

# **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 150 statutes of the Parliament. A list of these Acts appears in Appendix 4 on page 109.

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

The Court's outcome and output structure appears in Chapter 4 on page 61.

This report uses the outcome and output structure to outline the Court's work and performance during 2003-04. Chapter 3 reports on these issues in detail.

## **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 have other commissions and appointments.

As at 30 June 2004 there were 46 judges of the Court. They are listed below 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 3 whose work as members of other courts or tribunals occupied all, or most, of their time.

**Judges of the Court  
(as at 30 June 2004)**

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
<b>Chief Justice</b> The Hon Michael Eric John BLACK AC	Melbourne	
The Hon Bryan Alan BEAUMONT	Sydney	Supreme Court of Norfolk Island – Chief Justice Tongan Court of Appeal – Judge Supreme Court of Fiji – non-resident, semi-permanent Judge Administrative Appeals Tribunal – Presidential Member
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
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 Supreme Court of Fiji – non-resident, semi-permanent Judge Supreme Court of the ACT – Additional Judge
The Hon Malcolm Cameron LEE	Perth	Industrial Relations Court of Australia – Judge Supreme Court of the Cocos (Keeling) Islands – Additional Judge

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
The Hon Graham HILL	Sydney	Administrative Appeals Tribunal – Presidential Member Supreme Court of the ACT – Additional Judge
The Hon Terence John HIGGINS	Canberra	Supreme Court of the ACT – Chief Justice
The Hon Peter Cadden HEEREY	Melbourne	Defence Force Discipline Appeal Tribunal – President Australian Competition Tribunal – Deputy President
The Hon Richard Ellard COOPER	Brisbane	Supreme Court of the ACT – Additional Judge Australian Competition Tribunal – Deputy President
The Hon Antony Philip WHITLAM	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Christopher John Seymour Metford CARR	Perth	
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Catherine Margaret BRANSON	Sydney	
The Hon Kevin Edmund LINDGREN	Sydney	Copyright Tribunal – President
The Hon Brian John Michael TAMBERLIN	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Ronald SACKVILLE	Sydney	
The Hon Susan Mary KIEFEL	Brisbane	Federal Police Disciplinary Tribunal – President Australian Law Reform Commission – Part-time Commissioner
The Hon Robert David NICHOLSON AO	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Paul Desmond FINN	Adelaide	
The Hon Ross Alan SUNDBERG	Melbourne	
The Hon Shane Raymond MARSHALL	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon Anthony Max NORTH	Melbourne	Industrial Relations Court of Australia – Judge Supreme Court of the Act – Additional Judge
The Hon Rodney Neville MADGWICK	Sydney	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 Ronald MERKEL	Melbourne	
The Hon John Ronald MANSFIELD	Adelaide	
The Hon Alan Henry GOLDBERG	Melbourne	Australian Competition Tribunal – 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	Supreme Court of the ACT – Additional Judge Supreme Court of Fiji – non-resident, semi-permanent Judge Federal Police Disciplinary Tribunal – Deputy President Australian Law Reform Commission – Part-time Commissioner
The Hon John Alfred DOWSETT	Brisbane	
The Hon Peter Graham HELY	Sydney	Australian Competition Tribunal – Deputy President
The Hon Susan Coralie KENNY	Melbourne	Australian Law Reform Commission – Part-time Commissioner
The Hon Roger Vincent GYLES AO	Sydney	Supreme Court of the ACT – Additional Judge Court of Arbitration for Sport – Member Australian Competition Tribunal – Deputy President
The Hon Richard Alan CONTI	Sydney	
The Hon Margaret Ackary STONE	Sydney	Supreme Court of the ACT – Additional Judge
The Hon James Leslie Bain ALLSOP	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Garry Keith DOWNES AM	Sydney	Administrative Appeals Tribunal – Acting President
The Hon Peter Michael JACOBSON	Sydney	
The Hon Bradley Maxwell SELWAY	Adelaide	Supreme Court of the ACT – Additional Judge

<b>Judge</b>	<b>Location</b>	<b>Other Commissions/Appointments</b>
The Hon Annabelle Claire BENNETT	Sydney	Supreme Court of the ACT – Additional Judge
The Hon Bruce Thomas LANDER	Adelaide	Supreme Court of the ACT – Additional Judge
The Hon Susan Maree CRENNAN	Melbourne	

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

15 October – 2 November 2003	Justice Wilcox
3 November – 30 November 2003	Justice Beaumont
1 December – 17 December 2003	Justice Wilcox
27 January 2004 – 29 January 2004	Justice Beaumont
22 March 2004 – 27 March 2004	Justice Beaumont

Most of the judges of the Court devote a 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 Appendix 8.

### **Appointments and retirements**

During the year two judges were appointed to the Court:

The Honourable Justice Bruce Thomas Lander (resident in Adelaide) was appointed on 14 July 2003.

The Honourable Justice Susan Marie Crennan (resident in Melbourne) was appointed on 3 February 2004.

During the year two judges resigned from the Court:

The Honourable Justice Alastair Bothwick Nicholson AO RFD resigned his commission as a judge of the Court on 31 May 2004.

The Honourable Justice John William von Doussa resigned his commission as a judge of the Court on 15 August 2003.

Other appointments, resignations and retirements during the year included:

Justice Heerey was appointed a Deputy President of the Australian Competition Tribunal for the period 4 December 2003 to 15 February 2009.

Justice Whitlam completed his term as President of the Federal Police Disciplinary Tribunal on 16 March 2004.

Justice Kiefel was appointed President of the Federal Police Disciplinary Tribunal for a period of two years with effect from 22 April 2004.

Justice Goldberg was appointed President of the Australian Competition Tribunal for a period of five years with effect from 30 July 2003.

Justice Emmett was reappointed a Deputy President of the Copyright Tribunal for a period of three years with effect from 24 June 2004.

Justice Finkelstein was reappointed a Deputy President of the Copyright Tribunal for a period of three years with effect from 24 June 2004.

Justice Weinberg was reappointed a member of the Australian Law Reform Commission for a period of two years with effect from 1 January 2004.

Justice Gyles was appointed a Deputy President of the Australian Competition Tribunal for the period of 4 December 2003 to 21 August 2008.

Justice Downes was reappointed Acting President of the Administrative Appeals Tribunal for a period of one year with effect from 13 April 2004.

Justices French, Hill, Moore, Tamberlin, Marshall, North, Stone, Allsop, Selway, Bennett and Lander were appointed Additional Judges of the Supreme Court of the Australian Capital territory with effect from 20 January 2004.

## **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 and provides policy advice, personnel services, financial management, computing support, library services, property management and support to the judges' committees.

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

Legal staff of the registries perform statutory functions assigned to them by the Federal Court of Australia Act, Federal Court Rules and the *Federal Court (Corporations) Rules 2000*. These include issuing process, taxing costs and settling appeal indexes. Many of them also exercise various powers, which are delegated by judges, under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. 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 Australian Competition Tribunal, the Defence Force Discipline Appeal Tribunal and the Federal Police Disciplinary Tribunal. The Queensland and Western Australian District Registries are registries for the High Court. 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 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.

More information on the management of the Court is outlined in Chapter 4.

### **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 list of registrars is at Appendix 3 on page 106.

### **Staff of the Court**

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs and Marshals) are appointed or employed under the Public Service Act. On 30 June 2004 there were 394 persons employed Australia-wide 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 4.3 to 4.6 in Chapter 4 on pages 68 to 71.