

FEDERAL COURT
OF
AUSTRALIA

Annual Report

2005–2006

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CHIEF JUSTICE'S CHAMBERS
FEDERAL COURT OF AUSTRALIA
305 WILLIAM STREET
MELBOURNE VIC 3000

15 September 2006

The Honourable Philip Ruddock MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

I have 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 2005-2006 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 seventeenth annual report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Michael Kirby'.

M E J BLACK
Chief Justice

FEDERAL COURT REGISTRIES

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Level 17 Law Courts Building
Queens Square Sydney NSW 2000
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Email: query@fedcourt.gov.au
<http://www.fedcourt.gov.au>
Hours: 8.30am-5.30pm

Australian Capital Territory District Registry

Nigel Bowen Commonwealth Law Court Building
Childers Street
Canberra City ACT 2601
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TTY: (02) 6267 0537
Email: actman@fedcourt.gov.au
Counter Hours: 10.00am-1.00pm; 2.00pm-4.00pm
Contact Hours: 8.30am-5.00pm

New South Wales District Registry

Level 16 Law Courts Building
Queens Square
Sydney NSW 2000
Phone: (02) 9230 8567 Fax: (02) 9230 8535
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Email: nswdr@fedcourt.gov.au
Counter Hours: 9.00am-4.00pm
Contact Hours: 8.30am-5.00pm

Northern Territory District Registry

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State Square
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TTY: (08) 8982 0838
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Contact Hours: 8.30am-4.30pm

Queensland District Registry

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TTY: (07) 3248 1272
Email: qldreg@fedcourt.gov.au
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Contact Hours: 8.30am-5.00pm

South Australia District Registry

Level 5 Roma Mitchell Commonwealth Law Court
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Contact Hours: 8.30am-5.00pm

Tasmania District Registry

Edward Braddon Commonwealth Law Court Building
39-41 Davey St
Hobart TAS 7000
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TTY: (03) 6232 1865
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Counter Hours: 9.00am-4.30pm
Contact Hours: 8.30am-5.00pm

Victoria District Registry

Level 7 Owen Dixon Commonwealth Law Court
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Contact Hours: 8.30am-5.15pm

Western Australia District Registry

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An electronic version of the report is available at <http://www.fedcourt.gov.au>

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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 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 2005–06. 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 managing the business of the Court.

Judges of the Court are appointed by the Governor-General by commission and may not be removed except by the Governor-General on an address from both Houses of Parliament in the same session. All judges must retire at the age of 70.

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

As at 30 June 2006 there were 46 judges of the Court. They are listed below in order of seniority with details about any other commissions or appointments held on courts or tribunals. Of the 46 judges, there were four whose work as members of other courts or tribunals occupied all, or most, of their time.

**Judges of the Court
(at 30 June 2006)**

Judge	Location	Other Commissions/Appointments
Chief Justice The Hon Michael Eric John BLACK AC	Melbourne	
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 Australian Competition Tribunal – Deputy President Supreme Court of Fiji – non-resident, semi-permanent Judge Supreme Court of the ACT – Additional Judge
The Hon Terence John HIGGINS	Canberra	Supreme Court of the ACT – Chief Justice

Judge	Location	Other Commissions/Appointments
The Hon Peter Cadden HEEREY	Melbourne	Defence Force Discipline Appeal Tribunal – President Australian Competition Tribunal – Deputy President Administrative Appeals Tribunal – Presidential Member
The Hon Michael Francis MOORE	Sydney	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge Tonga Court of Appeal – 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 Administrative Appeals Tribunal – Presidential Member
The Hon Ronald SACKVILLE	Sydney	
The Hon Susan Mary KIEFEL	Brisbane	Federal Police Disciplinary Tribunal – President Supreme Court of Norfolk Island – Judge 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

Judge	Location	Other Commissions/Appointments
The Hon Rodney Neville MADGWICK	Sydney	Industrial Relations Court of Australia – Judge Supreme Court of the ACT – Additional Judge
The Hon John Ronald MANSFIELD	Adelaide	
The Hon Alan Henry GOLDBERG AO	Melbourne	Australian Competition Tribunal – President
The Hon Arthur Robert EMMETT	Sydney	Copyright Tribunal – Deputy President
The Hon Raymond Antony FINKELSTEIN	Melbourne	Australian Competition Tribunal – Deputy President Copyright Tribunal – Deputy President
The Hon Geoffrey Michael GIUDICE	Melbourne	Australian Industrial Relations Commission – President
The Hon Mark Samuel WEINBERG	Melbourne	Supreme Court of Norfolk Island – Chief Justice 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	Supreme Court of the ACT – Additional Judge
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 Administrative Appeals Tribunal – Presidential Member
The Hon Richard Alan CONTI	Sydney	

Judge	Location	Other Commissions/Appointments
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 Admiralty Rules Committee – Presiding Member
The Hon Garry Keith DOWNES AM	Sydney	Administrative Appeals Tribunal – President
The Hon Peter Michael JACOBSON	Sydney	
The Hon Annabelle Claire BENNETT AO	Sydney	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Bruce Thomas LANDER	Adelaide	Supreme Court of the ACT – Additional Judge Administrative Appeals Tribunal – Presidential Member
The Hon Antony Nicholas SIOPIIS	Perth	Administrative Appeals Tribunal – Presidential Member
The Hon Richard Francis EDMONDS	Sydney	Administrative Appeals Tribunal – Presidential Member
The Hon Peter Ross GRAHAM	Sydney	
The Hon Andrew Peter GREENWOOD	Brisbane	Administrative Appeals Tribunal – Presidential Member
The Hon Neil John YOUNG	Melbourne	
The Hon Steven David RARES	Sydney	
The Hon Berna COLLIER	Brisbane	
The Hon Dennis Antill COWDROY OAM	Sydney	
The Hon Anthony James BESANKO	Adelaide	
The Hon Christopher Neil JESSUP	Melbourne	

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

25 – 30 July 2005	Wilcox J
7 September – 9 October 2005	Spender J
10 – 16 October 2005	Wilcox J
12 – 21 May 2006	Wilcox J
22 May – 4 June 2006	Gray J

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. 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 seven judges were appointed to the Court:

The Honourable Justice Andrew Peter Greenwood (resident in Brisbane) was appointed on 4 August 2005.

The Honourable Justice Neil John Young (resident in Melbourne) was appointed on 30 November 2005.

The Honourable Justice Steven David Rares (resident in Sydney) was appointed on 2 February 2006.

The Honourable Justice Berna Collier (resident in Brisbane) was appointed on 8 February 2006.

The Honourable Justice Dennis Antill Cowdroy OAM (resident in Sydney) was appointed on 13 March 2006.

The Honourable Justice Anthony James Besanko (resident in Adelaide) was appointed on 3 April 2006.

The Honourable Justice Christopher Neil Jessup (resident in Melbourne) was appointed on 23 June 2006.

During the year three judges resigned from the Court:

The Honourable Justice Susan Maree Crennan resigned her commission as a judge of the Court on 1 November 2005.

The Honourable Justice Malcolm Cameron Lee resigned his commission as a judge of the Court on 1 May 2006.

The Honourable Justice Ronald Merkel resigned his commission as a judge of the Court on 15 May 2006.

Other appointments, resignations and retirements during the year included:

The Honourable Justice Lee resigned his appointments as a judge of the Industrial Relations Court of Australia and an additional judge of the Supreme Court of Cocos (Keeling Islands), with effect from 1 May 2006.

The Honourable Justice Heerey was re-appointed President of the Defence Force Discipline Appeal Tribunal, with effect from 8 September 2005, until the age of 70.

The Honourable Justice Heerey was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Moore was appointed a judge of the Tonga Court of Appeal with effect from April 2006.

The Honourable Justice Tamberlin was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Tamberlin was appointed to act as President of the Administrative Appeals Tribunal during any period when the President is absent from duty or from Australia or during a vacancy in the office of President. The appointment took effect from 23 November 2005.

The Honourable Justice Kiefel was re-appointed President of the Federal Police Disciplinary Tribunal, for a further period of 12 months, with effect from 22 April 2006.

The Honourable Justice Kiefel was re-appointed a part-time member of the Australian Law Reform Commission, for a period of three years, with effect from 7 April 2006.

The Honourable Justice Kenny was re-appointed a part-time member of the Australian Law Reform Commission, for a period of three years, with effect from 15 May 2006.

The Honourable Justice Gyles AO was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Allsop was appointed the presiding member of the Admiralty Rules Committee, pursuant to Article 42(1) of the *Admiralty Act 1988* (Cth), with effect from 7 July 2005.

The Honourable Justice Bennett AO was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Lander was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Siopis was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Edmonds was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

The Honourable Justice Greenwood was appointed a presidential member of the Administrative Appeals Tribunal, for a period of five years, with effect from 23 November 2005.

Deaths

During the year two judges died while in office:

The Honourable Justice Graham Hill died on 24 August 2005.

The Honourable Justice Peter Graham Hely died on 1 October 2005.

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 to the judges in each state, as well as registry services to legal practitioners and members of the public. The registries receive court and related documents, assist with the arrangement of court sittings and facilitate the enforcement of orders made by the Court.

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 Tasmanian District Registry provides registry services 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.

The registries of the Court are also registries 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 and 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 registrars must take an oath or make an affirmation of office before undertaking their duties (section 18Y of the Federal Court of Australia Act). Registrars perform statutory functions assigned to them by the Federal Court of Australia Act, Federal Court Rules and the *Federal Court (Corporations) Rules 2000*. These include issuing process, taxing costs and settling appeal indexes. They also exercise various powers delegated by judges under the *Bankruptcy Act 1966*, *Corporations Act 2001* and *Native Title Act 1993*. A number of staff in each registry also perform functions and exercise delegated powers under the *Federal Magistrates Act 1999*. Appendix 3 on page 106 lists the registrars of the Court.

Staff of the Court

The officers and staff of the Court (other than the Registrar and some Deputy Sheriffs and Marshals) are appointed or employed under the Public Service Act. On 30 June 2006 there were 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. 2 to 4.3 in Chapter 4 on pages 66–67.

CHAPTER 2

THE YEAR IN REVIEW

2.1 INTRODUCTION

During the year under review, the Court continued to achieve its objective of promptly, courteously and effectively deciding disputes according to law, in order to fulfil its role as a Court exercising the judicial power of the Commonwealth under the Constitution. Through its jurisdiction, the Court applied and upheld the rule of law to deliver remedies and enforce rights and, in so doing, contributed to the social and economic development and well being of all Australians. The Court's innovative approach to managing its work, and the way it operates as an organisation, brought continuing recognition of its leading role.

2.2 SIGNIFICANT ISSUES AND DEVELOPMENTS

During 2005–06, the Court maintained its commitment to achieving performance goals for the Court's core work while at the same time developing and implementing a number of key strategic and operational projects.

eCourt Services

Following the successful implementation of the Court's new case management system Casetrack, in 2005–06 the Court focused on its eCourt services to more fully realise the potential of technology to enhance services, and to improve access to justice for the wider community. This involved further development of Casetrack including program enhancements and development of projects to integrate eFiling with Casetrack.

During the reporting year the Court made further progress towards achieving its eCourt objectives by providing more information through eSearch, its online case information service.

eSearch is a free service that enables people, particularly legal practitioners, to search for case information on the Internet through the Court's website. A range of information is available through eSearch including name of a party and the cases in which they are involved; file number, date filed, type of application; associated cases if any; a description of the type of document filed eg Notice of Motion, and date filed; past and future listing dates; and copies of orders made by a judge or registrar. eSearch is used extensively by legal practitioners to monitor progress of their proceedings and to obtain routine information, such as the terms of orders made by the Court.

By the end of the reporting year the eSearch averaged 16,000 hits per month. This has given more time to staff in the registries to deal with more complex enquiries while practitioners, the media and the general public utilise eSearch for routine enquiries.

Many practitioners now conduct bankruptcy searches and look up other case details from their offices. In the past it was necessary to visit the Court's registry to obtain this kind of information. This has resulted in significant time savings for practitioners and, therefore, should reduce costs to their clients. Further enhancements to eSearch are planned for 2006–07 including a link to electronic versions of judgments.

eFiling

The use of eFiling also grew substantially over the reporting year with a 70% increase in documents filed through this service. It is worth noting, however, that less than 10 % of all documents filed are filed electronically with the Court. Further enhancements planned to the eFiling facility during the coming year are likely to result in a significant increase in the proportion of documents filed with the Court through eFiling.

The Court will continue to work on integrating the eFiling/eLodgment facility with Casetrack with the aim of eventually making electronically filed documents available through eSearch. This is expected to produce a substantial incentive to practitioners to file electronically.

Commonwealth Courts portal

The Court has been working with the Family Court and the Federal Magistrates Court to examine the feasibility of a Commonwealth Courts portal through which a broad range of court services and information could be delivered over the Internet to litigants, their legal representatives and the broader community.

Federal Court website in world's top 10

The Federal Court website was listed among the world's top 10 court websites for 2005–06 through a survey conducted by Justice Served (an alliance of court management and justice experts based in the United States). In 2006, 3,500 court websites were evaluated to recognise the best court online facilities in the world.

The Federal Court website has received three awards in the eight years the awards have been conducted. The evaluation criteria for the awards include: court functionality (users should have the ability to perform court business online); web functionality (design, ease of navigation); and extras (the website is geared to the public and frequently updated).

Legislative changes

A number of legislative changes during 2005–06 were of particular significance to the Court. The extension of the *National Security Information (Criminal and Civil Proceedings) Act 2004* to civil proceedings has led to the Court developing new systems, and installing the necessary infrastructure, for the handling of classified information. The changes to the *Workplace Relations Act 1996* and the *Migration Act 1958* have had, or are expected to have, a significant impact on the Court's workload. Work has commenced on developing the legislative, procedural and other arrangements for dealing with indictable criminal matters following the Treasurer's announcement in May 2006 that the Court is to have jurisdiction in relation to the new cartel offences.

Harmonised bankruptcy rules

In February 2006 the Court and the Federal Magistrates Court adopted a harmonised set of rules for proceedings under the *Bankruptcy Act 1968*. These Rules were the culmination of a project to develop and implement harmonised rules that:

- apply to bankruptcy matters in the Federal Court and the Federal Magistrates Court;
- are written in clear and simple language and in accordance with modern drafting standards;
- remove any ambiguities or areas of uncertainty that exist in the present bankruptcy rules of each Court; and
- include prescribed forms for the most common applications made in bankruptcy proceedings.

The harmonised rules were also used by the Family Court as the basis of its rules for bankruptcy proceedings.

2.3 THE COURT'S PERFORMANCE

Workload

During the year there were several important trends concerning the Court's workload. Actions commenced increased from 4,517 in 2004–05 to 6,158 in 2005–06 a 36% increase.

Actions finalised increased from 4,289 in 2004–05 to 6,516 in 2005–06 a 52% increase. It should be noted that from 2005–06 the Court has included Native Title joinder of party applications as finalised matters. While these are not counted as separate filings within Casetrack they are individual applications which must be dealt with by a judge or Registrar and from 2005–06 will be counted. For comparison purposes with 2004–05 when these figures weren't counted, if the 377 Native Title joinder of party applications that were finalised in 2005–06 are excluded, there has been a 43% increase in finalisations from 2004–05 to 2005–06.

The Court also expects to see a reduction in the order of 30% in the cost of finalisations (according to the Productivity Commission counting criteria) when the 2006 cost per case data which is presently being collated and audited is finalised.

Moreover, the registry work of the Court continues to grow with substantial productivity improvements, particularly from electronic services already mentioned. This is best explained by considering the combined workload of the Federal Court and the Federal Magistrates Court in the general federal law jurisdiction. The Federal Court's registries provide registry services for the Federal Magistrates Court. That work has continued to grow since 2000, when the Federal Magistrates Court was established. In 1999–2000 the combined number of filings in the Federal Magistrates Court and the original jurisdiction of the Federal Court was 5,885 compared to 13,719 in 2005–06. In simple numbers of cases this represented a 133% increase in cases dealt with by the Registry. By comparison, in the same period, the general Registry staff of the Federal Court has increased by only 35 in numbers or 17%.

Migration matters

The *Migration Litigation Reform Act 2005* (Cth) (the Act), which commenced on 1 December 2005, had a substantial impact on the Court's migration jurisdiction requiring extensive and innovative managerial responses by the Court. Almost all first instance migration cases are now dealt with by the Federal Magistrates Court with the Federal Court only having original jurisdiction for the judicial review of a decision under the Migration Act in a limited number of prescribed circumstances.

The Act also amended the *Federal Court of Australia Act 1976* (Cth) with the result that the majority of migration appeals from the Federal Magistrates Court are to be heard by a single judge unless referred to a Full Court.

In order to ensure expedient management of these appeals, the Court has implemented strategies to manage the entire migration workload through the deployment of national resources.

Rather than allocate appeals to individual judges according to the usual docket allocation system, migration appeals and related applications are being listed for hearing in the next scheduled Full Court sitting period (which occurs every three months for a four week period). Systems have been developed for the identification of matters raising similar issues or where there is a history of previous litigation. This process allows for similar cases to be managed by a single judge with as many as up to 20 cases per day being finalized by one judge. The Court has also developed a system (modeled along similar systems for Federal Circuit Courts of Appeals in the United States) whereby legal researchers provide case summaries in migration appeals. These summaries identify the history of the matter and may also identify whether the matter involves similar issues with other appeals. Similar issue appeals may be grouped together to enable efficient consideration.

Management of migration appeals by fixing appeals and applications for hearing in the four Full Court sitting periods has, to date, provided greater certainty and consistency for litigants. It has also resulted in most cases being heard and determined quickly and without delay.

Performance against time standards

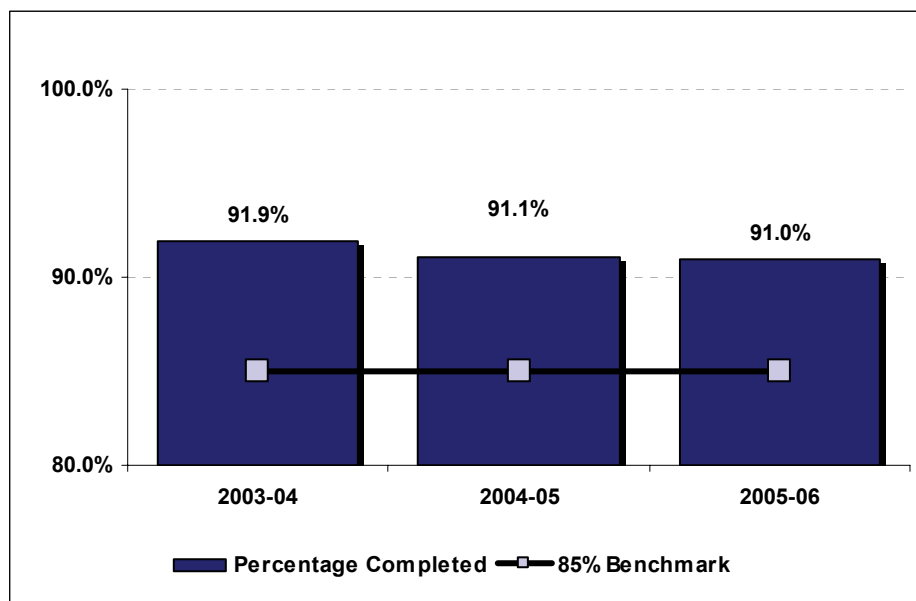
The Court was one of the first courts in Australia to establish and report against performance standards. The Court maintains two time goals: the first goal concerns the time taken from filing a case to completion; the second goal concerns the time taken to deliver reserved judgments.

The time goals assist the Court in managing its work to achieve the performance criteria. They do not, of course, determine how long all cases will take as some are very long and complex and others will, necessarily, be very short.

Time Goal 1: 85% of cases completed within 18 months of commencement

During the reporting year, the Court completed 91% of cases in less than eighteen months, compared with 91.1% in the previous year. As shown by the following chart, over the last three years the Court has consistently exceeded the benchmark.

Figure 2.1
Time span to complete benchmark
2003–04 to 2005–06



Time Goal 2: *Judgments to be delivered within three months*

The Court's goal for the delivery of reserved judgments is within a period of three months. Success in meeting this goal depends upon the complexity of the case and the pressure of other business upon the Court. It was not possible to report on this time goal in 2004–05 as the Court was developing the necessary reports within the new Casetrack system. During 2005–06 the Court handed down 2,164 judgments. While the reporting system is still being refined, initial data indicates that 94% of appeals (both full court and single judge) were delivered within three months and 89% of judgments at first instance were delivered within three months of the date of being reserved.

The initial data also indicates that the median time for delivery of reserved judgments in appeals (both full court and single judge) was 16 days and 24 days for first instance judgments. The shorter time frame for appeals reflects the high number of migration appeals, the majority of which are very short cases and are disposed of expeditiously.

CHAPTER 3

**THE WORK OF THE COURT
IN 2005–06**

3.1 INTRODUCTION

The Federal Court has one key outcome identified for its work, which is, through its jurisdiction, to apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and wellbeing of all Australians.

This chapter reports on the Court's performance against this objective. In particular, it reports extensively on the Court's workload during the year, as well as its management of cases and performance against its stated workload goals. The chapter also reports on aspects of the work undertaken by the Court to improve access to the Court for its users, including changes to its practices and procedures. Information about the Court's growing work with overseas courts is also covered.

3.2 MANAGEMENT OF CASES AND DECIDING DISPUTES

Introduction

The following examines the Court's jurisdiction, management of cases, workload and use of assisted dispute resolution.

