

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 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 150 statutes of the Parliament. A list of these Acts appears in Appendix 5 on page 116.

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, decisions of the Federal Magistrates Court and certain decisions of State Supreme Courts exercising federal jurisdiction. The Court's jurisdiction is described more fully in Chapter 3.

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'S OUTCOME AND OUTPUT STRUCTURE

In October 1998, the Court adopted an outcome and output structure in accordance with the accrual budgeting arrangements that commenced in 1999–2000. Details of the outcome and output structure and a report on the resources to achieve the outcomes are contained in Appendix 6 on page 120.

During 2001-02 the Court reviewed its outcome and output structure and from 2002-03 a revised structure will be implemented. This is shown in Appendix 6.

1.5 THE COURT

Judges

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

As at 30 June 2002 there were 48 judges of the Court. They are listed below in order of seniority. The list gives details about each judge, including other commissions or appointments held on courts or tribunals. Of the 48 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 2002)

Judge	Location	Other Commissions/Appointments
Chief Justice		
The Hon Michael Eric John BLACK AC	Melbourne	
Judges		
The Hon Bryan Alan BEAUMONT	Sydney	Supreme Court of Norfolk Island – Chief Justice Tongan Court of Appeal – Judge Administrative Appeals Tribunal – Presidential Member Supreme Court of Fiji – ad hoc 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

Judge	Location	Other Commissions/Appointments
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	Administrative Appeals Tribunal – Presidential Member
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	Supreme Court of the NT – Additional Judge Administrative Appeals Tribunal – Presidential Member Aboriginal Land Commissioner
The Hon John William von DOUSSA	Adelaide	Industrial Relations Court of Australia– Judge Supreme Court of the ACT – Additional Judge Supreme Court of Vanuatu – Acting Judge Court of Appeal Administrative Appeals Tribunal – Presidential Member Australian Competition Tribunal – 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 Terence John HIGGINS	Canberra	Supreme Court of the ACT – Judge
The Hon Peter Cadden HEEREY	Melbourne	Defence Force Discipline Appeal Tribunal – President
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	

Judge	Location	Other Commissions/Appointments
The Hon Kevin Edmund LINDGREN	Sydney	Copyright Tribunal – President
The Hon Brian John Michael TAMBERLIN	Sydney	
The Hon Ronald SACKVILLE	Sydney	
The Hon Susan Mary KIEFEL	Brisbane	Federal Police Disciplinary Tribunal – Deputy President
The Hon Robert David NICHOLSON AO	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 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	Copyright Tribunal – Deputy President
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	Federal Police Disciplinary Tribunal – Deputy President Australian Law Reform Commission – Commissioner
The Hon John Alfred DOWSETT	Brisbane	
The Hon Peter Graham HELY	Sydney	Australian Competition Tribunal – Deputy President

Judge	Location	Other Commissions/Appointments
The Hon Susan Coralie KENNY	Melbourne	
The Hon Roger Vincent GYLES AO	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Richard Alan CONTI	Sydney	
The Hon Margaret Ackary STONE	Sydney	
The Hon James Leslie Bain ALLSOP	Sydney	
The Hon Gary Keith DOWNES	Sydney	Administrative Appeals Tribunal – President
The Hon Peter Michael JACOBSON	Sydney	

The Chief Justice was absent on the following dates during the year. Acting Chief Justice arrangements during the periods are indicated.

23 September – 25 September 2001	Wilcox ACJ
1 October – 2 October 2001	Wilcox ACJ
9 June to 23 June 2002	Beaumont ACJ
24 June to 27 June 2002	Wilcox ACJ
28 June to 30 June 2002	Beaumont ACJ

The judges of the Court 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.

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.

Members of the Court also spend a significant amount of time on other activities related to legal education and the justice system. More information about these activities is set out in Chapter 3 and Appendices 9 and 11 of this report.

Appointments and retirements

During the year two judges were appointed to the Court:

The Honourable Gary Keith Downes (resident in Sydney) appointed on 2 April 2002.

The Honourable Peter Michael Jacobson (resident in Sydney) appointed on 17 June 2002.

During the year three judges retired or resigned from the Court:

The Honourable John Robert Felix Lehane resigned his commission as a judge of the Court on 10 September 2001 due to ill health and died on 11 September 2001.

