSW Supreme Court, presented one of these seminars. Justice Lindgren participated in a number of other seminars during the reporting year. In July and November 1998 he and Justice Cohen of the NSW Supreme Court presented a seminar on affidavit evidence in their respective courts. Justice Lindgren also presented a paper at the Taxation Institute of Australia's Annual Intensive Seminar for 1998, and commented on a paper presented at the Eighth Annual *Journal of Contract Law* Conference held at the University of Melbourne.

In June 1999 Justice Tamberlin participated in a series of seminars on intellectual property delivered to judges of the newly formed Central Intellectual Property and International Trade Court of Thailand. The five day seminars consisted of addresses on the substantive intellectual property law and court procedures and remedies in relation to matters of copyright, trade marks, patents and design legislation. The seminars were well attended by over thirty judges and staff. The program was an extension of similar programs conducted in Indonesia in recent years in which Justices Branson and Lindgren participated. The experience of Justice Tamberlin confirmed that judges of the Federal Court have a useful and worthwhile role to play in sharing the expertise of this Court with other courts in the South Pacific and South East Asian regions.

Justices Kiefel and Dowsett participated in the Colloquium of the Judicial Conference of Australia. Justice Kiefel also delivered a paper on the relationship between courts and media to the Oceania Press Council.

Justice R Nicholson presented a paper to the Australasian Legal Education Forum.

Justice Merkel conducted a two day judicial training program in Jakarta as part of a joint project between the Federal Court and the Supreme Court of Indonesia. This 12 month judicial training project is funded by AusAid out of the Government Sector Linkages Program.

## **Searches on court database**

Public access is available to FEDCAMs, the Federal Court Case Management System 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**

The Court was visited by a significant number of judges and officials from overseas jurisdictions. These visits provided the judges and staff of the Court with an opportunity to develop relationships and learn from people involved in the administration of justice from around the world. The number of visits reflects the international reputation of the Federal Court as a leading court, in its administration and its practice and procedure.

### **Canada**

The Hon Madam Justice Rosalie Abella, Court of Appeal, Ontario

### **Europe**

Professor Giuseppe Frederico Mancini, European Court of Justice

### **Hong Kong**

Mr Justice Patrick Chan, Chief Judge of the High Court of Hong Kong

Mr Justice Anthony Rogers, Justice of Appeal of the Court of Appeal of the High Court of Hong Kong

Ms Carlye Chu Fun Ling, Acting Registrar of the High Court of Hong Kong

Ms Alice Tai, Administrator of the Supreme Court of Hong Kong

### **India**

The Hon Justice D P Wadhwa, Supreme Court

### **Indonesia**

Justice Marina Sidabutar, Administrative Court of Jakarta

Delegation of Indonesian Jurists

Dr Romli Atmasasmita, Director General, Law and Legislation, Ministry of Justice

### **Malaysia**

Mr Haji Abu Azhar bin Dato' Andika Ujang, Chairman of the Malaysian Copyright Tribunal

Mr Mustafa Azhar bin Mahmud, Director of the Intellectual Property Division, Ministry of Domestic Trade and Consumer Affairs

Mr A Manisekaran, Secretary of the Malaysian Copyright Tribunal

### **Mongolia**

Sanduin Geremaa

Dorjdamba Zumberellkham

Baymbanorev Otgonbayar

Dashkuu Tsolomon

Tudev Jargalsaihan

Nichibuu Enkhtuya  
Mashbar Serjmyadag  
Damdin Erdenebalsuren

## **New Zealand**

The Hon Justice Anthony Doogue, High Court of New Zealand

## **Papua New Guinea**

The Hon Michael Gene, Attorney-General  
Professor John Nongorr  
Mr Jack Nuari

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

Mr Wei Zijian, Chief of Court of Beijing No 2, Intermediate People's Court  
Mr Hao Zengyi, Deputy President of Beijing Daxing County People's Court