As reported in the 2004–2005 Annual Report, the Court fully implemented a new case management system, Casetrack, during that year, which replaced the Court's existing FEDCAMS system. It is important to note that the counting methodology of Casetrack is fundamentally different to FEDCAMS in that Casetrack classifies matters in the Court according to eleven main categories, described as 'causes of action' (COA). This differs from FEDCAMS where matters in the Court were counted as 'filings' categorised according to the legislation they were filed under (more than 150 different pieces of legislation make up the Court's jurisdiction). Accordingly, cases in Casetrack are counted differently, with the effect that in this year's report, the statistics reported for 2001–02 through to 2003–04 may be different from those reported for 2004–05 and 2005–06. In addition, the Court is still in the process of developing and refining the reports to be produced in Casetrack, so in a very small number of areas it has not been possible to produce statistics to report on aspects of the Court's work this year.

The Court's jurisdiction

The Court's jurisdiction is broad, covering almost all civil matters arising under Australian federal law and some summary criminal matters. It also has jurisdiction to hear and determine any matter arising under the Constitution.

Cases arising under Part IV (restrictive trade practices) and Part V (consumer protection) of the *Trade Practices Act 1974* constitute a significant part of the workload of the Court. These cases often raise important public interest issues involving such matters as mergers, misuse of market power, exclusive dealing or false advertising. See Figure 5.8 on page 124 for comparative statistics regarding Trade Practices Act matters.

Many cases also arise under the *Administrative Decisions (Judicial Review) Act 1977*, which provides for judicial review of most administrative decisions made under Commonwealth enactments on grounds relating to the legality, rather than the merits, of the decision. Under the Act, the Court also hears appeals on questions of law from the Administrative Appeals Tribunal.

The Court has jurisdiction under the *Judiciary Act 1903* to hear applications for judicial review of decisions by officers of the Commonwealth. Until 1 December 2005, this jurisdiction included the review of ‘privative clause’ and other decisions by the Migration Review Tribunal and the Refugee Review Tribunal under the *Migration Act 1958*. The Court’s migration jurisdiction is discussed on page 36.

The Court hears taxation matters on appeal from the Administrative Appeals Tribunal. It also exercises a first instance jurisdiction to hear objections to decisions made by the Commissioner of Taxation.

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

A significant part of the Court’s jurisdiction derives from the *Native Title Act 1993*. The Court has jurisdiction to hear and determine native title determination applications, revised native title determination applications, compensation applications, claim registration applications, applications to remove agreements from the Register of Indigenous Land Use Agreements and applications about the transfer of records. The Court also hears appeals from the National Native Title Tribunal (NNTT) and matters filed under the *Administrative Decisions (Judicial Review) Act* involving native title. The Court’s native title jurisdiction is discussed on page 38.

Another important part of the Court’s jurisdiction derives from the *Admiralty Act 1988*. The Court has concurrent jurisdiction with the Supreme Courts of the States and Territories to hear maritime claims under this Act. Ships coming into Australian waters may be arrested for the purpose of providing security for money claimed from ship owners and operators. If security is not provided, a judge may order the sale of the ship to provide funds to pay the claims. During the reporting year the Court’s Admiralty Marshal made 16 arrests and carried out three judicial sales. See Figure 5.10 on page 126 for a comparison of Admiralty Act matters filed in the past five years.

The Court’s jurisdiction under the *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* (ASIC Act) covers a diversity of matters ranging from the appointment of provisional liquidators and the winding up of companies, to applications for orders in relation to fundraising, corporate management and misconduct by company officers. The jurisdiction is exercised concurrently with the Supreme Courts of the States and Territories. See Figure 5.7 on page 123 for a comparison of corporations matters filed in the last five years.

The Court exercises jurisdiction under the *Bankruptcy Act 1966*. It has power to make sequestration (bankruptcy) orders against persons who have committed acts of

bankruptcy and to grant bankruptcy discharges and annulments. The Court's jurisdiction includes matters arising from the administration of bankrupt estates. See Figure 5.6 on page 122 for a comparison of bankruptcy matters filed in the last five years.

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 appellate jurisdiction is discussed on page 34. Figure 5.11 on page 127 shows the appeals filed in the Court since 2001–02.

This summary refers only to some of the principal areas of the Court's work. Statutes under which the Court exercises jurisdiction are listed in Appendix 4 on page 109.

Changes to the Court's jurisdiction in 2005–06

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

- *Anti-Terrorism Act (No 2) 2005*
- *Australian Sports Anti-Doping Authority Act 2006*
- *Building and Construction Industry Improvement Act 2005*
- *Energy Efficient Opportunities Act 2006*
- *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*
- *Migration Litigation Reform Act 2005*
- *National Security Information (Criminal Proceedings) Legislation Amendment Act 2005*
- *Offshore Petroleum Act 2006*
- *Workplace Relations Amendment (Work Choices) Act 2005*

Amendments to the Federal Court of Australia Act

During the reporting year the Federal Court of Australia Act was amended by the *Migration Litigation Reform Act 2005* and the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2006*.

The Migration Litigation Reform Act amended the Federal Court of Australia Act by inserting a new section dealing with summary judgment. Section 31A provides that the Court may give summary judgment in a matter where it is satisfied that a proceeding or part of a proceeding, or a defence to a proceeding or part of a proceeding, has no reasonable prospect of success.

The Jurisdiction of the Federal Magistrates Court Legislation Amendment Act amended the Federal Court of Australia Act to allow the Federal Court to transfer any matter to the Federal Magistrates Court, irrespective of whether the Federal Magistrates Court would otherwise have jurisdiction to deal with such a matter.

The Attorney-General's Department is considering proposals by the Court that the Federal Court of Australia Act be amended to:

- empower the Court to refer all or part of a proceeding to a referee for report to the Court;
- make it clear that a single judge may grant an interlocutory injunction to operate pending a determination of an appeal to a Full Court; and
- allow for certain types of appeals to be heard and determined by a two judge appeal panel.

Amendments to the Federal Court of Australia Regulations

On 1 May 2006 the Federal Court of Australia Regulations 2004 were amended to:

- allow the Court to invoice legal practitioners for court fees;
- allow 30 days for the payment of invoiced fees; and
- give the Registrar of the Court a discretion to refund setting-down fees in certain circumstances.

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.

The Rules are kept under review. New and amending rules are made to ensure that the Court's procedures are current and responsive to the needs of modern litigation. They also provide the framework for new jurisdiction conferred upon the Court. A review of the Rules is often undertaken as a consequence of changes to the Court's practice and procedure described elsewhere in this report. Where appropriate, proposed amendments are discussed with the Law Council of Australia and other relevant organisations.

During the reporting year, a number of amendments were made to the Rules. These included amendments to:

- support a new system for processing documents lodged with the Court through its electronic filing system;
- insert a new Order 25A setting out rules relating to freezing orders (also known as Mareva orders after *Mareva Compania Naviera SA v International Bulkcarriers SA (The Mareva)* [1975] 2 Lloyd's Rep 509, or asset preservation orders);
- insert a new Order 25B setting out rules relating to search orders (also known as Anton Piller orders, after *Anton Piller KG v Manufacturing Processes Ltd* [1976] Ch 55);
- exempt proceedings under the *Admiralty Act 1988* from the operation of Order 62 rule 36A, which provides for the reduction in the amount of costs (including disbursements) that might be recovered in certain proceedings;
- replace Orders 69 and 69A and the associated forms with new Orders 69 and 69A and forms to more accurately reflect the legislative regime for trans-Tasman proceedings under Part IIIA of the Federal Court of Australia Act and the *Evidence and Procedure (New Zealand) Act 1994* (Cth);

- amend Order 46 rule 7B to streamline the processes for asking a Registrar to refer a matter to a Judge and for seeking a review of a Registrar’s decision, with amendments to forms 47 and 152 to include a note referring parties to the new rule;
- amend Order 52B rule 5 to address certain concerns about the documents to be filed and served by the Commissioner for Taxation in matters under private rulings;
- amend various rules and forms to prescribe the form of certificate to be used by parties and lawyers for the purpose of complying with sections 486D and 486I of the *Migration Act 1958*;
- amend Order 70 and related forms to reflect the changes to the *Aboriginal and Torres Strait Islander Act 2005*;
- amend Order 78 to provide for a new rule 41AA dealing with short titles for certain proceedings under the *Native Title Act 1993*.

On 6 February 2006 the Federal Court (Bankruptcy) Rules 2005 replaced Order 77 of the Federal Court Rules. The Bankruptcy Rules were the culmination of a project with the Federal Magistrates Court to develop and implement harmonised Bankruptcy Rules. The project also provided an opportunity to simplify the language and structure of the rules. The Family Court had regard to the harmonised Bankruptcy Rules when developing its rules concerning proceedings under the Bankruptcy Act 1966 that are within its jurisdiction. A common set of rules in this jurisdiction has proven to be advantageous to the Courts, registrars, registry staff, legal representatives and litigants.

Practice Notes supplement the procedures set out in the Rules of Court. On 1 December 2005, the Chief Justice issued Practice Note No 22 – Appeals against Appealable Objection Decisions, made under the *Taxation Administration Act 1953* which provides guidance for practitioners on the first directions hearing in appeals against appealable objection decisions.

In May 2006 the Chief Justice issued Practice Note No 23 – Freezing Orders (also known as *Mareva* orders or asset preservation orders) and Practice Note No 24 – Search Orders (also known as Anton Piller orders). These Practice Notes complement the new Orders 25A and 25B. Practice Note No 10, which dealt with Anton Piller orders, was revoked.

During the reporting year the Chief Justice also issued a Notice to Practitioners: Conduct of Admiralty and Maritime Work in the Federal Court of Australia. This Notice explains the general approach to be taken to the conduct of Admiralty and maritime matters in the Federal Court.

Practice Notes and Notices to Practitioners are available through District Registries and on the Court’s Internet home page. The Court has also published various Notices to Practitioners issued by the District Registries. These are available from the Court’s home page, the District Registries and in loose-leaf legal services.

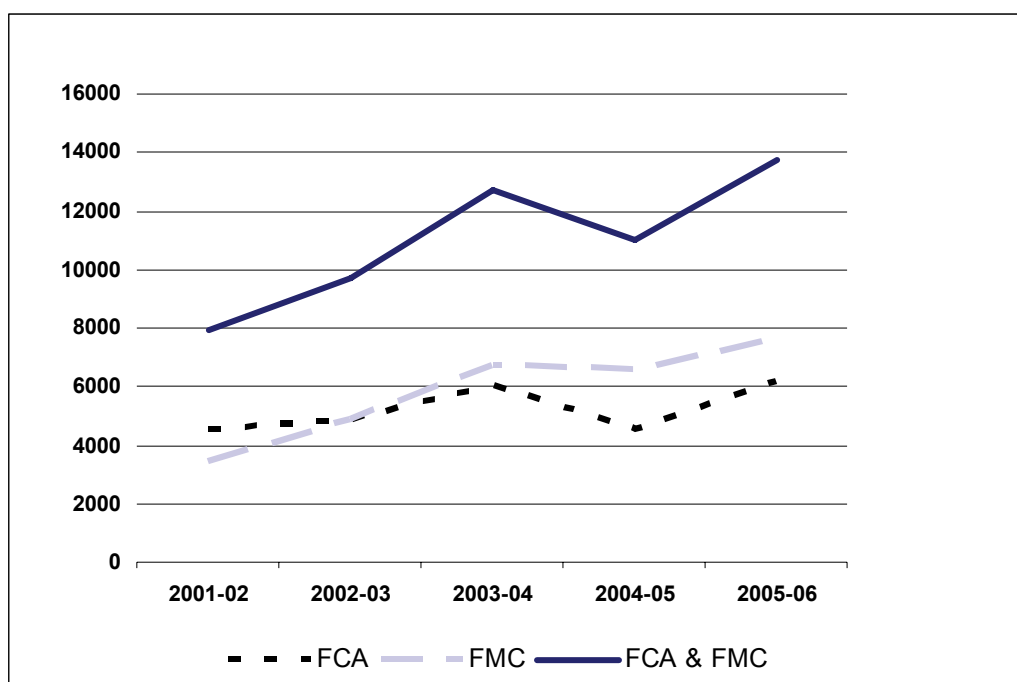
Workload of the Federal Court and Federal Magistrates Court

The Court has concurrent jurisdiction with the Federal Magistrates Court in a number of areas of general federal law including bankruptcy, human rights, workplace relations and migration matters. The registries of the Federal Court provide registry services for the Federal Magistrates Court in its general federal law jurisdiction.

As shown in Figure 3.1 below, the combined number of filings in the two courts has been growing since the establishment of the Federal Magistrates Court in mid-2000. In 2005–06, a total of 13,719 matters were filed in the two courts. In 1999–2000, there were 6,276 filings in the two courts.

The growth in the number of filings has had a considerable impact on the Federal Court’s registries, which process the documents filed in these matters for both courts and provide the administrative support for each matter to be heard and determined by the relevant Court.

Figure 3.1
Filings to 30 June 2006
Federal Court Australia (FCA) and Federal Magistrates Court (FMC)



Case flow management of the Court’s jurisdiction

The Court has adopted as one of its key case flow management principles the establishment of time goals for the disposition of cases and the delivery of reserved judgments. The time goals are supported by the careful management of cases through the Court’s Individual Docket System, and the implementation of practices and procedures designed to assist with the efficient disposition of cases according to law.

Under the Individual Docket System, a matter will usually stay with the same judge from commencement until disposition. This means a judge has greater familiarity with each case and leads to the more efficient management of the proceeding.

Disposition of matters other than native title

In 1999–2000 the Court set a goal of 18 months from commencement as the period within which it should dispose of at least 85% of its cases (excluding native title cases). The time goal was set having regard to the growing number of long, complex and difficult cases, the impact of native title cases on the Court’s workload, and a decrease in the number of less complex matters (such as winding up and related applications under the Corporations Law). It is reviewed regularly by the Court in relation to workload and available resources. The Court’s ability to continue to meet its disposition targets is dependent upon the timely replacement of judges.

Notwithstanding the time goal, the Court expects that most cases will be disposed of well within the 18 month period, with only particularly large and/or difficult cases requiring more time. Indeed, many cases are urgent and need to be disposed quickly after commencement. The Court’s practice and procedure facilitates early disposition when necessary.

During the five year period from 1 July 2001 to 30 June 2006, 88.7% of cases (excluding native title matters) were completed in less than 18 months, 82.6% in less than 12 months and 62.7% in less than six months (see Figure 5.4 on page 120). Figure 5.5 on page 121 shows the percentage of cases (excluding native title matters) completed within 18 months over the last five reporting years. The figure shows that in 2005–06, 91% of cases were completed within 18 months. This compares to 91.1% in the previous reporting year.

As noted in the 2004–2005 Annual Report, the Court expects that the proportion of cases completed within 18 months will gradually decrease as the proportion of complex cases that make up the Court’s workload increase. Simpler matters would commence in, or be transferred to, the Federal Magistrates Court. The longer time needed to resolve complex cases, coupled with the impact of the large number of native title matters, will affect the Court’s ability to meet its goal of disposing of 85% of matters within 18 months. However, the change in the mix of cases will lead to a reduction in the time to complete complex cases as more judicial resources become available to deal with them.

Special issues arise in relation to the disposition of native title matters. This is discussed on pages 38 to 42.

Delivery of judgments

In the reporting period, 2,164 Full Court and single judge judgments were delivered. Of these, 263 were delivered in Full Court appeals and 1,901 in single judge matters. These figures include both written judgments and judgments delivered orally on the day of the hearing, immediately after the completion of evidence and submissions.

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

The Court has set a goal for the delivery of judgments of three months from the date a judgment is reserved to the date when it should be delivered. The degree to which the Court is able to meet this goal depends on the complexity of each case in question and other issues, such as the pressure of the business upon the Court. It was not possible to report on this time goal in 2004–05 as the Court was developing the necessary reports within the new Casetrack system. During 2005–06 the Court handed down 2,164 judgments. While the reporting system is still being refined, initial data indicates that 94% of appeals (both full court and single judge) were delivered within three months and 89% of judgments at first instance were delivered within three months of the date of being reserved.

The initial data also indicates that the median time for disposition of appeals (both full court and single judge) was 16 days and 24 days for matters at first instance. The shorter time frame for appeals reflects the high number of migration appeals, the majority of which are very short cases and are disposed of expeditiously.

Decisions of interest

During the year the judges published over 2,164 decisions. Appendix 7 on page 135 includes a summary of decisions of interest, and illustrates the Court's varied jurisdiction.

The workload of the Court in its original jurisdiction

Incoming work

In the reporting year, 4,829 cases were commenced in, or transferred to, the Court's original jurisdiction, an increase of 1,696 compared to 2004–05. The increase between the two reporting years was due principally to a large increase in corporations filings.

Matters transferred to and from the Court

Matters may be remitted or transferred to the Court under:

Judiciary Act 1903, section 44
Cross-vesting Scheme Acts
Corporations Act 2001
Federal Magistrates Act 1999

During 2005–06, 60 matters were remitted or transferred to the Court:

17 from the High Court of Australia
26 from the Federal Magistrates Court
17 from other courts

Matters may be transferred from the Court under:

Federal Court of Australia (Consequential Provisions) Act 1976
Jurisdiction of Courts (Cross-vesting) Act 1987
Administrative Decisions (Judicial Review) Act 1977
Bankruptcy Act 1966
Trade Practices Act 1974
Corporations Act 2001
Administrative Appeals Tribunal Act 1975

During 2005–06, 120 matters were transferred from the Court:

80 to the Federal Magistrates Court
40 to other courts

Matters completed

Table 5.2 on page 115 shows a comparison of the number of matters commenced in the Court's original jurisdiction and the number completed. The number of matters completed during the reporting year was 5,171 against 3,112 in the previous reporting year. The increase in the number of completed matters was primarily due to the corporations jurisdiction.

Matters on hand

The total number of matters on hand in the Court's original jurisdiction at the end of the reporting year was 3,240 (including native title matters) (see Table 5.2 on page 115), compared with 3,354 in 2004-05.

Age of pending workload

The comparative age of matters pending in the Court's original jurisdiction (against all major causes of action, other than native title matters) as at 30 June 2006 is set out in Table 3.1.

Native title matters are not included in Table 3.1 because of their complexity, the role of the NNTT and the need to acknowledge regional priorities. The age of pending native title matters is set out in Table 3.4 on page 41.

**Table 3.1 Age of current matters
(excluding appeals and related actions and native title matters)**

Current Age	Under 6 mths	6 – 12 mths	12 – 18 mths	18 – 24 mths	Over 24 mths	Sub-Total
Cause of Action						
Administrative Law	63	50	7	11	6	137
Admiralty	29	31	10	4	7	81
Bankruptcy	72	43	21	8	33	177
Competition Law	5	6	6	6	17	40
Trade Practices	77	79	41	43	103	343
Corporations	502	75	31	45	25	678
Human Rights	8	10	4	4	7	33
Industrial	83	33	4	11	8	139
Intellectual Property	80	54	18	15	42	209
Migration	16	15	8	6	20	65
Miscellaneous	34	24	8	6	5	77
Taxation	96	121	30	62	166	475
Total	1065	541	188	221	439	2454
% of Total	43.4%	22.0%	7.7%	9%	17.9%	100%
Running Total	1065 (43.4%)	1606 (65.4%)	1794 (73.1%)	2015 (82.1%)	2454 (100%)	

Table 3.1 shows that as at 30 June 2006 there were 660 cases over 18 months old compared to 776 in 2005. Taxation and trade practices make up a high proportion of the matters over 24 months old.

The Court will continue to focus on reducing its pending caseload and the number of matters over 18 months old. A collection of graphs and statistics concerning the workload of the Court is contained in Appendix 5 to this report commencing on page 113.

The Court's appellate jurisdiction

The appellate jurisdiction

The appellate workload of the Court continues to be substantial. While most of the appeals arise from decisions of single judges of the Court or the Federal Magistrates Court, some are in relation to decisions by State and Territory courts exercising certain federal jurisdiction.

The number of appeals and related actions are dependent on many factors including the number of first instance matters disposed of in a reporting year, the nature of matters filed in the Court, and whether the jurisdiction of the Court is enhanced or reduced by legislative changes or decisions of the High Court of Australia on the constitutionality of legislation.

The *Migration Litigation Reform Act 2005* (Cth) (the Act), which commenced on 1 December 2005, amended legislation affecting the Court's original and appellate jurisdiction. The Court's original jurisdiction for the judicial review of decisions under the *Migration Act 1958* (Cth) is now exercisable in only limited circumstances as the Act, in effect, gave the Federal Magistrates Court exclusive first instance jurisdiction in migration cases.

The Act also amended the *Federal Court of Australia Act 1976* (Cth) to provide that the appellate jurisdiction of the Court in relation to an appeal from a migration judgment of the Federal Magistrates Court is to be exercised by a single judge or a Full Court (where a Judge considers that it is appropriate for the appellate jurisdiction of the Court in relation to the appeal to be exercised by a Full Court).

Subject to sections (1A) and (AA) of the Federal Court Act, appeals from the Federal Magistrates Court may be heard by a Full Court of the Federal Court or by a single judge. All other appeals must be heard by a Full Court, which is usually constituted by three, and sometimes five, judges. Any increase in the number of Full Court hearings adds to the workload of the Court. Thus judges who sit on Full Courts would have less time to devote to their own individual docket work, and this also impacts on the Court's ability to dispose of first instance work. Any substantial increase in Full Court work may result in a proportionate reduction in the Court's ability to do trial work.

The Court monitors the effects of increases in the number of appeals on its workload and, as necessary or relevant, will introduce changes to appellate practice and procedure to ameliorate or limit these effects so that the Court continues to deal with its appellate and first instance work in an efficient, effective and timely manner.

Towards the end of each calendar year, the Court publishes its program of Full Court sittings for the following year. In the 2006 calendar year, four Full Court sittings have been programmed for Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, Hobart and Darwin. Once an appeal is ready to be heard, it can usually be listed for the next scheduled Full Court sitting in the capital city where the matter was heard at first instance.

When appeals are considered to be sufficiently urgent, the Court will convene a special sitting of a Full Court which may, if necessary and appropriate, hear the appeal in a capital city other than that in which the case was originally heard or use video conferencing facilities. During the reporting year, 16 special hearings of the Full Court (totalling 11 hearing days) were held to enable the early disposition of urgent appeals.