The Honourable James Deidre Frances O'Connor resigned her commission as a judge of the Court on 5 March 2002.

The Honourable Leslie Sydney Katz resigned his commission as a judge of the Court on 16 April 2002 due to ill health.

Other appointments, resignations and retirements during the year included:

The Honourable Justice Beaumont resigned his commission as judge of the Supreme Court of the ACT on 11 June 2002.

The Honourable Justice Beaumont was appointed an *ad hoc* judge of the Supreme Court of Fiji for the June 2002 sitting of that Court.

The Honourable Justice Olney was reappointed Aboriginal Land Commissioner for the period 5 October 2002 to 7 October 2004.

The Honourable Justice Hill was admitted to the Degree of Doctor of Laws (Honouris Causa) from the University of Sydney on 24 May 2002.

The Honourable Justice Sackville was admitted to the Degree of Doctor of Laws (Honouris Causa) from the University of New South Wales on 17 May 2002.

The Honourable Justice Kiefel was appointed Deputy President of the Federal Police Disciplinary Tribunal for a period of five years with effect from 8 October 2001.

The Honourable Justice RD Nicholson was appointed an Officer in the Order of Australia on Australia Day 2002.

The Honourable Justice Weinberg was appointed Deputy President of the Federal Police Disciplinary Tribunal for a period of five years with effect from 8 October 2001.

The Honourable Justice Weinberg was re-appointed part-time Commissioner of the Australian Law Reform Commission for a period of two years from 1 January 2002.

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 the Head of a Statutory Agency of the Australian Public Service in respect

of the officers and staff of the Court employed under the *Public Service Act 1999* (section 18Q of the Federal Court of Australia Act).

Principal and District Registries

The Principal Registry of the Court, located in Sydney, is responsible for the overall administrative policies and functions of the Court's registries. The Principal Registry also provides various services to the Court including policy advice, personnel services, financial management, computing support, library services, property management and support to the judges' committees.

The Court has a District Registry in each capital city. The District Registries provide operational support for the Court as well as information 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 the Federal Court Rules. These include issuing process, taxing costs and settling appeal indexes. Many of them also exercise various powers under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*, which are delegated by judges. These include the power to conduct examinations of bankrupt individuals and associated persons under the Bankruptcy Act and examinations of company officers and others under the Corporations Act. Senior legal staff are delegated to exercise powers to make sequestration (bankruptcy) orders, orders for the winding up of companies and the setting aside of statutory demands. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Magistrates Act 1999*.

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, and for the Federal Magistrates Court in relation to non-family law matters.

Officers of the Court

Officers of the Court are appointed by the Registrar under section 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 (section 18Y of the Federal Court of Australia Act). A schedule of registrars appears in Appendix 3 on page 108 and a list of District Registrars appears in Table 1.2 below.

**Table 1.2
District Registrars
(as at 30 June 2002)**

Registry	District Registrar
Australian Capital Territory	John Mathieson
New South Wales	John Mathieson
Northern Territory	Caroline Edwards
Queensland	Graham Ramsey
South Australia	Patricia Christie
Tasmania	Alan Parrott
Victoria	Jamie Wood
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 2002 there were 381 persons employed as registry staff or as judges' personal staff. Generally, judges have two personal staff members. More details on Court staff are set out in Tables 4.1 to 4.3 in Chapter 4 on pages 65 to 67.

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 sections 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.

The management structure of the Court is set out in Appendix 2 on page 107.

Judges Committees

The administration of the Court is assisted by committees of judges, which include the following committees.

Admiralty	Judicial Education
Assisted Dispute Resolution	Library
Audit	Management of Appeals
Bankruptcy	Native Title Coordination
Corporations	Practice and Procedure
Equality and the Law	Rules
Federal Court Reports	Security
Finance	Transcript
Information Technology	

A number of other committees and working parties have been established to deal with particular issues. An ad hoc Certified Agreement Steering Committee was convened during the reporting year to assist in the development of the Court's third Certified Agreement under the *Workplace Relations Act 1996*.

Each committee is supported by staff of the Court and its role is defined by terms of reference. The membership of each committee is set out in Appendix 4 on page 110.

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.