## **Poland**

Mr Nievar Cewicz, Vice Minister for Justice  
Mr Sikola and Mr Bonicki

## **Singapore**

Mr Hamzah Moosa, Registrar, Singapore Subordinate Court

## **United Kingdom**

The Rt Hon the Lord Irvine of Lairg, The Lord High Chancellor of Great Britain  
The Rt Hon the Lord Browne Wilkinson and Lady Browne Wilkinson  
Professor Sir David Williams QC DL, Vice-Chancellor Emeritus, University of Cambridge  
Professor Peter Brian Herrenden Birks, Regius Professor of Civil Law, Oxford University  
Ms Heather Hallett QC, Chairman of the Bar Council of England and Wales  
Mr Niall Morison, Chief Executive of the Bar Council of England and Wales

## **United States of America**

Judge Thomas Thompson, Acting Judge of the Federal Court (California and Hawaii circuits)  
Professor Irwin Cotler, Professor of Law, McGill University

## **Vietnam**

Delegation of members of the Supreme Peoples Court and Provincial Courts (relating to the Training of Judges Project):

Mr Doan Minh Vuong, Deputy Chief Justice of Central Military Court of Supreme People's Court (SPC), Head of Delegation  
Mr Dang Xuan Dao, Deputy Chief Justice of Administrative Court of SPC, Deputy Head of Delegation  
Mr Tran Quoc Tu, Mr Nguyen Minh Man, Mr Vu The Doan, Mr Ta Minh Go, Ms Nguyen Thi Duyen, Mr Tran Duc Trung, Ms Nguyen Thi Tan, Mr Luong Tien Dung, Mr Chu Xuan Minh (Justices of SPC)

Mr Pham Van Hoa, Chief Judge of Military Court Zone IV  
Mr Phan Tanh, Deputy Chief Judge of Ho Chi Minh City Court  
Mr Hoang Huu But, Deputy Chief Judge of Ha Noi Court  
Mr Nguyen Hong Son, Chief Judge of Quang Ngai Court  
Mr Nguyen Thanh Tung, Chief Judge of Binh Duong Court  
Mr Nguyen Van Luu, Chief Judge of Lao Cai Court  
Ms Le Vu Hong Hue, Deputy Chief Judge of Ben Tre Court

## **Western Samoa**

The Hon Chief Justice Tiavaasue Sapolu, Supreme Court of Western Samoa

## **Zimbabwe**

The Hon Chief Justice Anthony Roy Gubbay, Chief Justice, Supreme Court  
The Hon Mr Justice G.G. Chidyausiku, President, High Court  
The Hon Mr Justice Ahmed Moosa Ebrahim, Judge, Supreme Court

### **1.10 JUDICIAL EXCHANGE PROGRAM**

The judicial exchange program had its origins in 1997 when the Chief Justice visited Washington DC and had discussions with Mr James Apple, head of the Interjudicial Affairs Office at the Federal Judicial Centre.

In the previous reporting year the Court provided chambers in its Melbourne Registry for the Hon. Judge Marvin Garbis, a Judge of the United States District Court for the District of Maryland, and Justice Graham Hill of the Federal Court visited Washington DC. In the reporting year there was no exchange of judges to or from Australia under the program. The Court, however, is committed to continuing the program and expects that exchanges will take place in the next reporting year.

### **1.11 PEGASUS SCHOLARSHIP TRUST**

The Pegasus Scholarship Trust was established in England to make it possible for gifted young lawyers to learn about the practical working of the common law system in countries other than their own, and to form enduring links with lawyers in those countries. Since 1987 the Trust has been sponsoring Pegasus scholars from overseas to study and work in England, and Pegasus scholars from England to live and work abroad. The Trust is supported by the Inner Temple and the Middle Temple, several major law firms, the Cambridge Commonwealth Trust, and government and commercial agencies.

During the reporting year the Chief Justice arranged for the Court to host a Pegasus Scholar. Mr Ian Rogers, a young London barrister, spent two weeks as an Associate to Justice Lindgren. In addition to attending hearings before His Honour, Mr Rogers undertook research work to assist in the preparation of judgments. The visit was of benefit to Mr Rogers, Justice Lindgren and the Court.

The Court will host another Pegasus Scholar in 1999.