The appellate workload

In 2005–06, 1,329 appeals and related actions were filed in the Court (see Table 5.3 on page 116) – 55 less than the previous reporting year. An Appeal or Related Action includes any appeal or interlocutory application filed in the Court's appellate jurisdiction in relation to a decision of a court exercising federal jurisdiction. The related actions include, for example, applications to the Court for leave or special

leave to appeal, an extension of time within which to institute an appeal or security for costs in relation to an appeal.

The Federal Magistrates Court continues to be the most significant source of appeals and related actions accounting for 77.7% (1,033) of the total number of appeals and related actions filed in the Court in 2005–06. Further information on the source of appeals and related actions is set out in Figure 5.12 on page 128.

In the reporting year 1,345 appeals and related actions were completed, compared with 1,177 in 2004–05. The higher number is largely attributable to the increase in the number of appeals and related actions, particularly migration cases, from the Federal Magistrates Court.

The majority of appeals and related actions from the Federal Magistrates Court were heard and determined by single judges exercising the appellate jurisdiction of the Court. Over the four Full Court sitting periods during the reporting year, only 68 appeals from the Federal Magistrates Court were fixed for hearing before a Full Court, comprising three judges.

As at 30 June 2006 there were 580 pending appeals and related actions – 61 less than for the previous reporting year.

The comparative age of matters pending in the Court’s appellate jurisdiction (including native title appeals) as at 30 June 2006 is set out in Table 3.2 below.

The annual report statistics which are produced in early July 2006 indicate that at 30 June 2006 there were 40 appeals and related actions over 18 months old. Further analysis of the figures has indicated that 21 of the 40 identified appeals and related actions were in fact finalised on or before 30 June 2006 however they were not finalised in Casetrack until mid August 2006. Of the 19 remaining appeals and related actions over 18 months old, one quarter involve associated appeals and related actions that arise out of the same or related proceedings at first instance.

Table 3.2 Age of Current Appeals and Related Actions

Current Age	Less than 6 mths	6–12 mths	12–18 mths	18–24 mths	Over 24 mths	Total
Appeals and related actions	413	90	37	27	13	580
% of total	71.2%	15.5%	6.4%	4.7%	2.2%	100.0%
Running total	413	503	540	567	580	
Running %	71.2%	86.7%	93.1%	97.8%	100%	

The Court’s migration jurisdiction

New arrangements

Prior to the commencement of the *Migration Litigation Reform Act 2005 (Cth)* on 1 December 2005, referred to above at page 35, the Court had already introduced

procedures to streamline migration appeals from the Federal Magistrates Court by removing the requirement for any pre-hearing court appearances. In consultation with the Department of Immigration and Multicultural Affairs, appeal books with pre-determined content, are now prepared by the solicitors for the Minister for Immigration and Multicultural Affairs in all appeals where the appellant is not represented by a solicitor or barrister and in all other cases, the solicitor or barrister for the appellant prepares the appeal books.

The Court then developed and implemented further strategies for managing its entire migration workload to coincide with the introduction of the new reforms in December 2005.

The Court has in place systems to assist with the identification of matters raising similar issues and where there is a history of previous litigation. This process allows for similar cases to be managed together, between 10 and 20 per day, resulting in more timely and efficient disposal of matters.

All migration appeals and related applications (whether to be heard by a single judge or by a Full Court) are being listed for hearing in the next scheduled Full Court sitting period. To date, fixing appeals and applications for hearing in the four, four-week, scheduled Full Court sitting periods has provided greater certainty and consistency for litigants. It has also resulted in a significant number of cases being heard and determined within the same four-week sitting period.

Where any migration appeal or application requires an expedited hearing, the matter is allocated to a docket judge or duty judge or referred to a specially convened Full Court.

Impact of changes on workload

In recent years the Court has had to deal with a significant number of migration matters at first instance. In 2003–04 there were over 2,590 migration matters filed in, or remitted to, the Court in its original jurisdiction. This included 1,716 matters remitted by the High Court.

The Court's migration workload decreased in 2005–06, with 128 migration matters commenced in its original jurisdiction. The change in workload reflects the fact that most migration applications are now commenced in the Federal Magistrates Court.

Migration Act matters now form a substantial and increasing proportion of the Court's appellate jurisdiction. In 1998–99, 22.7% of appeals concerned decisions under the Migration Act. This can be compared to 2005–06, where 79% of appeals involved a review of a decision under the Migration Act. Table 3.3 shows how the number of appeals involving the Migration Act has increased as a proportion of the appellate workload since 2000–01. This trend is expected to continue, with most of the appeals being against decisions of the Federal Magistrates Court. The Court has introduced a number of procedures to streamline the preparation and conduct of these appeals, most of which are heard by a single Judge rather than a Full Court. It is important to note that rather than seeking additional judicial resources, the Court has implemented

structural and procedural changes to facilitate the expeditious management of the migration workload.

Table 3.3
Migration Act appeals and related actions as a proportion of
all appeals and related actions.

Full Court Appeals	2001–02	2002–03	2003–04	2004–05	2005–06
Migration Appeals	375	437	663	1050	1050
%	56.4%	61.8%	73.4%	75.8%	79%
Total Appeals	665	707	903	1385	1329

The Court’s Native Title Jurisdiction

Since 30 September 1998, the Court has been responsible for the management and determination of native title applications. To perform these functions the Court has a wide range of powers under the *Native Title Act 1993* (Cth) (NTA) in relation to the management and resolution of native title applications.

Under the regime, applications are filed in the Court. Applications that satisfy the Court’s requirements are referred to the National Native Title Tribunal (NNTT), which applies a registration test to determine whether the native title applicant has the right to negotiate. The NNTT will also mediate applications referred to it by the Court.

The native title jurisdiction presents particular challenges from a case management perspective for the Court. Purposefully, the Court has adopted an active approach to the management of native title cases, which aims to create and support a culture of activity and progress. The Court’s approach recognises the special and complex character of native title litigation and the need to adopt a strategic approach to the management of these cases without compromising the independence of the Court in its decision-making. The Court uses a range of innovative strategies to assist with the management of native title cases.

This section of the report sets out some of the ways in which the Court meets this challenge.

National allocation

The Native Title List is managed at a national level. Cases are allocated to a ‘provisional docket judge’ upon filing (usually for the period of referral to the NNTT for mediation although not always) and monitored by the Court.

Provisional docket judges manage their cases having regard to the Court being a national Court and the desirability of achieving a nationally consistent approach while having proper regard to local circumstances and the needs of the parties.

When the matter requires substantive action, for example the hearing of a contentious interlocutory application, or the matter is ready for a main hearing, or the case

requires close case management, the case will be allocated through the Chief Justice to a substantive docket judge. This judge may be resident anywhere in Australia, regardless of the location of the land or waters that are the subject of the matter.

At 30 June 2006, 368 native title matters had been substantively allocated, of which 151 were still active and managed by judges of the Court.

Case management strategies

All native title matters are proceedings of the Court and are subject to its practice and procedure. They are subject also to the generally applicable Rules of Court (as well as to a small number of rules relating specifically to native title) and to the various practice notes and directions issued by the Chief Justice and the Registrar.

As with other litigation, native title cases are subject to intensive case management. There is extensive judicial involvement in the supervision and monitoring of a case in progress and native title is subject to more or less the same limitations and opportunities for innovation as any other matter in the Court. Nonetheless, native title is a young jurisdiction and tends to lend itself to novel approaches. Overall the Court encourages innovative pathways to the settling of a claim, and uses a number of different mechanisms to progress matters, including the making of orders requiring a high level of specificity in the timetabling of mediation, the use of pre-mediation conferences, regional case conferences, the referral of a matter or a specific issue to mediation by an officer of the Court, the appointment of Court experts, the convening of conferences of experts and the referral of a case to an early neutral evaluation conference (ENE).

The Court has the ability to focus the parties and bring momentum to discussions without listing a matter for trial. It can do this through the combined effects of case specific orders during directions hearings, regional supervision through case management conferences, the determination of questions of law or fact and the taking and evaluation of evidence while a matter remains in mediation (ie appointment of Court expert and preservation of evidence).

The Court has on many occasions informed the parties that it considers the exchange and assessment of ‘connection material’ to be part of the mediation process rather than a pre-condition to that process.

The kind of approach that could be pursued was contemplated by Justice French in *Frazer and Ors v State of Western Australia*, where his Honour commented that it may be desirable that the Court hear important elements of connection evidence from applicants themselves, in order to facilitate the preservation of that evidence, to give applicants an opportunity to tell their story to the Court at an early stage and to facilitate subsequent mediation.

Their Honours’ North and Mansfield JJ took a similar approach in two Native Title Determination Applications and made orders for a Registrar of the Court to convene a conference of experts. Such initiatives assisted the Court in making best use of expert anthropological evidence and contributed positively to the mediation of the matters. The conferences convened by a Court registrar, at which lawyers are usually

excluded, assist in identifying and clarifying areas of dispute amongst experts, focus the parties as to the aspects of the case which most depend on evidence from the claimants and the strength of and preferable manner of running their cases generally.

Regional case conferences

The regional case conferences allow the judge or judges (sometimes sitting together) to explore the development of priorities and timeframes for mediation, negotiation and litigation on a regional basis, and in so doing, to have regard to regional priorities, interrelated claims and resource considerations. The regional case conferences provide a forum by which parties inform the Court of their priorities on a regional, rather than on a case-by-case basis.

This approach was first taken in Western Australia and is now reflected to a lesser or greater degree in all States and Territories. There is, however, some variation in the approach taken.

Regional case conferences continue to be used most effectively in Western Australia and involve the provisional and substantive docket judges. The ordering of cases in the conferences is achieved by the Court making mediation timetabling orders, often in parallel with programming orders for final hearing. The Court's approach in a number of cases has enabled the NNTT to continue to facilitate the settling of mediation timetables, but with the timetables then becoming an order of the Court and therefore enforceable by the Court. As an order of the Court, the programs provide a framework against which the parties' participation can be authoritatively measured, encouraging parties to focus on progressing discussions and reinforcing the role of the NNTT in that process.

Court annexed mediation

During the reporting period, the role of the Court in relation to NNTT mediation has been to impose a timetable on matters referred to NNTT mediation, and set various deadlines by which progress should be shown (or an agreement reached). Alternatively it will set the matter down for trial and may order that mediation cease. The Court has recognised that it is appropriate that timetables within a particular region may be staggered to reflect priorities within that region.

Although mediation is primarily conducted by the NNTT, the Court has used its own mediation process from time to time, in particular following a decision of the Court, a case management conference, or having regard to the particular circumstances of the matter or of the parties.

This practice is likely to be affected by legislative amendments arising out of the Native Title Claims Resolution Review. The Review, initiated by the Commonwealth Attorney-General during the reporting period, looked into the roles of the NNTT and the Court. In March 2006, the final report recommended that the NNTT have an exclusive mediation role in respect of native title cases with no time limitation on Federal Court intervention.

The native title workload

Table 3.4
Age of Current Native Title Matters

Age at 30 June 2006	Under 6 months	6–12 months	12–18 months	18–24 months	Over 24 months	Total
Native Title Action	32	24	25	14	691	786
% of Total	4.1%	3.1%	3.2%	1.8%	87.9%	100.0%
Running Total	32	56	81	95	786	
Running %	4.1%	7.1%	10.3%	12.1%	100.0%	

It is important to note that the figures set out in Table 3.4 are based on all applications under the Native Title Act (NTA) that have been filed in the Court and which remain open on the Court's database, Casetrack. However, a large number of cases have been effectively closed as a result of being combined or consolidated with one or more cases. For these cases, the individual file has not been closed and remains open for the purpose of the Court's database. The consolidation and streamlining of native title cases often means that applications are dealt with as a single 'active claimant application' with the consolidated or subsidiary files remaining open for practical purposes until the lead matter has been determined or finalised. In effect, this means that as at 30 June 2006 there were, in practical terms, 546 active native title claimant applications.

Active judicial case management of native title cases since 1998 has led to a substantial number of native title applications being amended, combined, withdrawn or discontinued. At 30 June 2006 there were 546 active claimant applications before the Court, of which the NNTT is mediating 326. There were also 12 compensation claims and 39 non-claimant applications.

Of the 546 active claimant applications before the Court, 500 have been notified. The notifications that occurred in 2005–06 resulted in the Court processing and finalising 377 joinder of party applications. These applications have not been counted in previous annual reports as they are not entered as separate filings within the Court's case management system. However, from 2005–06, the Court will count these finalised matters as they are individual applications which must be dealt with by a judge or registrar.

During the reporting year, the Court made 18 determinations in respect of the existence of native title. Four of these determinations were made after contested hearings, ten were achieved through mediation and negotiation and four of the determinations were made in respect of non-claimant applications.

Native title decisions of interest

During the reporting year, a number of decisions of the Court clarified the following issues under the Native Title Act (NTA).

- That in recognising the existence of native title, the native title right to live on the land and erect structures could include the right to permanently live on the land, subject to the inconsistency principle. *Northern Territory v Alyawarr, Kaytetye, Warumungu, Wakaya*
- The circumstances in which the Court is empowered to dismiss an application for failing to take adequate steps to prosecute the proceeding, was in default under O 35A r 2(1)(f) of the Federal Court Rules. *Pappin v NSW Minister for Land and Water Conservation*
- Whether an occupier of land who has no authority, permit, license or other right of authority granted by the relevant authority to occupy the land has an interest that might be affected by a determination in the proceedings. *Walker v State of Queensland*
- Whether the Court has the authority to order that an application be split into two proceedings. *Turrbal People v State of Queensland*
- The authorisation provisions of section 251B of the NTA and the provisions for the removal and replacement of the applicant under s. 66B(2) of the NTA. *Davidson v Fesl, Noble v Mundraby, Noble v Murgha.*

Assisted dispute resolution

Assisted dispute resolution (ADR) is an umbrella term that covers a range of flexible case management processes used to enhance the effective and efficient management of the Court's diverse case load. ADR processes include mediation, case management conferences, arbitration, conference of experts and early neutral evaluation (ENE). ADR provides opportunities to implement and develop processes that are best suited to particular cases or issues arising from particular cases as demonstrated by the use of a 'conference of experts' in Native Title matters.

Mediation is the most utilised of the ADR processes with judicial referrals to mediation occurring at all stages in the litigation process, including matters on appeal. Mediation is not mandatory nor is it dependent upon the consent of the parties. Once mediation is ordered most parties utilise the mediation service provided by the Court although some parties engage in private mediation sessions outside of the Court. The Court annexed service is a total mediation package designed and monitored by the Court so as to ensure the standard appropriateness and effectiveness of all its requisite components.

The Court provides the structural and operational requirements for the mediation to occur, including the venue and a trained mediator, at minimal cost to the parties. Mediators are usually specially trained Court Registrars and although there is provision for Judges to act as mediators this rarely occurs. Mediations are conducted using a facilitative model which is highly reliant on the skill of the mediator to work with the disputing parties and to develop and consider options for settlement. The mediator has no determinative role and the confidentiality of the mediation and of

statements made during the mediation are protected by legislation and codes of practice.

Even if not fully successful in resolving a dispute, ADR processes may assist by isolating or clarifying issues in dispute or resolving components of the dispute therefore reducing trial time and costs. The range of benefits achievable through the use of ADR processes is highlighted by Justice Branson's decision in *Hopeshore Pty Limited v Melroad Equipment Pty Limited* [2004] FCA 1445 where she states in relation to mediation that:

'The options available to the parties to resolve their dispute may be wide and flexible when compared with the orders that would be open to be made by a court were their dispute litigated. The options available to the parties at mediation may include a win-win option...'

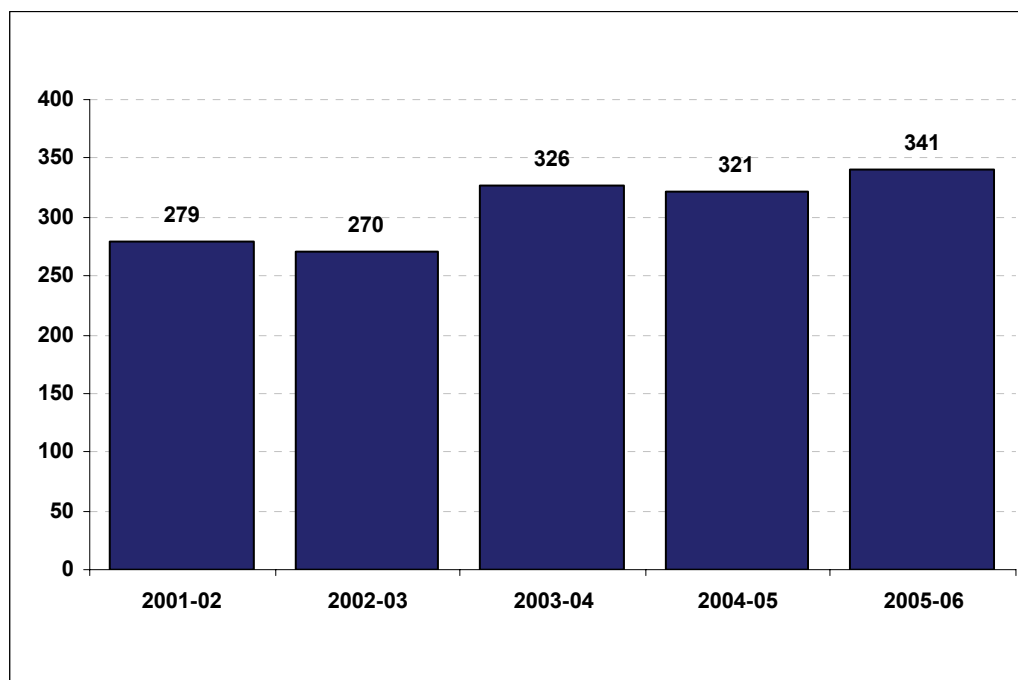
There were 369 mediation sessions conducted by court mediators in the last reporting year with 36 matters continuing in mediation and 56% finalised by resolution. The categories of matters dealt with was diverse, including trade practice, native title, consumer protection, admiralty, corporations law, bankruptcy, and intellectual property.

The Court has continued in its aim to systematise and optimise the use of high quality ADR processes. In recognition of the increasing sophistication and importance of mediation the Court is undertaking a mediator accreditation program designed to up-skill and enhance the quality of its court mediators and promote the advantages and use of mediation and other ADR processes. The Court program follows, with some modifications, the framework of the National Mediator Accreditation System. Stipulated requirements include an extensive education and training course, an assessment of mediator competence by means of simulation and written exam, and continuing professional development.

The accreditation program highlights the Court's commitment to ADR as a critical feature of the Court's practice, acknowledges the increasing professionalisation of ADR, and demonstrates the Court's ongoing determination to provide and promote ADR services that are both innovative and of the highest quality.

The Court's expertise in court annexed ADR is internationally recognised and regionally acknowledged. Through the auspices of its International Program the Court has continued to provide Judicial and Registrar expertise and assistance in the training and development of judges, court administrators and practitioners in mediation and ADR practices across the Pacific region and in Indonesia.

Figure 3.2
Assisted Dispute Resolution (ADR) 2001–02 to 2005–06
(matters referred for mediation)



Management of cases and deciding disputes by Tribunals

The Court provides operational support to the Australian Competition Tribunal, Copyright Tribunal, Defence Force Discipline Appeal Tribunal and Federal Police Disciplinary Tribunal. This support includes the provision of registry services to accept and process documents, collect fees, list matters for hearings, and to otherwise assist the management and determination of proceedings. The Court also provides the infrastructure for tribunal hearings, including hearing rooms, furniture, equipment and transcript services.

A summary of the functions of each tribunal and the work undertaken by it during the reporting year is set out in Appendix 6 on page 130.

3.3 IMPROVING ACCESS TO THE COURT AND CONTRIBUTING TO THE AUSTRALIAN LEGAL SYSTEM

Introduction

The following section reports on the Court's work during the year to improve the operation and accessibility of the Court, including reforms to its practices and procedures, enhancements in the use of technology and improvements to the information about the Court and its work.

This section also reports on the Court's work during the year to contribute more broadly to enhancing the quality and accessibility of the Australian justice system, including the participation of judges in bodies such as the Australian Law Reform

Commission, the Judicial Conference of Australia and in other law reform and educational activities.

Practice and procedure reforms

The Practice Committee is responsible for developing and refining the Court's practice and procedure. During the reporting year the Committee considered a range of issues, including:

- the operation of the Court's rules in relation to judicial review proceedings under section 39B of the *Judiciary Act 1903*;
- the implementation of a proposed new 'fair and reasonable' test for the fixing of party and party costs in lieu of the current 'necessary and proper' test;
- current registry Individual Docket System practices;
- the operation of the Court's legal assistance scheme under Order 80 of the Federal Court Rules;
- procedures for the enforcement of orders imposing a pecuniary penalty for contempt;
- procedures for dealing with certain applications 'on the papers';
- the exercise of appellate jurisdiction by single Judges;
- the procedural and other issues arising from changes to the Court's jurisdiction under the *Migration Act 1958*, *Criminal Code Act 1995* and *Workplace Relations Act 1996*;
- the establishment of a joint courts committee to replace the Federal Costs Advisory Committee which is to be abolished; and
- procedures for the preparation of Appeal books.

Liaison with the Law Council of Australia

The Committee met during the reporting year with the Law Council's Federal Court Practice Committee to discuss matters concerning the Court's practice and procedure, including:

- the Council's proposal for a federal costs assessment scheme;
- discovery of electronic records;
- electronic initiatives and case management issues;
- native title; and
- the Council's draft paper on case management in the Federal Court.

Assistance for self represented litigants

In recent years the Court has undertaken a range of activities in response to the challenges raised by self represented litigants. In August 2002 the Court adopted a Self Represented Litigants Management Plan which implemented:

- arrangements to improve the nature and quality of information collected by the Court on self represented litigants and their needs;
- a revision of the Court's brochures and guides;
- staff training on giving appropriate advice and assistance to self represented litigants; and
- the development of rules and practices that will allow the Court to more effectively deal with self represented litigants.

Following implementation of most of the recommendations in the Management Plan, the Court is now developing a new plan.

The Court is continuing to develop a range of statistical reports to be produced by Casetrack which will allow the Court to more closely monitor the impact that self represented litigants have on the litigation process and to measure the effectiveness of initiatives to assist them. It is therefore not possible to provide definitive information on the number of self represented litigants in the Court. Anecdotal evidence suggests that the number of self represented litigants is decreasing, probably an outcome of the Federal Magistrates Court hearing most of the first instance bankruptcy and migration cases – these historically involve a very high number of self represented litigants.

Interpreters

The Court is aware of the difficulties faced by litigants who have little or no understanding of the English language. The Court will not allow a party or the administration of justice to be disadvantaged by a person's inability to secure the services of an interpreter. It has therefore put in place a system to provide professional interpreter services to people who need those services but cannot afford to pay for them. In general, the Court's policy is to provide these services for litigants who are unrepresented and who do not have the financial means to purchase the services, and for litigants who are represented but have exemption from, or have been granted a waiver of fees under the Federal Court of Australia Regulations.

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 will increase on 1 July 2006 in accordance with regulation 8, which provides a formula for increasing specific court fees every two years from 1 July 2004.

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 pensioner concession card or a Commonwealth seniors health card; or
- is the holder of any other card issued by the Department of Families, Community Services and Indigenous Affairs 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 a youth or AUSTUDY allowance; or
- is in receipt of an ABSTUDY allowance.

Registrars also have a discretion to waive or remit a fee where 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. There were no applications to the Tribunal during the reporting period.

Details of the fees exempted or waived during the reporting year are set out in Appendix 1 on page 73.

Remote hearings

Where appropriate, the Court will conduct hearings in remote locations. For example, in a number of native title cases the Court has travelled to remote areas of Western Australia, Queensland and the Northern Territory to take evidence from witnesses who may not otherwise be able to attend the Court.

Public information

Internet website

The Federal Court website (www.fedcourt.gov.au) is integral to the Court's business and contains useful information about the Court and its work including full text judgments, daily court lists, practice and procedure guides, forms and fees, information for litigants and new initiatives. It also provides access to electronic filing, eCourt online forum and eSearch for selected case information.

The legal practitioners' area of the website has been reorganised following feedback from practitioners that some information was difficult to locate. Information has been grouped into categories and additional material relating to panels has been added.

Published information

The Court publishes a number of brochures on aspects of its work including: a guide for witnesses appearing in the Court; information on procedures in bankruptcy, native title and human rights cases; information on the Court's use of mediation. These brochures are available from any of the Court's registries and are downloadable from the website.

Access to judgments

When a decision of the Court is delivered, a copy of it is immediately made available to the parties and the media. The Court also provides electronic copies of judgments to legal publishers and other subscribers.

Judgments are also made available in full text on the Internet at the Australasian Legal Information Institute (AustLII) website at www.austlii.edu.au. A link to this site is provided on the Court's website. High profile judgments are usually made available at the AustLII site within a few hours of publication and other judgments within a few days.

The rapid availability of judgments electronically assists their speedy dissemination to the legal and wider community.

Information for the media and televised judgments

During the reporting year the Court’s Director Public Information provided a range of assistance to journalists covering Federal Court cases and issues related to the Court’s work. This included managing access to court proceedings by television and radio news outlets in matters of public interest. In 2005–06 the Director Public Information facilitated television and radio coverage of the following cases and judgments:

- *Seven Network v News and others* – vision of the opening of the case in Sydney, which was brought by the Seven Network against 21 respondents headed by News Ltd.
- *Wotjobaluk, Jaadwa, Jadawadjali, Wergaia & Jupagulk Peoples #1, 2 & 3 v State of Victoria* – native title determination delivered by Justice Merkel at Horseshoe Bend near Dimboola, Victoria, and covered by ABC, Channel Nine and WIN television news.
- *ASIC v Vizard* – overlay vision of this Melbourne hearing pooled to major television outlets.
- *AWB v Cole* – judgment delivered by Justice Young in Melbourne and supplied to major outlets.
- *Frank Sebastian & Ors (Rubibi Community) v State of Western Australia* – native title determination delivered by Justice Merkel in Broome and covered by ABC radio and television and the regional network GWN.

During the reporting year, the following videos were produced for internal training and external use: ‘Achieving Major Change in the Federal Court of Australia’, ‘Commonwealth Law Courts Adelaide’ and ‘Gray Hawk – Master Craftsman’. The Director Public Information also provided interviews and vision for use in the Court’s staff training program.

Community relations

The Court is actively engaged in a program of national strategies to enhance public understanding of the Court and its work, as well as confidence in the justice system and courts more generally. These strategies include ongoing initiatives such as regular meetings at a national and local level with different users of the Court, as well as a program of engagement with schools and other educational and community organisations. The following highlights some of the activities during the year.

User groups

The Court continued its involvement in user groups to provide an opportunity for information exchange with practitioners and other people with an interest in particular areas of its jurisdiction. During the year meetings were held with local law societies and bar associations in the states and territories and regular liaison meetings were held between the Practice Committee and the Law Council of Australia. In the course of the Rules Revision Project Justice Lander met with the Law Council and other representative bodies in each State and Territory. More detailed consultation will be held when the draft rules are finalised.

User group meetings for general Court users, as well as in specific areas of the Court's jurisdiction, such as migration, corporations (including bankruptcy), admiralty, intellectual property and trade practices were also held.

Activities with the community

During the year the Court undertook the following activities with the legal profession, schools, students and community organisations.

The NSW Registry was involved in presentations to the NSW Bar Readers Course and the NSW Law Society program for school students, School's Conflict Resolution and Mediation. The Registry hosted three school students undertaking work experience placements and conducted an introduction to the Court tour for new solicitors.

The Victorian Registry hosted a number of Moot courts for LaTrobe, Deakin and Monash Universities. Registry staff were involved in a presentation on Bankruptcy for Family Lawyers to the Victorian Bar. The launch of Arts Law Week was held in the Victorian Commonwealth Law Courts building. During the reporting year, eight high school students undertook work experience with the Victorian Registry.

The Queensland District Registrar presented a paper at the North Queensland Law Association Conference. The Registry hosted visits to the Court by Bond University and school and community groups. The Registry continued its association with the Queensland University of Technology, conducting practice court sessions for students in bankruptcy matters.

In Western Australia a range of activities were carried out during the reporting year including information sessions on Court and Registry processes for junior solicitors and paralegals. A handbook covering the information provided during the session was provided on a CD. The Registry conducted information sessions and tours of Court facilities for various groups, including Summer clerks and articulated clerks and hosted the grand finals of the Australian Law Students Association Humanitarian Law Moot and the Murdoch Law Society Trial Advocacy competition. Admiralty and Intellectual Property colloquiums were organised and videoed by Registry staff. A Deputy District Registrar chaired a panel of arbitrators in relation to the International Maritime Law Arbitration Moot Competition held at Murdoch University. A staff member gave a presentation on the logistics of native title hearings to staff of the State Solicitors Office. The Western Australian Registry provides work experience and training each Wednesday to a high school student under the Aboriginal School Based Traineeship scheme coordinated by South Metropolitan Youth Link.

In South Australia the Registry undertook information sessions for newly admitted practitioners (this is also presented on request to legal firms for their continuing legal education sessions), participated in the SA Bar Readers Course and Lawyers Engaged in ADR (LEADR) chapter meetings, and conducted a presentation on the Federal Court for secondary school children during Law Week.

In the Northern Territory, the District Registrar, in conjunction with the Native Title Registrar, presented a paper on Expert Anthropology in Native Title Cases at the

Monash University conference, Experts and Lawyers: Surviving in the Brave New World.

The Registry Librarian in Tasmania was Trade Co-ordinator for the National Law Librarians Conference. She regularly presents papers and workshops on various topics to library technical students from TAFE Tasmania.

The District Registrar in the ACT presented a continuing legal education seminar on Insolvency procedures – Federal Jurisdictions to members of the ACT Law Society.

Complaints about the Court’s processes

During the reporting year twenty-three complaints were made to the Court in relation to its procedures, rules, forms, timeliness or courtesy to users. This figure does not include complaints about the merits of a decision by a judge or the Court, which may only be dealt with by way of appeal.

Involvement in legal education programs and legal reform activities

The Court is an active supporter of legal education programs, both in Australia and overseas. Information about the Court’s engagement with legal education programs for international jurisdictions is described below. During the reporting year, the Chief Justice and many judges:

- presented papers, gave lectures and chaired sessions at judicial and other conferences, judicial administration meetings, continuing legal education courses, university law schools; and
- participated in Bar reading courses, Law Society meetings and other public meetings.

An outline of the Judges’ contributions in this area is included in Appendix 8 on page 155.

3.4 WORK WITH INTERNATIONAL JURISDICTIONS

Introduction

The Court is extensively involved in offering judicial and non-judicial support to assist the continuing development of governance and jurisprudence in courts across the Asia Pacific region. Activities include individual judges holding second commissions in overseas courts and participation in international committees and conferences. The Court has an increasing involvement in legal and judicial development programs that provide capacity building support to judges and staff of regional courts, and programs to strengthen judicial institutions. The Court also provides library services to countries of the South Pacific. The following outlines the major areas of this work during the reporting year.

Indonesia

Following the signing in March 2004 of the Memorandum of Understanding (MOU) between the Federal Court and the Supreme Court of Indonesia, and the signing of an Annex to the MOU in April 2005, cooperation between the Courts continues. The Indonesian Judicial Training Program which operated between 1999 and 2004 has

been expanded to include the provision of technical assistance in specific areas which respond to the Supreme Court's priorities as they progress to implement their Blueprint for Reform. In the past year a number of programs have been designed and delivered with AusAID funding, with more programs being developed for implementation over the coming two years.

Consumer Protection Regulation Development Program

Justice Merkel visited Indonesia from 13 to 16 September 2005 under the auspices of the Supreme Court Consumer Protection Regulation Program. The objective of the program was to assist the Supreme Court of Indonesia in developing a Regulation to manage consumer protection appeals. Justice Merkel's visit involved consultations with judges and registry staff of the Supreme Court and the research team commissioned by the Supreme Court to assist with the drafting of the Regulation. The visit culminated in a consumer protection forum, attended by key stakeholders such as consumer complaint associations and Non-Governmental Organisations (NGOs), aimed at gathering input for the research team. The Regulation has since been drafted and issued by the Supreme Court.

Mediation Program

In December 2005 Justice Gray and the Court's Acting Director of Assisted-Dispute Resolution, Catherine Cashen, visited Jakarta to assist in the development of mediation training for judges and other legal professionals. Meetings were held with representatives of the Supreme Court of Indonesia, two Non-Governmental Organisations (NGOs); the Indonesian Institute for Conflict Transformation (IICT), Pusat Mediasi Nasional (PMN) and the Indonesia Australia Legal Development Facility. The meetings focused on gathering information and gaining an understanding of the Indonesian Court system with particular emphasis on mediation and providing information on the practice and procedure of court-annexed mediation within the Federal Court.

Catherine Cashen returned to Indonesia in February and May 2006 to participate in the training sessions which were developed following the December meetings. Justice Rares assisted with similar training sessions during a visit in April 2006. The training sessions are now complete and the Court is in the process of assisting the Supreme Court to design the next phase of the program which will focus on developing internal practice and procedure to facilitate the use of mediation in the courts.

Planning

Justice Moore, Registrar Warwick Soden and the Court's International Program Coordinator, Helen Burrows, travelled to Bogor and Jakarta in January 2006 to meet with the Supreme Court's Reform Team. The purpose of the visit was to discuss the development of programs which meet the Supreme Court's reform priorities as articulated in the Blueprint for Reform. The meeting provided an opportunity to build a deeper understanding of the strengths, needs, constraints and benefits of judicial cooperation between the two Courts at a working level and to focus on several areas of development. The meetings culminated in the development of a suite of assistance programs to be implemented in the next two years.

Backlog Reduction Program

In the Annex to the MOU, the Chief Justices of both Courts stated that the Federal Court of Australia would provide strategic advice and technical assistance in relation to case management at the appellate level, including strategic advice on auditing and eliminating case backlogs. The objectives of the program are to assist the Supreme Court to obtain accurate information on the actual case backlog; including how long these cases have been within the system, and evaluate how the backlog is distributed. The second objective of the program is to implement a reduction mechanism to assist the Supreme Court to eliminate the case backlog within two years. It is anticipated that the recording and reduction methodology will be entrenched in Supreme Court practice to obviate the need to conduct another audit in the future.

The first meeting of the backlog reduction team took place at the end of June 2006. Justice Moore and Registrar Soden represented the Federal Court and met with representatives of the Supreme Court along with Indonesian case management staff. The purpose of the meeting was to provide strategic advice to the team and plan the technical components of the program.

Future programs

Other programs in development include a leadership and change management program and a budgeting and financial management program.

Asia Pacific Judicial Reform Forum (APJRF)

At the International Conference and Showcase on Judicial Reform held in Manila in November 2005 it was agreed that Australia would host the first Asia Pacific Judicial Reform Forum Working Party Meeting. That meeting took place in Sydney on 16 and 17 March 2006. The High Court chaired the meeting, co-facilitated by the Federal Court, the Supreme Court of NSW and the Judicial Commission of NSW. The meeting was attended by representatives from the Philippines, China, India, Indonesia, Malaysia, Thailand, Russia, the United Nations Development Program, the World Bank, and the Australian Agency for International Development.

The aim of the meeting was to identify areas of reform priority amongst APJRF member countries. As a result, four projects were identified for members to collaborate on in sharing skills, knowledge and experience. These projects are:

- Access to justice
- Expedition of cases
- Education
- Independence

The Working Party agreed that a Secretariat would be established and Australia was asked by the Meeting participants to host the Secretariat. Since the meeting the Secretariat has drafted a proposal to develop a judicial reform handbook. The proposal was submitted to the United Nations Democracy Fund in May 2006.

The handbook will contain a number of chapters each comprising a practical model which can be used in participating countries to address reform priorities including those identified above. The Forum is a unique initiative in that its work will be built by and with developing countries.

Interim Regional Judicial Development Program

Since late 2004 the Court has been providing interim assistance to South Pacific judiciaries while the Pacific Judicial Development Program was being designed. During the reporting year six programs across four countries were conducted. Funding for these programs is provided by AusAID.

Tonga: Assisted Dispute Resolution (ADR) workshop

District Registrar Patricia Christie and Acting District Registrar Jennifer Hedge facilitated an ADR workshop in Nuku'alofa, Tonga in July 2005 for 22 participants including; the Chief Police Magistrate, magistrates, Chief Registrar of the Supreme Court and private and government sector lawyers.

Papua New Guinea: Assisted Dispute Resolution(ADR) exchange

Justice Ambeng Kandakasi and Registrar Maria Miria of the Supreme and National Court of Papua New Guinea visited the Federal Court's Melbourne Registry in July 2005. The purpose of the visit was to discuss how court-annexed mediation was implemented in the Federal Court along with the policies and procedures associated with its operation.

Cook Islands: Evidence and Sentencing workshop

The Evidence and Sentencing workshop took place in Rarotonga, Cook Islands in August 2005. The objective of the workshop was to equip Justices of the Peace with the necessary knowledge, skills and values to assist them in becoming competent Judicial Officers. The workshop revisited the roles, tasks and duties of Justices covered in the first workshop and then focused on the Justices' roles and functions in evidence and sentencing procedures.

Cook Islands: Court support staff workshop

Recognising that the provision of training usually excludes administrative staff, the objective of the Court support staff workshop was to equip court clerks with the knowledge, skills and values necessary to fulfil their functions and roles in the legal system. Broadly, participants were given guidance on the following topics: monitoring of cases according to their jurisdiction; processing and entering of all criminal case information in the Court's computer system; administration of in-court and post-court proceedings; and processing and management of enforcement orders or warrants prepared and executed in accordance with statutory or court directives.

Federated States of Micronesia: Assisted Dispute Resolution (ADR) workshop

Justice Bennett and Deputy District Registrar Gilich conducted an ADR workshop in Chuuk, Federated States of Micronesia in November 2005. Numerous State judges and registry staff attended the workshop which introduced participants to various

forms of assisted dispute resolution including; mediation, arbitration and early neutral evaluation. The primary focus of the workshop was to discuss how mediation is used by the Federal Court of Australia, with a view to assisting the States to develop a version of mediation appropriate to their circumstances.

Pacific Governance Support Program

In 2004 the Court developed a program in consultation with several courts in the South Pacific to provide assistance in the area of judicial administration and support. The program was funded by AusAID. In 2005–06 the following activities were conducted as part of the program.

Fiji: Case Management workshop

Justice James Wood (formerly of the NSW Supreme Court) and Jerry Riznyczok, Prothonotary & Manager, Court Services NSW Supreme Court visited Fiji in September 2005 to design and deliver a case management workshop. The visit involved a series of consultations with judges and registry staff from Lautoka and Suva, to identify the challenges facing judges and court staff in the area of case management.

Following the consultations, a case management workshop was held in Suva for judges and senior court staff. The workshop focused on exploring opportunities to ensure the case management system guarantees efficient and effective access to justice.

Tonga: Completion of court and judicial administration diagnostic

The Federal Court worked closely with the Supreme Court of Tonga over the course of the year to diagnose inefficiencies within its court and judicial administration processes with a view to developing streamlined processes. The final phase of that program was completed in November 2005 by Deputy Registrar Kellow. A series of meetings were held with the Chief Justice, Chief Registrar, registry staff, the Solicitor General, the President and other representatives of the Law Society of Tonga and others to develop a series of protocols which would assist all stakeholders and provide efficient and effective access to justice.

Tonga: Audit of case backlog

Responding to the results of the diagnosis conducted under the previous program, the Federal Court and Supreme Court of Tonga developed a second program to focus on several key priority areas. The Court's case management specialist, David Beling, conducted an audit of backlogged cases in February 2006. The visit also saw the introduction of a new case tracking system and discussions were held about implementing a series of reforms to be introduced incrementally over the course of this program.

Third Asia Pacific Mediation Forum Conference

The Third Asia Pacific Mediation Forum Conference was held between 26 and 30 June 2006 at the University of the South Pacific in Suva, Fiji. The Conference

theme was Mediating Culture in the Pacific and Asia. The Federal Court delivered two sessions during the conference. The first provided a one-day mediation skills training workshop, the second focused on the strategic development of policy, practice and procedure necessary to facilitate the introduction or expanded use of mediation in Pacific court systems. The Court's Acting Director of Assisted Dispute Resolution Catherine Cashen, and the International Program Coordinator, in consultation with Justice Ambeng Kandakasi of Papua New Guinea designed both sessions. Justice Gyles led the Federal Court's involvement in Suva which was attended by participants from across the region. The Court, through AusAID, was able to fund the participation of thirteen people from six Pacific countries, including three chief justices, four judges and six senior registrars.

Visitors to the Court

The Court is visited by a significant number of judges and officials from overseas jurisdictions. These visits provide the judges and staff of the Court with an opportunity to develop relationships and learn from people involved in the administration of justice around the world. During the reporting year more than 70 visitors came to the Court from countries including Botswana, Canada, China, Malaysia, New Zealand and Singapore.

Library services to the South Pacific and Thailand

The Court operates three programs which provide assistance to court and legal libraries in the South Pacific, including the administration of a five year AusAID grant of \$104,500 for library assistance in the South Pacific. The Court has established libraries for the Supreme Courts of Vanuatu and Tonga and provided assistance to the libraries of the High Court and Court of Appeal of Fiji and the Supreme Court of Kiribati. The Court keeps these collections up to date with surplus monthly parts of law reports which the Court has bound up into volumes prior to dispatch and the supply of new and superseded text books.

The Court periodically sends law librarians to these countries to assist with library maintenance and advice. A librarian visited Tonga for two weeks in July 2005, and undertook collection maintenance, stocktaking, training of local staff in basic library procedures and updating the catalogue for the courthouses in both Nuku'alofa and Vav'vu.

The Court also coordinates the payment of the freight costs, using AusAID funding, for books and other publications donated by Australian law libraries to Pacific law libraries. In addition the Court supports a specialist intellectual property court in Thailand, sending regular shipments of reports and text books.

CHAPTER 4

**MANAGEMENT OF THE
COURT**

4.1 INTRODUCTION

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

The management of the Court is supported by the collegiate involvement of the judges of the Court through formal meetings of all judges and the judges' committees' structure (discussed below).

As outlined in Chapter 1 of this report, the Court's administration is supported by a national registry structure, with a Principal Registry responsible for managing national issues and supporting the corporate services functions of the Court, and a District Registry in each State and Territory which supports the work of the Court at a local level. A diagram of the management structure of the Court is set out in Appendix 2 on page 105.

Judges' committees

There are a number of standing committees of judges of the Court, which assist with the administration of the Court and play an integral role in managing issues related to the Court's administration, as well as its rules and practice. The committees provide advice to the Chief Justice and to all judges at the regular judges' meetings. The current standing committees are:

Admiralty	Library
Assisted Dispute Resolution	Management of Appeals
Audit	Native Title Coordination
Bankruptcy	Policy and Planning
Corporations	Practice
Equality and the Law	Rules
Finance	Security
Information Technology	Self Represented Litigants
International Development	Transcript
Judicial Education	

In addition, a number of other committees and working parties have been established from time to time to deal with particular issues. The committees are supported by registry staff.

Judges' meetings

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

4.2 CORPORATE SERVICES

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

Financial management

The Finance Committee oversees the financial management of the Court. The Corporate Services Branch supports the committee.

During the reporting period the Court initiated several activities to enhance the Court's financial management processes and reporting structure. These activities included:

- a review of the Court's compliance with the Commonwealth Financial Management Framework;
- a review of the Court's travel expenditure and implementation of a new travel model to reduce domestic travel costs;
- development and implementation of various measures to ensure the Court's financial management system (FMIS) continues to operate in an effective and efficient manner;
- undertaking preliminary analysis of interface technology between the Court's financial management and case management systems for receipting Court fees.

Financial Accounts

The net operating result from ordinary activities for 2005–06 was an operating surplus of \$4.909m. The positive variance results primarily from deferred expenditure, including expenses related to Workplace Relations Reforms. Equity increased from \$31.788m in 2004–05 to \$38.068m in 2005–06.

During 2005–06 revenues from ordinary activities totalled \$97.610m. Total revenue, in the main, comprised of:

- an appropriation from Government of \$81.126m;
- resources received free of charge, including \$5.547m for accommodation occupied by the Court in Sydney;
- \$7.284m of liabilities assumed by other government agencies, representing the notional value of employer superannuation payments for the Court's judges;
- \$2.472m from the sale of goods and services.

Total Court expenses of \$92.701m in 2005–06 comprised: \$48.687m in judges' and employees' salaries and related expenses; \$24.417m in property related expenses; \$17.112m in other administrative expenses and \$2.485m in depreciation expenses.

The Court also received an equity injection of \$1.371m in 2005–06 for the purchase of equipment and fitout changes required to manage the new workload arising from changes to the *Workplace Relations Act 1996*.

The total price of the Court’s outputs for 2005-06 is \$97.610m as detailed in Table 4.1 below.

Table 4.1
Outcome and Output Statement

		Budget	Actual
		2005–06	2005–06
		\$’000	\$’000
Output 1.1 Federal Court Business	Revenue from Government (Appropriations)	81.126	81.126
	Total revenue from other sources	15.127	16.484
	Total price of departmental outputs	96.253	97.610

Risk management and internal audit

The Court’s Audit Committee is responsible for the internal audit program, fraud control plan and risk management plan. The Committee comprises an independent chairperson, two judges, the Registrar, and the District Registrar for New South Wales.

In 2005–06 the Court engaged the services of Ernst & Young to assist in the development of a three year audit plan. The internal audit program for 2005–06 focused on the implementation of the Court’s new case management system and monthly financial processes.

Staff of the Australian National Audit Office inspected the Court’s 2005–06 financial statements and provided an unqualified audit certificate.

There were no cases of fraud reported in the Federal Court in 2005–06.

External scrutiny

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

Purchasing

The Federal Court of Australia's procurement policies and procedures are based on the Australian Government's policy framework for procurement as articulated in the Commonwealth Procurement Guidelines and expressed in the Chief Executive Instructions. The Court achieves a high level of performance against the core principles of achieving value for money through efficient, effective and appropriately competitive procurement processes by ensuring that officers involved in procurement:

- Encourage competition through open approaches to the market where this approach will deliver the most favourable outcome.
- Ensure procurement processes do not discriminate against particular types of suppliers including small and medium enterprises, and new businesses.
- Ensure that a single requirement is not divided to avoid a procurement threshold or delegation level.
- Reduce costs to the industry in contesting procurement by using, where appropriate, selective approaches to the market, particularly where it is mandatory to procure Information Technology products and services from the ESA Multi-Use List maintained by the Department of Finance and Administration.

Consultants

During 2005–06, 20 new consultancy contracts were entered into, involving total expenditure of \$565,870, including GST. In addition, two ongoing consultancy contracts were active during the 2005–06 year, involving total expenditure of \$23,386, including GST.

Table 10.1 on page 168 provides more detailed information on consultancy services contracts entered into during 2005–06.

Advertising and marketing services

A total of \$84,082 was paid for recruitment advertising services throughout the reporting period.

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

Technology services

Network operating system

The past financial year has seen the commencement of the most significant information technology (IT) infrastructure change since 1997 when the Court merged networks with the Industrial Relations Court of Australia. During the reporting period the Court's network operating system has been migrated from Novell NetWare to Microsoft 2003 Server in conjunction with the implementation of new desktop computer software supported by Windows XP and Microsoft 2003 Office Professional Suite.

Wide Area Network (WAN) infrastructure

In 2005–06 the Court’s Wide Area Network (WAN) communication infrastructure was migrated from Frame Relay to newer IP-WAN technology. This provides the Court with access to a higher data communication bandwidth which is more responsive to changing business requirements at a reduced cost per bandwidth size when measured against Frame Relay.

eCourt strategy

The eCourt strategy continues to take advantage of technological opportunities to achieve benefits for the Court, law firms and the public who utilise the Internet online services consisting of eFiling, eSearch and eCourtroom (Forum).

eFiling

eFiling of court documents continues to grow rapidly with a 70% increase over the 2004-05 year. Enhancements to the processing and return of documents to parties were implemented during the reporting period.

eSearch

The Court’s eSearch online case search facility continues to be the most visited page on the Court’s website, with practitioners and members of the public averaging over 16,000 hits per month. The major improvement during the reporting period has been the inclusion of ‘search by listing date’.

eCourtroom

Directions hearings and less complex interlocutory matters for 23 matters are currently being conducted through the Court’s virtual Internet courtroom, eCourtroom. This service has proven to be of particular assistance to practitioners and parties in native title cases, providing improved access to case information for those in remote locations. A tender is currently being prepared to develop the next generation of eCourtroom, reflecting and implementing improved features suggested by the users of the service.

Commonwealth Courts portal

The Court has commenced a partnership with the Family Court of Australia and the Federal Magistrates Court examining the feasibility of a Commonwealth Courts portal or Internet service centre.

Case management system – Casetrack

Enhancements

A substantial number of enhancements, prioritised by the Court’s Casetrack User Group, were implemented in Casetrack in the past year. These included changes to document lodgement, listings, court lists, fees, subpoena and exhibits, and time recording. The changes have improved client service and system usability.

Casetrack review

During the reporting year the Court commissioned an independent consultant to conduct a review of the implementation of Casetrack. The broad aims of the review were to provide a blueprint for the future development and use of Casetrack within the Court. The report on the Casetrack review was delivered in July 2006.

Online court management reporting

During 2005–06 an on-line court management reporting pilot was commenced. The pilot system allows senior Court staff to access reports as necessary and enables reports to be customised as required.

Court reporting

The implementation of a digital court reporting service, commenced in July 2005, was successfully completed during the reporting year. The court reporting services are now fully electronic, from the recording of proceedings to the preparation and delivery of transcript to the Court and parties.

Human Resources

Workplace relations

The Court's National Consultative Committee (NCC) continued to operate effectively through the year and was involved in a range of projects including overseeing the implementation of the Court's 2005–2008 Certified Agreement, the finalisation of draft Work Level Standards, a national trial of new arrangements for accommodation when travelling, the introduction of salary packaging arrangements and the completion of guidelines for the use of Child and Dependent Care Rooms.

The Court's other consultative forums such as Regional Consultative Committees and the Occupational Health and Safety Committee continued to operate effectively, reporting to the NCC. Minutes from all committees are placed on the Court's intranet where they can be readily accessed by staff.

Separate working parties were also established to finalise the Court's Work Level Standards and oversee a classification review of judges' personal assistants.

Workplace bargaining

The Court's 2005–2008 Certified Agreement was certified by the Australian Industrial Relations Commission (IRC) on 25 July 2005.

Australian Workplace Agreements (AWAs) were entered and re-negotiated with a number of new and existing staff. The Court currently has 23 staff on AWAs, 11 of whom are officers in the Senior Executive Service ('SES'). All staff not covered by AWAs are covered by the Court's Certified Agreement.

Non SES AWAs generally mirror Certified Agreement provisions with the exception of base salary and, in a small number of cases, leave entitlements.

The introduction of the Work Choices amendments to the Workplace Relations Act necessitated the re-drafting of the Court's AWA templates. This process was completed with assistance from the Australian Government Solicitors Office.

Staffing overview

At 30 June 2006 the Court employed 403 employees under the *Public Service Act*. This figure comprised 209 ongoing full-time employees, 36 ongoing part-time employees and 158 non-ongoing employees. The high number of non-ongoing employees is due to the nature of employment of judges' associates (who are generally employed for 12 months) and casual court officers. The Court had an average staffing level of 351.45 during the reporting period.

Table 4.2 on page 66 contains an overview of the Court's staffing by location at 30 June 2006. Table 4.3 on page 67 contains details of the Court's SES staff.

Performance management

The Court's performance management program continued to operate effectively through the reporting period.

Performance pay

There were no performance pay arrangements in 2005–06.

Training and development

During the year the Court successfully completed the first stage of a major new staff development initiative – the Court's National Training Program. The program seeks to provide all staff with the core skills and knowledge necessary to work effectively in the Court. Nearly all staff have undertaken the first part of the program, which will now form the core of the Court's Induction Program. Training was conducted by local registry staff who have completed a Train the Trainer course. Preparation is currently underway for the second stage, Caseflow Management.

Other areas of national focus were:

- continuing Casetrack training for staff;
- ongoing development of the Court's Client Services Network, which meets quarterly by teleconference and has an annual conference;
- the ongoing development of the Court's National Training Network, members of which present the National Training Program and meet regularly via teleconference and annual conference to ensure the Court addresses the training needs of staff.

More generally, training was carefully targeted towards the development of essential core skills and the Court spent \$333,372 on external training during the period.

The Court's Studybank policy also continued to operate and provided staff with time off and financial assistance to pursue approved tertiary studies. During the reporting period \$15,177 was reimbursed to staff undertaking studies under the policy.

Table 4.2
Staffing Overview by Location
(actual occupancy at 30 June 2006 – includes full-time and part-time staff)

Level	PR	NSW	VIC	QLD	SA	WA	TAS	ACT	NT	NAT	Total
SES2	1	1	1								3
SES1	1	1	1	1	1	1			1	1	8
FCL2		6	1	3	1	2	1			2	16
FCL1	1			1		1		1		1	5
FCM2	14	2	4	1	1	1				1	24
FCM1	7		4	2	1	1		1	1	4	21
FCS6	11	2	2	1		1	1		1	1	20
FCS5	12	63	31	15	9	9	1	3		13	156
FCS4	3	3	4	1	1	3			3	2	20
FCS3	5	19	15	12	5	8	6	1			71
FCS2		21	12	15	3	5		1	1		58
FCS1			1								1
Total	55	118	76	52	22	32	9	7	7	25	403

Note: The Registrar, who is a holder of public office, is not included in this table.

Key: PR Principal Registry
SES Senior Executive Service officer
FCS Federal Court Staff
FCM Federal Court Manager
FCL Federal Court Legal
NAT National
Includes the following staff:
– National Native Title
– Chambers of Chief Justice
– Full-Court
– Research Assistants/Indigenous Research Assistants

Table 4.3
Senior Executive Service
(at 30 June 2006 – includes full-time and part-time staff)

Principal Registry		Senior Executive Service Grading Occupied
Senior Deputy Registrar	Philip Kellow	Senior Executive Band 1
Executive Director, Corporate Services Branch	Gordon Foster	Senior Executive Band 2
National		
National Native Title Registrar	Louise Anderson	Senior Executive Band 1
New South Wales District Registry		
District Registrar	Michael Wall	Senior Executive Band 2
Deputy District Registrar	Jennifer Hedge (part-time)	Senior Executive Band 1 (Specialist)
Victoria District Registry		
District Registrar	Sia Lagos	Senior Executive Band 2
Deputy District Registrar	Timothy Connard	Senior Executive Band 1
Queensland District Registry		
District Registrar	Graham Ramsey	Senior Executive Band 1
South Australia District Registry		
District Registrar	Patricia Christie	Senior Executive Band 1
Northern Territory District Registry		
District Registrar	Caroline Edwards	Senior Executive Band 1
Western Australia District Registry		
District Registrar	Martin Jan PSM	Senior Executive Band 1

Table 4.4
Salary ranges by classification level under Certified Agreement or AWA
(at 30 June 2006)

Court Designation	Australian Public Service (APS) Classification	Salary
Clerical Administrative Positions		
Federal Court Staff Level 1	APS Level 1	32 584
		36 010
Federal Court Staff Level 2	APS Level 2	36 876
		40 891
Federal Court Staff Level 3	APS Level 3	42 001
		45 331
Federal Court Staff Level 4	APS Level 4	46 814
		50 828
Federal Court Staff Level 5	APS Level 5	52 213
		55 366
Federal Court Staff Level 6	APS Level 6	56 393
		64 780
Federal Court Manager Level 1	Executive Level 1	72 179
		77 952
Federal Court Manager Level 2	Executive Level 2	83 211
		94 359
		97 519
Legal Positions		
Federal Court Legal 1	From APS Level 3	47 157
	to Executive Level 1	91 672
Federal Court Legal 2	Executive Level 2	106 200
		110 361
Senior Executive Positions		
Senior Executive Service Band 1	SES Band 1	133 388
Senior Executive Service Band 2	SES Band 2	172 500

Occupational health and safety (OHS)

The Court’s national Occupational Health and Safety (OHS) Committee continued to meet through the reporting period and oversee occupational health and safety (‘OHS’) within the Court. The Committee also met for a conference in Sydney in December 2005. Among other things, the Committee has overseen the development of workplace safety audit checklists to enable each registry to conduct regular workplace inspections to identify risks and hazards in the workplace. The Committee also oversaw the development of a new OHS Agreement, which is close to finalisation.

The Court introduced a program of optional annual health checks and flu shots for all staff, as provided for in its 2005–2008 Certified Agreement. The Certified Agreement also provides for ongoing and long-term staff to be advanced the cost of annual gym membership, which can then be paid back by the staff member over the following 12 months.

No provisional improvement notices were issued under section 29 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS Act). No directions or notices under section 46 of the OHS Act were served on the Court prohibiting the use of any workplace, plant or substance.

A total of 4.05 working weeks were lost due to work related injuries compared to 14.5 weeks for the previous reporting period. The Court's Comcare premium decreased from 1.12 per cent of the wages and salary bill to 1.06 per cent.

The Court continues to provide external, confidential counselling to staff, when required. During the reporting period, the Court evaluated its Employee Assistance Scheme and has engaged Commonwealth Rehabilitation Services (CRS) to provide counselling services to all staff of the Court.

During the reporting year the Court introduced an optional executive health check program for judges. The confidential counselling service available to staff was also extended to judges.

Workplace diversity

The Court is actively committed to the principles of workplace diversity. Some of the Court's initiatives during the reporting period are set out below.

- The continuation of the Indigenous Research Assistant Program. This program commenced in 2001 and attracted a significant response when applications were invited for subsequent programs. Participants, and those in the Court associated with the program, report that considerable benefit is derived from the program.
- The National Consultative Committee (NCC) was consulted on proposed changes to the Court's Workplace Diversity Plan, which was finalised in early 2006.
- The Court's Workplace Diversity Coordinator continued to play a key role within the Public Service and Merit Protection Commission's Workplace Diversity and Indigenous Employment Network.
- The Court finalised guidelines to ensure the safety of Child and Dependent Care rooms. These have been provided since 2001 and are regularly used by Court staff in most registries.
- Intermittent/Irregular employees were guaranteed access to email and computer facilities in the Court's 2005–2008 Certified Agreement. The pattern and nature of employment of many of these staff previously meant that they were not guaranteed access to the Court's computer facilities – thereby addressing possible problems with accessing policies, messages, information about job vacancies, etc.

Commonwealth Disability Strategy

In accordance with the Commonwealth Disability Strategy, the Court undertook the following activities during the reporting period.

- A new Workplace Diversity Plan was developed and Human Resource Policies continued to be monitored for compliance with the requirements of the *Disability Discrimination Act 1992*.
- Recruitment information was provided on the Court's home page as well as via email and hard copy.
- Disability related issues concerning the Court's staff were handled consistent with the requirements of the Disability Discrimination Act 1992.
- Building works on existing and proposed buildings continued to take into account the needs of people with disabilities. Examples include:
 - ensuring enquiry counters are appropriately designed for use by people in wheelchairs;
 - ensuring signage is appropriate;
 - continuing improvements to building access and facilities within buildings.
- The Court continued to provide a TTY (telephone-typewriter) service in all of its registries for the hearing impaired. During the reporting period the Court received no requests for information in alternative formats.

Library and information services

The Court continued to maintain a national library network, which provides a comprehensive library service to judges and staff of the Court. In Adelaide, Brisbane, Hobart, Melbourne, Perth and Sydney, library access was also available to the legal profession and self represented litigants. The Judges' Library Committee oversees the provision of library and information services. Key achievements in 2005–2006 are set out below.

Adelaide Library

The move into the new Commonwealth Law Court building was completed late in 2005. Coordinating the orderly relocation of the library collection involved a major workload for the two library staff members. The collection was reorganised to improve accessibility, and material previously held in storage due to lack of space has been incorporated into the collection.

Intranet

Work has continued on the development of a new intranet utilising both new content management software and a new search engine. The preview was released in April 2006 and the pilot phase, incorporating updating of new judgments, commenced the first week in July. The site has been radically redesigned with the concept of views for different user groups to target the most relevant information for them in a streamlined way. Features of the new intranet include distributed authoring, secure areas, search highlighting and navigation, judgment email subscriptions and eventually sharing of documents between the intranet and the Court's website.

Judgment template and style guide

A subcommittee of the Library Committee has been set up to oversee changes in both the judgment template and matters related to style of judgments. The judgment template has been rewritten to update the program language, facilitate the collation of full court judgments and streamline uploading to the intranet. It is in the final testing stage.

Archives and records management

The Court archives collection project has identified a range of material, such as judges' robes and wigs, photographs, papers relating to high profile cases and memorabilia, which has been collected together and is being added to the archives database and stored appropriately.

The DIRKS (Designing and Implementing Record Keeping Systems) project has continued with Step C draft returned from National Archives with comments and suggested editions. The revised version was submitted to the National Archives in August 2006 allowing Court records of permanent value to be kept by the National Archives Authority.

Property management

The Court's facilities are located in Commonwealth owned buildings in Adelaide, Brisbane, Canberra, Melbourne, Hobart and Perth, in the Northern Territory Supreme Court building in Darwin and the Queens Square Law Courts building in Sydney. All buildings are shared with other jurisdictions.

The Court participates in management of the Commonwealth owned buildings through a National Building Management Committee, which comprises senior representatives from jurisdictions housed in more than one building. The committee meets quarterly and establishes budgets, approves works programs and sets policies. Local Building Management Committees manage day-to-day operations in each building.

Major achievements during the year include:

- Occupation and official opening of the new Commonwealth Law Court building in Adelaide. The Court's accommodation includes courtrooms, judges chambers, library and registry facilities. The building features state of the art courtroom technology in selected courtrooms; the latest technology to minimise use of energy, water and other resources; extensive security facilities; and extensive use of art and craftwork by local artists.
- Upgrading of courtroom audio and video conferencing systems were completed in Brisbane and Darwin.
- A Master Plan for the refurbishment and upgrade of the Sydney Law Courts Building at Queens Square has been completed. Detailed design will commence early in the new reporting year, with construction work beginning in early 2007.
- To reflect forthcoming changes to the Court's jurisdiction, a study has commenced of jury facilities – what these should consist of to reflect modern standards and how they can be incorporated into existing facilities.

Accessibility

The Court is conscious of the need for its facilities to be accessible to all members of the community and is committed to ensuring that people with a disability do not face access problems in their contact with the Court.

As part of a national program to upgrade audio and video facilities, fully integrated hearing assistance systems have been specified for those with hearing difficulties.

The new Commonwealth Law Court building in Adelaide has been designed to be fully accessible to those with disabilities.

Security

Following a major review of security by external consultants, the Court, in conjunction with other resident jurisdictions, has completed a program to install x-ray scanning facilities at building entrances. These facilities are now in place in all buildings, with the last installation in Perth completed in June. The installation has been accompanied by operator training and a range of management measures to ensure the equipment operates to maximum effectiveness.

Environmental management

The Court provides the following information as required by section 516A of the *Environmental Protection and Biodiversity Conservation Act 1999*.

The nature of the Court's core business, outcomes and activities is such that it does not impact or affect the principles of ecologically sustainable development. However, the Court is seeking to minimise the impact of its activities on the environment through the following measures:

- Testing of cooling towers and water features in Court buildings in accordance with Commonwealth, State and local statutory requirements.
- Energy consumption is closely managed and data is provided to the Australian Greenhouse Office as part of the Court's obligations to Government as part of the Kyoto Protocol.
- Environmental Management Systems are being progressively implemented in our buildings. These focus on further reducing energy consumption, water and waste.

APPENDIX 1

FINANCIAL STATEMENTS

**FEDERAL COURT OF AUSTRALIA
INCOME STATEMENT**

for the year ended 30 June 2006

	Notes	2006 \$'000	2005 \$'000
INCOME			
<i>Revenue</i>			
Revenues from Government	3A	81,126	73,204
Goods and services	3B	2,472	2,401
Interest	3C	614	490
Total revenue		84,212	76,095
<i>Gains</i>			
Net gains from disposal of assets	3D	18	12
Other gains	3E	13,380	12,256
Total gains		13,398	12,268
TOTAL INCOME		97,610	88,363
EXPENSES			
Judges and employees	4A	48,687	46,340
Suppliers	4B	41,205	37,896
Depreciation and amortisation	4C	2,485	2,157
Finance costs	4D	60	30
Write-down of assets	4E	264	8
Value of assets sold	3D	-	41
TOTAL EXPENSES		92,701	86,472
OPERATING RESULT		4,909	1,891

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

**FEDERAL COURT OF AUSTRALIA
BALANCE SHEET**

as at 30 June 2006

	Notes	2006 \$'000	2005 \$'000
ASSETS			
Financial Assets			
Cash	5A	348	1,761
Receivables	5B	32,800	13,985
Total Financial Assets		33,148	15,746
Non-Financial Assets			
Land and buildings	6A	5,620	4,055
Infrastructure, plant and equipment	6B	10,907	8,746
Intangibles	6C	444	579
Other non-financial assets	6E	5,492	19,157
Total Non-Financial Assets		22,463	32,537
TOTAL ASSETS		55,611	48,283
LIABILITIES			
Payables			
Suppliers	7	404	616
Total Payables		404	616
Interest Bearing Liabilities			
Leases	8A	1,411	621
Other interest bearing liabilities	8B	-	139
Total Interest Bearing Liabilities		1,411	760
Provisions			
Judges and employees	9	15,728	15,119
Total Provisions		15,728	15,119
TOTAL LIABILITIES		17,543	16,495
NET ASSETS		38,068	31,788
EQUITY			
Contributed equity		7,914	6,543
Reserves		1,614	1,614
Retained Surpluses		28,540	23,631
TOTAL EQUITY		38,068	31,788
Current assets		36,634	29,397
Non-current assets		18,977	18,886
Current liabilities		15,930	15,382
Non-current liabilities		1,613	1,113

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

**FEDERAL COURT OF AUSTRALIA
STATEMENT OF CASH FLOWS**

for the year ended 30 June 2006

	Notes	2006 \$'000	2005 \$'000
OPERATING ACTIVITIES			
Cash received			
Goods and services		2,059	2,589
Appropriations		64,200	72,400
Refund Credits		3,500	-
GST received from ATO		3,557	3,240
Total cash received		73,316	78,229
Cash used			
Judges and employees		(41,662)	(40,157)
Suppliers		(24,290)	(34,420)
GST paid to ATO		(3,766)	(3,359)
Financing costs		(60)	(30)
Total cash used		(69,778)	(77,966)
Net cash from operating activities	10	3,538	263
INVESTING ACTIVITIES			
Cash received			
Proceeds from sales of property, plant and equipment		14	12
Total cash received		14	12
Cash used			
Purchase of property, plant and equipment		(4,888)	(2,350)
Purchase of intangibles		(77)	(189)
Total cash used		(4,965)	(2,539)
Net cash (used by) investing activities		(4,951)	(2,527)
FINANCING ACTIVITIES			
Cash received			
Appropriations – contributed equity		-	1,908
Total cash received		-	1,908
Net cash from financing activities		-	1,908
Net increase or (decrease) in cash held		(1,413)	(356)
Cash at the beginning of the reporting period		1,761	2,117
Cash at the end of the reporting period	5A	348	1,761

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

**FEDERAL COURT OF AUSTRALIA
STATEMENT of CHANGES in EQUITY**

for the year ended 30 June 2006

	Accumulated Results		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000
Opening Balance	23,631	23,764	1,614	1,245	6,543	4,635	31,788	29,644
Income and Expense								
Revaluation adjustment	-	(2,025)	-	369	-	-	-	(1,656)
<i>Subtotal income and expenses recognised directly in equity</i>	23,631	21,739	1,614	1,614	6,543	4,635	31,788	27,988
Net Operating Result	4,909	1,891	-	-	-	-	4,909	1,891
Total income and expenses recognised directly in equity	28,540	23,631	1,614	1,614	6,543	4,635	36,697	29,879
Transactions with Owners								
Appropriation (equity injection)	-	-	-	-	1,371	1,908	1,371	1,908
Closing balance at 30 June	28,540	23,631	1,614	1,614	7,914	6,543	38,068	31,788

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

FEDERAL COURT OF AUSTRALIA SCHEDULE OF COMMITMENTS

as at 30 June 2006

	2006 \$'000	2005 \$'000
BY TYPE		
Capital commitments		
Infrastructure, plant and equipment	7	515
Total capital commitments	<u>7</u>	<u>515</u>
Other commitments		
Operating leases ¹	175,327	166,387
Other ²	4,155	3,473
Total other commitments	<u>179,482</u>	<u>169,860</u>
Commitments receivable	<u>(16,317)</u>	<u>(15,489)</u>
Net commitments by type	<u><u>163,172</u></u>	<u><u>154,886</u></u>
BY MATURITY		
Capital commitments		
One year or less	7	515
Total capital commitments	<u>7</u>	<u>515</u>
Operating lease commitments		
One year or less	22,035	20,178
From one to five years	67,647	63,799
Over five years	89,800	85,883
Total operating lease commitments	<u>179,482</u>	<u>169,860</u>
Commitments receivable	<u>(16,317)</u>	<u>(15,489)</u>
Net commitments by maturity	<u><u>163,172</u></u>	<u><u>154,886</u></u>

NB: Commitments are GST inclusive where relevant.

¹ Operating leases included are effectively non-cancellable and comprise:

Nature of Lease	General description of leasing arrangement
Leases for judicial and other accommodation	These commitments are mainly for rental of special purpose court buildings which are occupied by the Court's registries. The court buildings are owned by the Commonwealth of Australia, except for the New South Wales court building, which is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments. There are no formal lease agreements executed which detail future payments. However, the rental amounts have been reliably measured and disclosed as they are the amounts expected to be payable under the arrangement with the Commonwealth and State Governments.
Provision of motor vehicles to judges and senior officers	The Court leases motor vehicles from Lease Plan under the terms of a contract that is operative until January 2010.
² Other commitments	The Court has entered into commitments for the provision of information technology goods and services.

SCHEDULE OF CONTINGENCIES

as at 30 June 2006

There were no contingent losses or gains as at 30 June 2006.

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

FEDERAL COURT OF AUSTRALIA			
SCHEDULE OF ADMINISTERED ITEMS			
	Notes	2006 \$'000	2005 \$'000
Income Administered on Behalf of Government			
<i>for the year ended 30 June 2006</i>			
Revenue			
Fees (filing and hearing fees)	15	6,167	5,220
Fines	15	43	1,646
Other	15	86	148
Total Income Administered on Behalf of Government		<u>6,296</u>	<u>7,014</u>
Expenses Administered on Behalf of Government			
<i>for the year ended 30 June 2006</i>			
Refund of fees and fines	16	89	65
Fees and fines – provision for doubtful debts	16	-	58
Total Expenses Administered on Behalf of Government		<u>89</u>	<u>123</u>
Assets Administered on Behalf of Government			
<i>as at 30 June 2006</i>			
Financial Assets			
Cash	17A	19	30
Receivables	17B	372	333
Total Assets Administered on Behalf of Government		<u>391</u>	<u>363</u>
Current Assets		391	363
Non-current Assets		-	-
Current Liabilities		-	-
Non-current Liabilities		-	-

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

**FEDERAL COURT OF AUSTRALIA
SCHEDULE OF ADMINISTERED ITEMS**

	Notes	2006 \$'000	2005 \$'000
Administered Cash Flow			
<i>for the year ended 30 June 2006</i>			
Operating Activities			
Cash Received			
Fees and Fines		6,172	6,598
Cash from Official Public Account		90	62
Other		86	148
Total Cash Received		6,348	6,808
Cash Used			
Refund of court fees and fines		89	65
Cash to Official Public Account		6,270	6,751
Total Cash Used		6,359	6,816
Net Cash from/(Used in) Operating Activities		(11)	(8)
Net Increase/(Decrease) in Cash Held			
Cash at the beginning of the reporting period		30	38
Cash at End of Reporting Period	17A	19	30

Administered Contingencies

as at 30 June 2006

There were no Administered contingent losses or gains as at 30 June 2006.

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

**FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

Note 1:	Summary of Significant Accounting Policies
Note 2:	The impact of the transition to AEIFRS from previous AGAAP
Note 3:	Income
Note 4:	Operating Expenses
Note 5:	Financial Assets
Note 6:	Non-Financial Assets
Note 7:	Payables
Note 8:	Interest Bearing Liabilities
Note 9:	Provisions
Note 10:	Cash Flow Reconciliation
Note 11:	Executive Remuneration
Note 12:	Remuneration of Auditors
Note 13:	Average Staffing Levels
Note 14:	Financial Instruments
Note 15:	Income Administered on Behalf of Government
Note 16:	Expenses Administered on Behalf of Government
Note 17:	Assets Administered on Behalf of Government
Note 18:	Administered Reconciliation Table
Note 19:	Administered Financial Instruments
Note 20:	Appropriations
Note 21:	Special Accounts
Note 22:	Comcare Account
Note 23:	Compensation and Debt Relief
Note 24:	Reporting of Outcomes

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the Court

The Federal Court of Australia is an Australian Public Service organisation. The objectives of the Court are to:

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

The Court has one Output and one Outcome, detailed below.

To apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.

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

1.2 Basis of Preparation of the Financial Statements

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

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO's, being the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2005)*);
- Australian Accounting Standards issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period; and
- Interpretations issued by the AASB and Urgent Issues Group that apply for the reporting period.

This is the first financial report to be prepared under Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in Note 2.

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

The financial report is presented in Australian dollars and values are rounded to the nearest thousand dollars unless disclosure of the full amount is specifically required.

Unless alternative treatment is specifically required by an accounting standard, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of assets or liabilities can be reliably measured. Assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies.

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

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for the Court except where stated in Note 1.23.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

1.3 Significant Accounting Judgements and Estimates

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

1.4 Statement of Compliance

The financial report complies with Australian Accounting Standards, which include Australian Equivalents to International Financial Reporting Standards (AEIFRS). The AASB has issued amendments to existing standards, which are not effective at the reporting date. The Court intends to adopt all standards upon their application date. As at the reporting date, there is no expected effect from application of these standards.

1.5 Revenue

The revenues described in this note and Note 1.23 are revenues relating to the core operating activities of the Court, whether in its own right or on behalf of the Commonwealth. Details of revenue amounts are given in Note 3 and Note 15.

Revenues from Government

Amounts appropriated for Departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Other Revenue

Revenue from the sale of goods is recognised when:

- risks and rewards of ownership have been transferred to the buyer;
- seller retains no managerial involvement nor effective control over the goods;
- revenue and costs incurred for the transaction can be reliably measured; and
- it is probable that the economic benefits associated with the transition will flow to the entity.

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

- amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- probable economic benefits with the transaction have flowed to the entity.

Receivables for goods and services are recognised at the nominal amounts due less any provision for bad and doubtful debts. Debts are reviewed at balance date. Provision is made when collection of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139.

1.6 Gains

Resources Received Free of Charge

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

Contributions of assets at no cost of acquisition or for nominal consideration are recognised at their fair value when the asset qualifies for recognition.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Other Gains

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

1.7 Transactions with the Government as Owner

Amounts appropriated which are designated as 'equity injections' for a year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity.

1.8 Judges and Employee Benefits

As required by the FMO's, the Court has adopted AASB 119 Employee Benefits, as issued in December 2004, early.

Liabilities for services rendered by Judges and employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts. The nominal amount is calculated at the rates expected to be paid on settlement of the liability.

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

Leave

The liability for employee benefits includes 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 leave liabilities are based on the employees' remuneration. This includes the Court's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The long service leave provision is based on the Court's estimated liability at balance date. Court staff employed under the *Public Service Act* accrue 3 months long service leave after 10 years service, and proportionally thereafter. The estimate of the present liability takes into account attrition rates and pay increases through promotion and inflation. Judges accrue 6 months long leave after 5 years of service. In recognition of the nature of Judges' tenure, a provision is accrued from the first year of service.

Superannuation

Staff of the Court are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

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

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Court makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Court's employees.

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

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Judges' Pension

Under the *Judges' Pensions Act 1968*, Federal Court Judges are entitled to a non-contributory pension upon retirement after 6 years service. Where entitlements are not available under the *Judges' Pensions Act 1968*, entitlements are available under the *Superannuation (Productivity Benefit) Act 1988*. As the liability for these pension payments is assumed by the Australian Government, the Court has not recognised a liability for unfunded superannuation liability. The Court does, however, recognise an expense and a corresponding revenue item, "Liabilities assumed by other agencies", in respect of the notional amount of the employer contributions to Judges' pensions for the reporting period amounting to \$7,283,979 (2004-05: \$6,523,910). The contribution rate has been provided by the Australian Government Actuary.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the lower of the fair value of the lease property or the present value of minimum lease payments at the beginning of the lease term and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis unless another systematic approach is more representative of the pattern of benefits derived from the leased assets.

1.10 Borrowing Costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

1.12 Financial Risk Management

The Court's activities expose it to normal commercial financial risk. As a result of the nature of the Court's business and internal and Australian Government policies managing financial risk, the Court's exposure is considered to be low.

1.13 Derecognition of Financial Assets and Liabilities

As prescribed in the FMO, the Court has applied the option in AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another entity. In the case of a transfer to another entity, the risks and rewards of ownership must be transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged, cancelled or expires.

For the comparative year, financial assets were derecognised when the contractual right to receive cash no longer existed. Financial liabilities were derecognised when the contractual obligation to pay cash no longer existed.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

1.14 Impairment of Financial Assets

As prescribed in the FMO the Court has applied the option in AASB 1 of adopting AASB 132 and 139 from 1 July 2005 rather than 1 July 2004.

Financial assets are assessed for impairment at each balance date.

Financial Assets held at Amortised Cost

If there is objective evidence that an impairment loss has occurred for loans and receivables, the amount of loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The loss is recognised in the income statement.

Comparative Year

The above policy was not applied for the comparative year. For receivables, amounts were recognised at original invoice amount less a provision for doubtful debts when collection of the full amount was no longer probable. Bad debts were written off as incurred.

Other financial assets carried at cost which were not held to generate net cash inflows, were assessed for indicators of impairment. Where such indicators were found to exist, the recoverable amount of the assets was estimated and compared to the assets carrying amount and, if less, reduced to the carrying amount. The reduction was shown as an impairment loss.

1.15 Interest Bearing Loans and Borrowings

Government loans are carried at the balance yet to be repaid. Interest is expensed as it accrues.

1.16 Trade Creditors

Trade creditors and accruals are recognised at the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received irrespective of having been invoiced.

1.17 Acquisition of assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate. Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition.

1.18 Property, Plant and Equipment (PP&E)

Asset Recognition Threshold

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

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

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

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Revaluations

Basis

Buildings, infrastructure, plant and equipment are carried at fair value. They are revalued with sufficient frequency such that the carrying amount of each asset class is not materially different, at reporting date, from its fair value. The frequency of valuations depends upon the volatility of movements in market values for the revalued assets. Valuations are done as at 30 June.

Fair values for each class of asset are:

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

Valuation adjustments are done by classes. Valuation increments are credited to equity under the asset revaluation reserve except to the extent that it reverses a previous valuation decrement of the same asset class previously recognised through the Income Statement.

Valuation decrements for a class of assets are recognised directly through the Income Statement except to the extent that they reverse a previous valuation increment for that class.

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

Depreciation and amortisation

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

Depreciation rates, residual values and methods are reviewed at each reporting date. Necessary adjustments are recognised in the current and future reporting periods, as appropriate.

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

	<u>2006</u>	<u>2005</u>
Leasehold improvements	10 years or Lease term	10 years or Lease term
Plant and equipment – excluding library materials	3 to 10 years	4 to 10 years
Plant and equipment – library materials	5 to 40 years	5 to 40 years

Impairment

All assets were assessed for impairment at 30 June 2006. Where indications of impairment exist, the asset's recoverable amount is estimated and an adjustment made if the asset's recoverable amount is less than its carrying amount.

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

FEDERAL COURT OF AUSTRALIA

NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

1.19 Intangibles

The Court's intangibles comprise externally developed software for internal use. These assets are carried at cost.

Software is amortised on a straight line basis over its anticipated useful life of 5 years (2004-05: 5 years).

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

1.20 Taxation

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

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable; and
- except for receivables and payables.

1.21 Resources provided free of charge

Federal Magistrates Court

The Court provides resources free of charge to the Federal Magistrates Court (FMC) in accordance with sections 90, 92 and 99 of the *Federal Magistrates Act 1999*. Resources provided free of charge include:

- Court staff performing work on behalf of the FMC; and
- accommodation, including access to the Court's courtrooms.

The estimated cost of resources provided free of charge by the Court to the FMC during 2005-06 was \$7,936,932 (2004-05: \$5,323,427).

Industrial Relations Court of Australia

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 (IRC) to be transferred to the Court on 26 May 1997.

The IRC 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 1996* provides that the Chief Justice of the Court may arrange with the Chief Justice of the IRC for staff, facilities and any other necessary support to be made available to the IRC.

The estimated cost of resources provided free of charge by the Court to the IRC during 2005-06 was \$1,730 (2004-05 \$2,414).

In 2005-06 all outstanding matters were finalised by the IRC.

1.22 Insurance

The Court is insured for risks through the Government's insurable risk managed fund, 'Comcover'. Workers compensation for Court employees is insured through Comcare Australia. The Chief Justice and Judges of the Court are provided for by the *Judges' Pensions Act 1968* and Act of Grace provisions.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

1.23 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the Schedule of Administered Items and related Notes.

Except where stated below, administered items are accounted for on the same basis and using the same policies as the Court.

Administered Cash Transfers to and from Official Public Account

Revenue collected by the Court for the Government rather than the Court is Administered Revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Administration. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Court on behalf of the Government and reported as such in the Statement of Cash Flows in the Schedule of Administered Items and in the Administered Reconciliation Table in Note 18. Thus, the Schedule of Administered Items reflects the Government's transactions, through the Court, with parties outside the Government.

Revenues

All administered revenues are revenues relating to the core operating activities performed by the Court on behalf of the Commonwealth.

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

Note 2: The impact of the transition to AEIFRS from previous AGAAP

There are no adjustments to the Court's Departmental or Administered assets and liabilities due to the transition to AEIFRS.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006 \$'000	2005 \$'000
Note 3: Income		
<u>Revenues</u>		
<u>Note 3A: Revenues from Government</u>		
Appropriations for outputs	81,126	73,204
Total revenues from Government	81,126	73,204
<u>Note 3B: Goods and Services</u>		
Services	2,472	2,401
Total sales of services	2,472	2,401
Rendering of services to:		
Related entities	2,065	2,193
External entities	407	208
Total rendering of services	2,472	2,401
<u>Note 3C: Interest Revenue</u>		
Interest on deposits	614	490
<u>Gains</u>		
<u>Note 3D: Net Gains (Loss) from Sale of Assets</u>		
Infrastructure, plant and equipment:		
Proceeds from disposal	14	12
Net book value of assets disposed	4	(41)
Net gain/(loss) from disposal of infrastructure, plant and equipment	18	(29)
<u>Note 3E: Other Gains</u>		
Liabilities assumed by other agencies	7,284	6,524
Resources received free of charge	6,096	5,732
	13,380	12,256

Resources received free of charge includes an amount of \$5,547,582 (2004-05: \$5,547,582) in respect of rent and outgoings associated with the accommodation occupied by the Court in the Law Courts Building located in Sydney, New South Wales. This building is owned by Law Courts Limited, a joint venture between the NSW State and Commonwealth Governments.

Note 4: Operating Expenses

<u>Note 4A: Judges and Employee Expenses</u>		
Remuneration	38,157	36,332
Superannuation	10,392	9,567
Separation and redundancies	138	441
Total employee expenses	48,687	46,340
<u>Note 4B: Supplier Expenses</u>		
Provision of goods - external entities	3,096	2,780
Rendering of services - related entities	1,591	1,713
Rendering of services - external entities	15,335	10,295
Operating lease rentals*	20,940	22,870
Workers compensation premiums	243	268
Total supplier expenses	41,205	37,926

* These comprise minimum lease payments only.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006 \$'000	2005 \$'000
<u>Note 4C: Depreciation and Amortisation</u>		
<u>Depreciation</u>		
Leasehold improvements	1,048	952
Plant and equipment	770	731
Total Depreciation	1,818	1,683
<u>Amortisation</u>		
Intangibles – computer software	212	278
Leased plant and equipment	455	196
	667	474
Total depreciation and amortisation	2,485	2,157
<u>Note 4D: Finance Costs</u>		
Leases	60	30
Total finance costs expense	60	30
<u>Note 4E: Write down of Assets</u>		
Non-financial assets		
Plant & equipment	264	8
Total write-down of assets	264	8

Note 5: Financial Assets

<u>Note 5A: Cash</u>		
Departmental (other than special accounts)	348	1,761
Total cash and cash equivalents	348	1,761
<u>Note 5B: Receivables</u>		
Goods and services	536	66
GST receivable from the Australian Taxation Office	563	515
Appropriations receivable:		
- for existing outputs	31,701	13,404
Total receivables (net)	32,800	13,985

All receivables are current assets. Credit terms are net 30 days (2005: 30 days).

Receivables (gross) are aged as follows:

Current	32,741	13,924
Overdue by:		
Less than 30 days	7	8
30 to 60 days	1	2
61 to 90 days	0	4
More than 90 days	51	47
	59	61
Total receivables (gross)	32,800	13,985

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006 \$'000	2005 \$'000
Note 6: Non-Financial Assets		
<u>Note 6A: Land and Buildings</u>		
Leasehold improvements		
– at cost	-	954
– accumulated amortisation	-	(65)
	<u>-</u>	<u>889</u>
– fair value	7,265	4,053
– accumulated amortisation	(1,645)	(887)
	<u>5,620</u>	<u>3,166</u>
Total Land and Buildings (non-current)	<u>5,620</u>	<u>4,055</u>
<u>Note 6B: Infrastructure, Plant and Equipment</u>		
Infrastructure, plant and equipment		
– at cost	-	2,041
– accumulated depreciation	-	(241)
	<u>-</u>	<u>1,800</u>
– fair value	13,015	7,623
– accumulated depreciation	(2,108)	(677)
	<u>10,907</u>	<u>6,946</u>
Total Infrastructure, Plant and Equipment (non-current)	<u>10,907</u>	<u>8,746</u>
Plant and equipment under finance leases is subject to revaluation. The carrying amount is included in the valuation figures above and is separately disclosed in Table B below.		
All revaluations are conducted in accordance with the valuation policy stated in Note 1. In 2004-05, the formal valuations were conducted by an independent valuer (Australian Valuation Office).		
<u>Note 6C: Intangible Assets</u>		
Computer software	2,135	2,058
– accumulated amortisation	(1,691)	(1,479)
	<u>444</u>	<u>579</u>
Total Intangibles (non-current)	<u>444</u>	<u>579</u>

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 6D: Analysis of Property, Plant, Equipment and Intangibles

TABLE A - Reconciliation of the opening and closing balances of property, plant, equipment and intangibles

Item	Leasehold improvement – Total land and buildings \$'000	Infrastructure, plant and equipment \$'000	Computer Software – Intangibles \$'000	Total \$'000
As at 1 July 2005				
Gross book value	5,007	9,665	2,058	16,730
Accumulated depreciation/amortisation	(952)	(919)	(1,479)	(3,350)
Opening Net Book Value	4,055	8,746	579	13,380
Additions:				
by purchase	2,876	3,393	77	6,346
Depreciation/amortisation expense	(1,048)	(1,224)	(213)	(2,485)
Disposals:				
Other disposals	(263)	(7)	-	(270)
As at 30 June 2006				
Gross book value	7,265	13,015	2,135	22,415
Accumulated depreciation/amortisation	(1,645)	(2,108)	(1,691)	(5,444)
Closing Net book value	5,620	10,907	444	16,971

Note 6D: Analysis of Property, Plant, Equipment and Intangibles

TABLE B – Property, Plant, Equipment held under Finance Lease

Item	Leasehold improvement – Total land and buildings \$'000	Total plant and equipment \$'000
As at 30 June 2006		
Gross value	-	2,022
Accumulated depreciation/amortisation	-	(650)
Net book value	-	1,372
As at 30 June 2005		
Gross value	-	798
Accumulated depreciation/amortisation	-	(196)
Net book value	-	602

Note 6D: Analysis of Property, Plant, Equipment and Intangibles

TABLE C – Property, Plant, Equipment under construction

Item	Leasehold improvement – Total land and buildings \$'000	Total plant and equipment \$'000
Carrying amount at 30 June 2006	-	782
Carrying amount at 30 June 2005	-	235

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006 \$'000	2005 \$'000
<u>Note 6E: Other Non-Financial Assets</u>		
Prepayments	<u>5,492</u>	<u>19,157</u>

All other non-financial assets are current assets.

Note 7: Payables

Trade creditors	404	401
Sundry creditors	-	215
Total supplier payables	<u>404</u>	<u>616</u>

Supplier payables are represented by:

Current	<u>404</u>	<u>616</u>
Total supplier payables	<u>404</u>	<u>616</u>

Settlement is usually made net 30 days.

Note 8: Interest Bearing Liabilities

Note 8A: Leases

Finance lease commitments
 Payable:

Within one year		
Minimum lease payments	700	279
Deduct: future finance charges	<u>(63)</u>	<u>(30)</u>
	<u>637</u>	<u>249</u>

In one to five years		
Minimum lease payments	812	392
Deduct: future finance charges	<u>(38)</u>	<u>(20)</u>
	<u>774</u>	<u>372</u>

Finance lease recognised in balance sheet	<u>1,411</u>	<u>621</u>
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Finance leases exist in relation to certain major IT equipment assets and some office equipment. The leases are non-cancellable and for fixed terms averaging three years, with a maximum of five years. The interest rate implicit in the leases averaged 5.39% (2005: 5.25%). The leased assets secure the lease liabilities. The Court guarantees the residual values of all assets leased. There are no contingent rentals.

Note 8B: Other Interest Bearing Liabilities

Lease incentives	<u>-</u>	<u>139</u>
Other interest bearing liabilities are represented by:		
Current	<u>-</u>	<u>139</u>
Total other interest bearing liabilities	<u>-</u>	<u>139</u>

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006 \$'000	2005 \$'000
Note 9: Provisions		
Salaries and wages	203	97
Leave	14,566	14,071
Superannuation	768	750
Fringe Benefits Tax	191	201
Total Provisions	15,728	15,119
Current	14,889	14,378
Non-current	839	741
Total Provisions	15,728	15,119

Note 10: Cash Flow Reconciliation

Reconciliation of cash per Income Statement to Statement of Cash Flows

Cash at year end per Statement of Cash Flows	348	1,761
Balance Sheet items comprising above cash: 'Financial Assets - Cash'	348	1,761

Reconciliation of operating result to net cash from operating activities:

Operating result	4,909	1,891
Depreciation/amortisation	2,485	2,157
Net write down of non-financial assets	264	8
(Gain)/Loss on disposal of assets	(18)	29
(Increase)/decrease in net receivables	(18,815)	(906)
(Increase)/decrease in prepayments	13,665	(3,067)
Increase/(decrease) in suppliers payables	(212)	430
Increase/(decrease) in judge and employee provisions	609	(75)
Increase/(decrease) in other liabilities	651	(204)
Net cash from operating activities	3,538	263

The variation in prepayments relates to the cessation of contractual arrangements for property management services.

Note 11: Executive Remuneration

	2006	2005
The number of senior executives who received or were due to receive total remuneration of \$130,000 or more:		
\$130,000 to \$144,999	-	1
\$145,000 to \$159,999	1	-
\$160,000 to \$174,999	1	1
\$175,000 to \$189,999	4	1
\$190,000 to \$204,999	2	4
\$205,000 to \$219,999	1	3
\$220,000 to \$234,999	2	1
\$235,000 to \$249,999	-	1
\$265,000 to \$279,000	1	-
Total	12	13

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006	2005
The aggregate amount of total remuneration of executives shown above:	\$2,391,069	\$2,398,840
The aggregate amount of separation and redundancy/termination benefit payments during the year to executives shown above:	\$3,627	\$169,530

Note 12: Remuneration of Auditors

	2006	2005
Financial statement audit services are provided free of charge to the Court.		
The fair value of audit services provided was:	\$76,000	\$72,000

The audit fees for the IRC are borne by the Court and have been included in the amounts disclosed in this note. No other services were provided by the Auditor-General during the financial year.

Note 13: Average Staffing Levels

	2006	2005
The average staffing levels for the Federal Court during the year were:	351	346

Note 14: Financial Instruments

Note 14A: Interest Rate Risk

Financial Instrument	Note	Floating Interest Rate		Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 %	2005 %
Financial Assets									
Cash at bank	5A	348	1,761	-	-	348	1,761	2	2
Receivables for goods and services (gross)	5B	-	-	32,800	13,985	32,800	13,985	n/a	n/a
Total		348	1,761	32,800	13,985	33,148	15,746		
Total Assets						33,148	15,746		

Financial Liabilities									
Trade creditors	7	-	-	404	616	404	616	n/a	n/a
Finance lease liabilities	8A	1,411	621	-	-	1,411	621	5.22	5.21
Lease incentives	8B	-	-	-	139	-	139	n/a	n/a
Total		1,411	621	404	755	1,815	1,376		
Total Liabilities						1,815	1,376		

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

The net fair values of cash, investments and non-interest-bearing financial assets approximate their carrying amounts. The net fair values for finance lease liabilities, lease incentives and trade creditors are approximated by their carrying amounts.

Credit Risk Exposures

The Court's maximum exposures to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The Court has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or to other security.

This note also applies to the Court's administered financial instruments and is therefore not reproduced at Note 19.

Note 15: Income Administered on Behalf of Government

	2006 \$'000	2005 \$'000
Fees (filing and hearing fees)	6,167	5,220
Fines	43	1,646
Other	86	148
<i>Total Revenues Administered on Behalf of Government</i>	<u>6,296</u>	<u>7,014</u>

Note 16: Expenses Administered on Behalf of Government

Note 16: Other

Refund of fees and fines	89	65
Fees and fines – provision for doubtful debts	-	58
<i>Total Expenses Administered on Behalf of Government</i>	<u>89</u>	<u>123</u>

Note 17: Assets Administered on Behalf of Government

Note 17A: Cash and cash equivalents

Administered bank account	<u>19</u>	<u>30</u>
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Note 17B: Receivables

Fees (filing and hearing fees)	416	427
Credit terms are net 30 days (2005: 30 days).		
<i>Less: Allowance for doubtful debts</i>	(44)	(94)
<i>Total Receivables (net)</i>	<u>372</u>	<u>333</u>

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

	2006 \$'000	2005 \$'000
Receivables (gross) are aged as follows:		
Current	101	-
Overdue by:		
- Less than 30 days	95	110
- 30 to 60 days	79	78
- 60 to 90 days	23	54
- More than 90 days	118	185
Total Receivables (gross)	416	427
Total Assets Administered on Behalf of Government	391	363

Note 18: Administered Reconciliation Table

<i>Opening administered assets less administered liabilities as at 1 July</i>	363	161
Plus: Administered revenues	6,296	7,014
Less: Administered expenses	(89)	(123)
Appropriation transfers from OPA	90	62
Transfers to OPA	(6,269)	(6,751)
Closing administered assets less administered liabilities as at 30 June	391	363

Note 19: Administered Financial Instruments

Administered Interest Rate Risk

Financial Instrument	Notes	Non-Interest Bearing		Total		Weighted Average	
		2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 %	2005 %
Financial Assets							
Cash	17A	19	30	19	30	n/a	n/a
Receivables (gross)	17B	372	333	372	333	n/a	n/a
Total		391	363	391	363		
Total Assets				391	363		

The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 20: Appropriations

Note 20A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2006 \$	2005 \$
Balance carried from previous period	13,839,300	14,717,000
Unspent receipts from 1999-2004 where no s31 agreement was in place	-	1,325,700
Unspent prior year appropriations – ineffective s31	-	7,782,996
<i>Adjusted Balance carried for previous period</i>	13,839,300	5,608,304
Appropriation Act (No.1)	79,428,000	68,735,000
Appropriation Act (No.3)	1,698,000	4,469,000
Departmental adjustments by the Finance Minister (Appropriation Acts)	1,325,700	-
Comcover receipts (Appropriation Act s13)	4,548	33,411
Adjustment of appropriations on change of entity function (FMA s32)	-	-
Refunds credited (FMA s30)	3,500,000	-
Appropriation reduced by section 9 determinations (current year)	-	-
Sub-total Annual Appropriation	85,956,248	73,237,411
Appropriations to take account of recoverable GST (FMA s30A)	3,557,000	3,240,000
Annotations to 'net appropriations' (FMA s31)	2,068,992	592,405
Year ended variation – s31	-	9,798,958
Total appropriations available for payments	105,421,540	92,477,078
Cash payments made during the year (GST inclusive)	74,743,540	78,637,778
Appropriations credited to special Accounts (excluding GST)	-	-
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropriations	30,678,000	13,839,300
Represented by:		
Cash at bank and on hand	348,000	1,761,000
Receivable – departmental appropriations	30,330,000	10,752,600
Receipts from periods of no s31 agreement in years 1999-2005 not currently available	-	1,325,700
Total	30,678,000	13,839,300

Note 20B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations

	Non-operating				Total	
	Equity		Previous Years' Outputs			
	2006 \$	2005 \$	2006 \$	2005 \$	2006 \$	2005 \$
Balance carried forward from previous period	-	50,000	-	267,000	-	317,000
Appropriation Act (No.4)	1,371,000	1,908,000	-	-	1,371,000	1,908,000
Total appropriations available for payments	1,371,000	1,958,000	-	267,000	1,371,000	2,225,000
Cash payments made during the year (GST inclusive)	-	1,958,000	-	267,000	-	2,225,000
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Other Than Ordinary Annual Services Appropriations	1,371,000	-	-	-	1,371,000	-

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 21: Special Accounts

Other Trust Moneys Account	2006	2005
	\$	\$
Legal Authority: <i>Financial Management and Accountability Act 1997; s 20</i>		
<i>Purpose:</i> for expenditure of moneys temporarily held on trust or otherwise for the benefit of a person other than the Commonwealth. This account is interest bearing.		
Balance carried from previous year	38,782	54,470
Receipts during 2005/06	1,047,261	29,868
Available for payments	1,086,043	84,338
Payments made during 2005/06	1,038,420	45,556
Balance carried to next year	47,623	38,782
Represented by:		
Cash – held by the Court	47,623	38,782
Total	47,623	38,782

Services for other Governments & Non-agency bodies	2006	2005
	\$	\$
Legal authority: <i>Financial Management and Accountability Act, 1997, s 20</i>		
<i>Purpose:</i> for expenditure in connection with services performed on behalf of other Governments and bodies that are not FMA agencies. This account is interest bearing.		
Balance carried from previous year	10,398	10,398
Receipts during 2005/06	-	-
Available for payments	10,398	10,398
Payments made during 2005/06	-	-
Balance carried to next year	10,398	10,398
Represented by:		
Cash – held by the Court	10,398	10,398
Total	10,398	10,398

Federal Court of Australia Litigant's Fund	2006	2005
	\$	\$
Legal Authority: <i>Financial Management and Accountability Act, 1997, s20</i>		
<i>Purpose:</i> to hold private moneys for litigants pending acceptance of moneys paid into Court by litigants; security for costs or pursuant to an order of a Federal Court Judge. This account is non-interest bearing.		
Balance carried from previous year	1,199,753	797,165
Receipts during 2005/06	2,466,458	1,583,997
Available for payments	3,666,211	2,381,162
Payments made during 2005/06	1,994,568	1,181,409
Balance carried to next year	1,671,643	1,199,753
Represented by:		
Cash – held by the Court	1,671,643	1,199,753
Total	1,671,643	1,199,753

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Federal Court of Australia Litigant's Fund	2006	2005
	\$	\$
Legal authority: <i>Financial Management and Accountability Act, 1997, s39</i>		
<i>Purpose:</i> 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. This account is interest bearing.		
Balance carried from previous year	1,674,832	1,734,235
Receipts during 2005/06	15,548,065	1,362,959
Available for payments	17,222,897	3,097,194
Payments made during 2005/06	4,823,185	1,422,362
Balance carried to next year	12,399,712	1,674,832
Represented by:		
Cash – held by the Court	12,399,712	1,674,832
Total	12,399,712	1,674,832

Note 22: Comcare Account

Comcare account	2006	2005
	\$	\$
This account holds monies advanced to the Court by COMCARE to distribute compensation payments made in accordance with the <i>Safety Rehabilitation and Compensation Act 1998</i> . Where the Court makes payments against accrued sick leave entitlements pending determination of an employee's claim, permission is obtained in writing from each individual to allow the Court to recover the payments from the monies in the account.		
Balance carried from previous year	-	-
Receipts during 2005/06	4,548	33,411
Available for payments	4,548	33,411
Payments made during 2005/06	(3,766)	(33,411)
Balance carried to next year	782	-
Represented by:		
Cash – held by the Court	782	-
Total	782	-

Note 23: Compensation and Debt Relief

	2006	2005
	\$	\$
<i>Administered</i>		
No Act of Grace payments were made during the financial year 2005-06 under sub-section 33(1) of the <i>Financial Management and Accountability Act 1997</i> .	-	-
No payments were waived during the financial year 2005-06 under subsection 34(1) of the <i>Financial Management and Accountability Act 1997</i> .	-	-
3,183 exemptions and waivers of amounts owing to the Commonwealth were made pursuant to sub-regulations 2(4)(a-c), 2A(2)(e-g), 2AA(2)(f-h) of the <i>Federal Court Act 1976</i> (2005: 2,566).	2,812,085	2,257,196

Departmental

No payments were made under the 'Defective Administration Scheme' during the financial year 2005-06.

FEDERAL COURT OF AUSTRALIA
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

Note 24: Reporting of Outcomes

Note 24A: Net Cost of Outcome Delivery

The Court has one Output and Outcome:

To apply and uphold the rule of law to deliver remedies and enforce rights and in so doing, contribute to the social and economic development and well-being of all Australians.

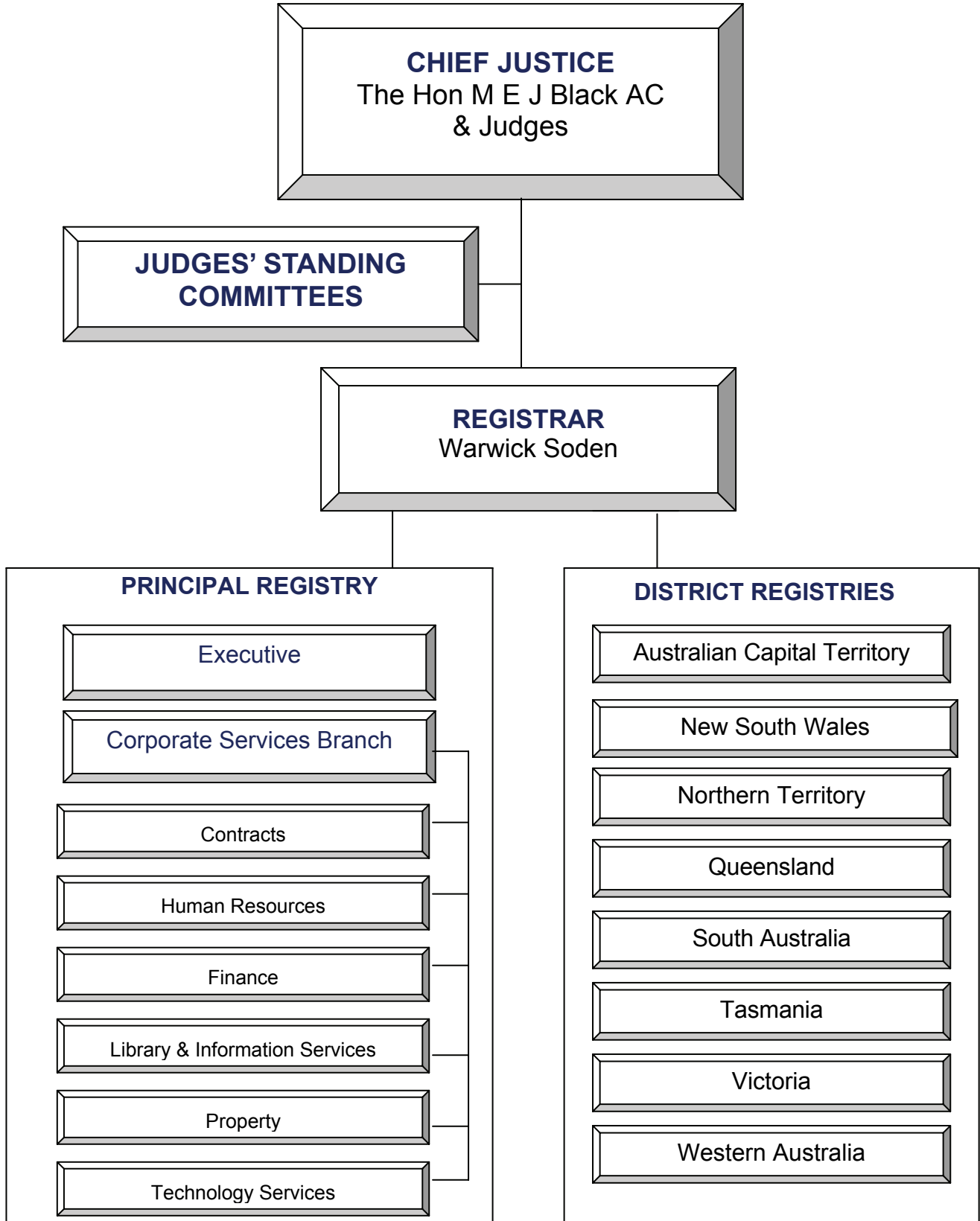
Outcome 1	Outcome 1	
	2006 \$'000	2005 \$'000
Administered expenses	89	123
Departmental expenses	92,701	86,472
Total expenses	92,790	86,595
<i>Costs recovered from provision of goods and services to the non-government sector</i>		
Administered	-	-
Departmental	-	-
Total costs recovered	-	-
<i>Other external revenues</i>		
Administered	6,296	7,014
Total Administered	6,296	7,014
Departmental		
Other	614	490
Goods and services revenue from Related Entities	2,490	2,413
Total Departmental	3,104	2,903
Total other external revenues	9,400	9,917
Net cost/(contribution) of outcome	83,390	76,678

Note 24B: Major Classes of Departmental Revenues and Expenses by Outputs

Outcome 1	Outcome 1	
	2006 \$'000	2005 \$'000
Departmental Expenses		
Judges and employees	48,687	46,340
Suppliers	41,205	37,926
Depreciation and amortisation	2,485	2,157
Finance costs	60	30
Other expenses	264	49
Total departmental expenses	92,701	86,472
Funded by:		
Revenues from government	94,506	85,460
Sale of goods and services	2,490	2,413
Other non-taxation revenues	614	490
Total departmental revenues	97,610	88,363

APPENDIX 2

MANAGEMENT STRUCTURE



APPENDIX 3

REGISTRARS OF THE COURT (at 30 June 2006)

Registry	Name	Appointments under other Acts
Principal Registry		
Registrar	Warwick Soden	
Deputy Registrar Sheriff of the Federal Court of Australia	Philip Kellow	Marshal in Admiralty (under <i>Admiralty Act</i>)
	Louise Anderson	A Registrar, Federal Magistrates Court Deputy Registrar
	Lance Grant	A Registrar, Federal Magistrates Court Deputy Sheriff, Admiralty Marshal
New South Wales		
District Registrar	Michael Wall	A Registrar, Federal Magistrates Court
Deputy District Registrars	Jennifer Hedge	Registrar, Federal Police Disciplinary Tribunal
		A Registrar, Federal Magistrates Court Deputy Registrar, Defence Force Discipline Appeal Tribunal
	Geoffrey Segal	Registrar, Australian Competition Tribunal
	Anthony Tesoriero	A Registrar, Federal Magistrates Court Secretary, Copyright Tribunal
	Stephanie Kavallaris	A Registrar, Federal Magistrates Court
	Anna Quilter	A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
		A Registrar, Federal Magistrates Court Deputy Registrar, Australian Competition Tribunal
	Kim Lackenby	Deputy Registrar, Federal Police Disciplinary Tribunal
		A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court
	Thomas Morgan	A Registrar, Federal Magistrates Court
Victoria		
District Registrar	Sia Lagos	Registrar, Defence Force Discipline Appeal Tribunal
Deputy District Registrars		A Registrar, Federal Magistrates Court
	Tim Connard	A Registrar, Federal Magistrates Court
	Jane Mussett	A Registrar, Federal Magistrates Court
	Robert Bardsley	A Registrar, Federal Magistrates Court
	Susan Agnew	A Registrar, Federal Magistrates Court
	Ian Irving	A Registrar, Federal Magistrates Court

Registry	Name	Appointments under other Acts
Queensland		
District Registrar	Graham Ramsey	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Caroline Reynolds Heather Baldwin David Robson Kenneth Berry Christine Fewings	A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court
Western Australia		
District Registrar	Martin Jan PSM	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Elizabeth Stanley June Eaton Rainer Gilich	A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court
South Australia		
District Registrar	Patricia Christie	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Catherine Cashen Lynette Duncan	A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court
Tasmania		
District Registrar	Alan Parrott	District Registrar, Administrative Appeals Tribunal Deputy Registrar, Australian Competition Tribunal Deputy Registrar, National Native Title Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court Deputy Sheriff, Admiralty Marshal

Registry	Name	Appointments under other Acts
Australian Capital Territory		
District Registrar	Jennifer Hedge (based in Sydney)	Registrar, Federal Police Disciplinary Tribunal Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court
Deputy District Registrars	Geoffrey Segal (based in Sydney)	Registrar, Australian Competition Tribunal
	Anthony Tesoriero (based in Sydney)	A Registrar, Federal Magistrates Court Secretary, Copyright Tribunal
	Stephanie Kavallaris (based in Sydney)	A Registrar, Federal Magistrates Court A Registrar, Federal Magistrates Court
	Anna Quilter (based in Sydney)	Deputy Registrar Australian Competition Tribunal A Registrar, Federal Magistrates Court
	Kim Lackenby (based in Sydney)	Deputy Registrar, Australian Competition Tribunal Deputy Registrar, Federal Police Disciplinary Tribunal A Registrar, Federal Magistrates Court
	Natalie Cujes (based in Canberra)	A Registrar, Federal Magistrates Court
Northern Territory		
District Registrar	Caroline Edwards	Deputy Registrar, Defence Force Discipline Appeal Tribunal A Registrar, Federal Magistrates Court Deputy Sheriff, Admiralty Marshal

APPENDIX 4

STATUTES UNDER WHICH THE FEDERAL COURT OF AUSTRALIA MAY EXERCISE JURISDICTION (at 30 June 2006)

[ONLY PRINCIPAL ACTS ARE INCLUDED]

<i>Aboriginal and Torres Strait Islander Act 2005</i>	<i>Australian Industry Development Corporation Act 1970</i>
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	<i>Australian National Railways Commission Sale Act 1997</i>
<i>Aboriginal Councils and Associations Act 1976</i>	<i>Australian Postal Corporation Act 1989</i>
<i>Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987</i>	<i>Australian Radiation Protection and Nuclear Safety Act 1998</i>
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	<i>Australian Securities and Investments Commission Act 2001</i>
<i>ACIS Administration Act 1999</i>	<i>Australian Sports Anti-Doping Authority Act 2006</i>
<i>Administrative Appeals Tribunal Act 1975</i>	<i>Australian Wine and Brandy Corporation Act 1980</i>
<i>Administrative Decisions (Judicial Review) Act 1977</i>	<i>Aviation Transport Security Act 2004</i>
<i>Admiralty Act 1988</i>	<i>Banking Act 1959</i>
<i>Advance Australia Logo Protection Act 1984</i>	<i>Bankruptcy Act 1966</i>
<i>Age Discrimination Act 2004</i>	<i>Broadcasting Services Act 1992</i>
<i>Aged Care Act 1997</i>	<i>Building and Construction Industry Improvement Act 2005</i>
<i>Agricultural and Veterinary Chemicals Act 1994</i>	<i>Building Industry Act 1985</i>
<i>Air Navigation Act 1920</i>	<i>Charter of the United Nations Act 1945</i>
<i>Airports Act 1996</i>	<i>Child Support (Registration and Collection) Act 1988</i>
<i>Anti-Personnel Mines Convention Act 1998</i>	<i>Circuit Layouts Act 1989</i>
<i>Australian Crime Commission Act 2002</i>	<i>Civil Aviation (Carriers' Liability) Act 1959</i>
<i>Australian Energy Market Act 2004</i>	
<i>Australian Federal Police Act 1979</i>	

<i>Coal Industry Repeal Act 2001</i>	<i>Evidence and Procedure (New Zealand) Act 1994</i>
<i>Commonwealth Authorities and Companies Act 1997</i>	<i>Excise Act 1901</i>
<i>Commonwealth Electoral Act 1918</i>	<i>Export Markets Development Grants Act 1997</i>
<i>Commonwealth Places (Mirror Taxes) Act 1998</i>	<i>Extradition Act 1988</i>
<i>Commonwealth Serum Laboratories Act 1961</i>	<i>Federal Court of Australia Act 1976</i>
<i>Complaints (Australian Federal Police) Act 1981</i>	<i>Federal Court of Australia (Consequential Provisions) Act 1976</i>
<i>Copyright Act 1968</i>	<i>Federal Proceedings (Costs) Act 1981</i>
<i>Corporations Act 2001</i>	<i>Financial Sector (Collection of Data) Act 2001</i>
<i>Crimes Act 1914</i>	<i>Financial Sector (Shareholdings) Act 1998</i>
<i>Criminal Code Act 1995</i>	<i>Financial Sector (Transfer of Business) Act 1999</i>
<i>CSL Sale Act 1993</i>	<i>Financial Transaction Reports Act 1988</i>
<i>Customs Act 1901</i>	<i>Fisheries Management Act 1991</i>
<i>Dairy Industry Service Reform Act 2003</i>	<i>Foreign Acquisitions and Takeovers Act 1975</i>
<i>Dairy Produce Act 1986</i>	<i>Foreign Evidence Act 1994</i>
<i>Debits Tax Administration Act 1982</i>	<i>Foreign Judgments Act 1991</i>
<i>Defence Act 1903</i>	<i>Foreign Proceedings (Excess of Jurisdiction) Act 1984</i>
<i>Defence Force Discipline Appeals Act 1955</i>	<i>Foreign States Immunities Act 1985</i>
<i>Defence Reserve Service (Protection) Act 2001</i>	<i>Fringe Benefits Tax Assessment Act 1986</i>
<i>Designs Act 2003</i>	<i>Fuel Quality Standards Act 2000</i>
<i>Diplomatic and Consular Missions Act 1978</i>	<i>Gas Pipelines Access (Commonwealth) Act 1998</i>
<i>Disability Discrimination Act 1992</i>	<i>Gene Technology Act 2000</i>
<i>Education Services for Overseas Students Act 2000</i>	<i>Great Barrier Reef Marine Park Act 1975</i>
<i>Egg Industry Service Provision Act 2002</i>	<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i>
<i>Environment Protection and Biodiversity Conservation Act 1999</i>	<i>Health Insurance Act 1973</i>
<i>Evidence Act 1995</i>	

Appendix 4 – Statutes under which the Federal Court may exercise Jurisdiction

<i>Health Insurance Commission (Reform and Separation of Functions) Act 1997</i>	<i>Moomba–Sydney Pipeline System Sale Act 1994</i>
<i>Hearing Services Administration Act 1997</i>	<i>Motor Vehicle Standards Act 1989</i>
<i>Hearing Services and AGHS Reform Act 1997</i>	<i>National Environment Protection Measures (Implementation) Act 1998</i>
<i>Horticulture Marketing and Research and Development Services Act 2000</i>	<i>National Health Act 1953</i>
<i>Human Rights and Equal Opportunity Commission Act 1986</i>	<i>National Measurement Act 1960</i>
<i>Income Tax Assessment Act 1936</i>	<i>National Security Information (Criminal Proceedings) Act 2004</i>
<i>Industrial Chemicals (Notification and Assessment) Act 1989</i>	<i>National Transmission Network Sale Act 1998</i>
<i>Industrial Relations Reform Act 1993</i>	<i>Native Title Act 1993</i>
<i>Insurance Acquisition and Takeovers Act 1991</i>	<i>Navigation Act 1912</i>
<i>Insurance Act 1973</i>	<i>Nuclear Non-Proliferation (Safeguards) Act 1987</i>
<i>Interactive Gambling Act 2001</i>	<i>Offshore Petroleum Act 2006</i>
<i>International Criminal Court Act 2002</i>	<i>Olympic Insignia Protection Act 1987</i>
<i>International War Crimes Tribunals Act 1995</i>	<i>Ombudsman Act 1976</i>
<i>Judiciary Act 1903</i>	<i>Ozone Protection and Synthetic Greenhouse Gas Management Act 1989</i>
<i>Jurisdiction of Courts (Cross-vesting) Act 1987</i>	<i>Parliamentary Privileges Act 1987</i>
<i>Lands Acquisition Act 1989</i>	<i>Patents Act 1990</i>
<i>Life Insurance Act 1995</i>	<i>Payments Systems (Regulations) Act 1998</i>
<i>Liquid Fuel Emergency Act 1984</i>	<i>Petroleum (Australia–Indonesia Zone of Cooperation) (Consequential Provisions) Act 1990</i>
<i>Maritime Transport and Offshore Facilities Security Act 2003</i>	<i>Petroleum Resource Rent Tax Assessment Act 1987</i>
<i>Medical Indemnity (Prudential Supervision and Product Standards) Act 2003</i>	<i>Petroleum Retail Marketing Franchise Act 1980</i>
<i>Members of Parliament (Life Gold Pass) Act 2002</i>	<i>Petroleum Retail Marketing Sites Act 1980</i>
<i>Migration Act 1958</i>	<i>Petroleum (Submerged Lands) Amendment Act 1991</i>
<i>Military Rehabilitation and Compensation Act 2004</i>	<i>Pig Industry Act 2001</i>

Plant Breeder's Rights Act 1994

Privacy Act 1988

Private Health Insurance Incentives Act 1998

Proceeds of Crime Act 2002

Protection of the Sea (Oil Pollution Compensation Fund) Act 1993

Qantas Sale Act 1992

Radiocommunications Act 1992

Referendum (Machinery Provisions) Act 1984

Removal of Prisoners (Territories) Act 1923

Renewable Energy (Electricity) Act 2000

Retirement Savings Account Act 1997

Royal Commissions Act 1902

Safety, Rehabilitation and Compensation Act 1988

Service and Execution of Process Act 1992

Shipping Registration Act 1981

Snowy Hydro Corporatisation Act 1997

Space Activities Act 1998

Spam Act 2003

Superannuation Contributions Tax (Assessment and Collection) Act 1997

Superannuation Industry (Supervision) Act 1993

Superannuation (Resolution of Complaints) Act 1993

Surveillance Devices Act 2004

Sydney Airport Demand Management Act 1997

Taxation Administration Act 1953

Telecommunications Act 1997

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telecommunications (Interception and Access) Act 1979

Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997

Telstra Corporation Act 1991

Termination Payments Tax (Assessment and Collection) Act 1997

Therapeutic Goods Act 1989

Trade Marks Act 1995

Trade Practices Act 1974

Transport Safety Investigation Act 2003

Treasury Bills Act 1914

Veterans' Entitlements Act 1986

Water Efficiency Labelling and Standards Act 2005

Wool International Privatisation Act 1999

Wool Services Privatisation Act 2000

Workplace Relations Act 1996

APPENDIX 5
WORKLOAD STATISTICS

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

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

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

Table 5.1 – Summary of Workload Statistics
Original and Appellate Jurisdiction

Filings of Major COAs including Appeals and Related Actions					
National Totals by Financial Year					
Year	2001-02	2002-03	2003-04	2004-05	2005-06
Cause of Action					
Total COAs (inc Appeals and Related Actions)					
Filed	4528	4846	6020	4517	6158
Finalised	4697	5219	6046	4289	6516
Current	4186	3816	3789	3995	3820
Corporation (inc Appeals and Related Actions)					
Filed	362	468	645	1005	2897
Finalised	249	436	555	772	2692
Current	147	179	269	489	678
Bankruptcy (inc Appeals and Related Actions)					
Filed	613	540	495	418	332
Finalised	736	574	517	374	340
Current	247	278	191	233	177
Native Title (inc Appeals and Related Actions)					
Filed	129	71	78	61	60
Finalised*	114	61	67	97	438
Current	820	859	841	805	786
Total COA's (inc. Appeals and Related Actions and excluding Corporations, Bankruptcy and Native Title)					
Filed	3424	3767	4802	3033	2869
Finalised	3598	4148	4907	3046	3046
Current	2972	2500	2488	2468	2179

* The 2005–06 finalised statistics for Native Title include 377 joinder of party applications. As these are not counted as separate filings within Casetrack they were not included in the previous years' statistics. From 2005–06 the Court has commenced counting these finalised matters as they are individual applications which must be dealt with by a judge or registrar.

**Table 5.2 – Summary of Workload Statistics
(excluding Appeals and related actions)**

Filings of Major COAs (excluding Appeals and Related Actions)					
National Totals by Financial Year					
Year	2001-02	2002-03	2003-04	2004-05	2005-06
Cause of Action					
Total COAs (ex Appeals and Related Actions)					
Filed	3863	4139	5117	3133	4829
Finalised	4138	4526	5219	3112	5171
Current	3841	3457	3355	3354	3240
Corporation (ex Appeals and Related Actions)					
Filed	358	466	635	986	2897
Finalised	242	432	546	760	2692
Current	144	178	267	480	678
Bankruptcy (ex Appeals and Related Actions)					
Filed	558	485	448	349	332
Finalised	693	526	464	318	340
Current	222	246	165	194	177
Native Title (ex Appeals and Related Actions)					
Filed	126	68	54	51	60
Finalised*	112	58	60	80	438
Current	810	849	814	785	786
Total COAs (ex Appeals and Related Action and excluding Corporations, Bankruptcy and Native Title)					
Filed	2821	3120	3980	1747	1540
Finalised	3091	3510	4149	1954	1701
Current	2665	2184	2109	1895	1599

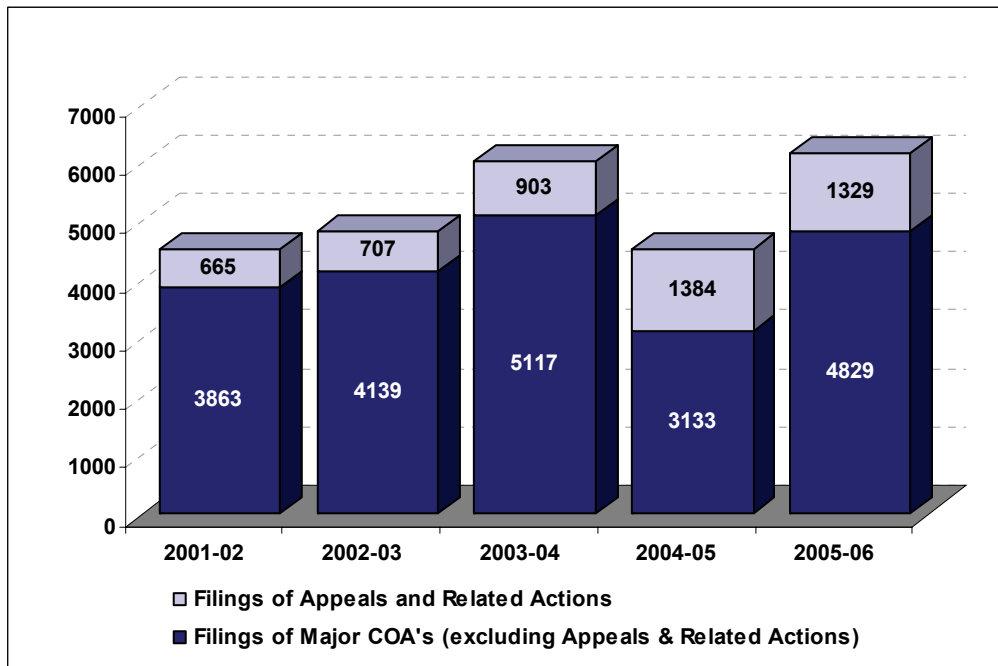
*The 2005–06 finalised statistics for Native Title include 377 joinder of party applications. As these are not counted as separate filings within Casetrack they were not included in the previous years' statistics. From 2005–06 the Court has commenced counting these finalised matters as they are individual applications which must be dealt with by a judge or Registrar.

Table 5.3 – Summary of Workload Statistics
 Appeals and Related Actions only

Filings of Appeals and Related Actions					
National Totals by Financial Year					
Year	2001-02	2002-03	2003-04	2004-05	2005-06
Cause of Action					
Total Appeals & Related Actions					
Filed	665	707	903	1384	1329
Finalised	559	693	827	1177	1345
Current	345	359	434	641	580
Corporation Appeals & Related Actions					
Filed	4	2	10	19	11
Finalised	7	4	9	12	8
Current	3	1	2	9	11
Bankruptcy Appeals & Related Actions					
Filed	55	55	47	69	57
Finalised	43	48	53	56	54
Current	25	32	26	39	30
Native Title Appeals & Related Actions					
Filed	3	3	24	10	7
Finalised	2	3	7	17	3
Current	10	10	27	20	7
Total Appeals & Related Actions – excluding Corporations, Bankruptcy & Native Title					
Filed	603	647	822	1286	1254
Finalised	507	638	758	1092	1280
Current	307	316	379	573	532

Figure 5.1

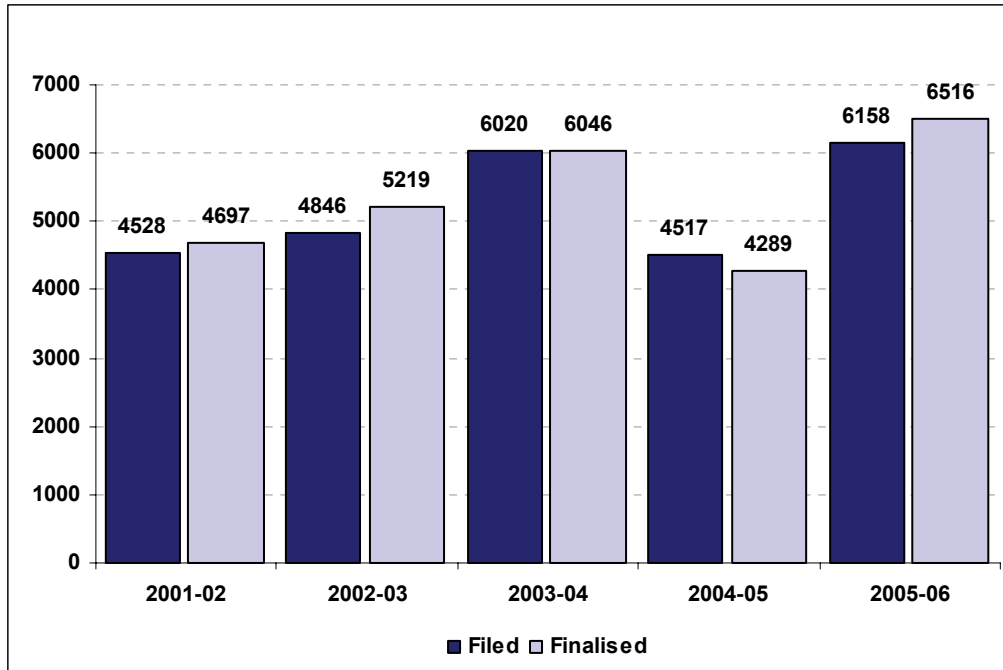
Matters filed 2001–02 to 2005–06



The increase in filings for 2005–06 was largely attributed to corporations matters.

Figure 5.2

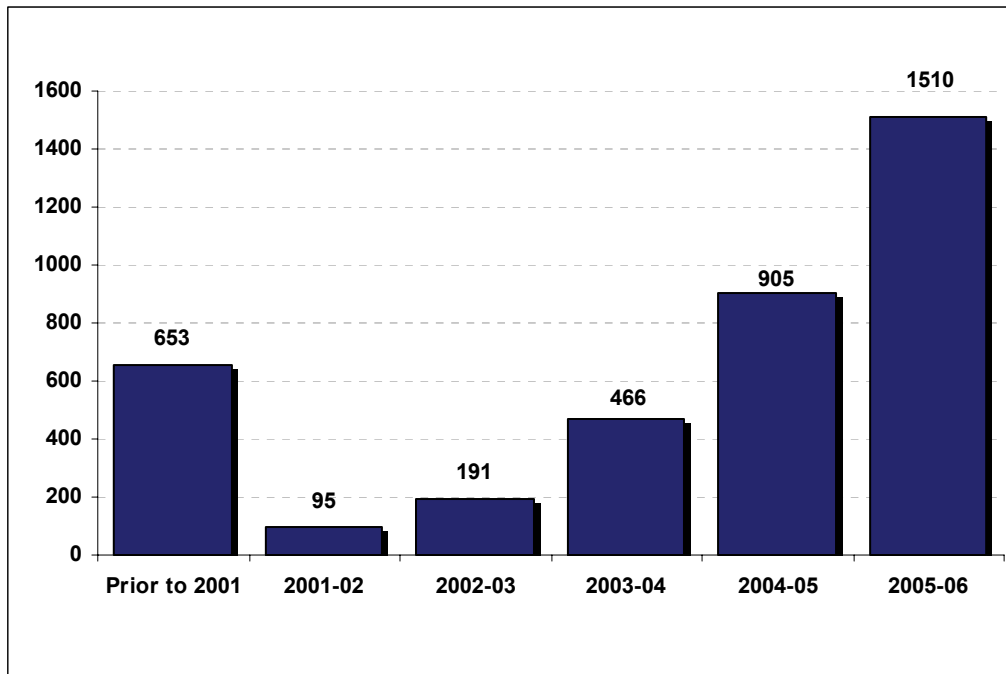
Matters filed and finalised 2001–02 to 2005–06



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

Figure 5.3

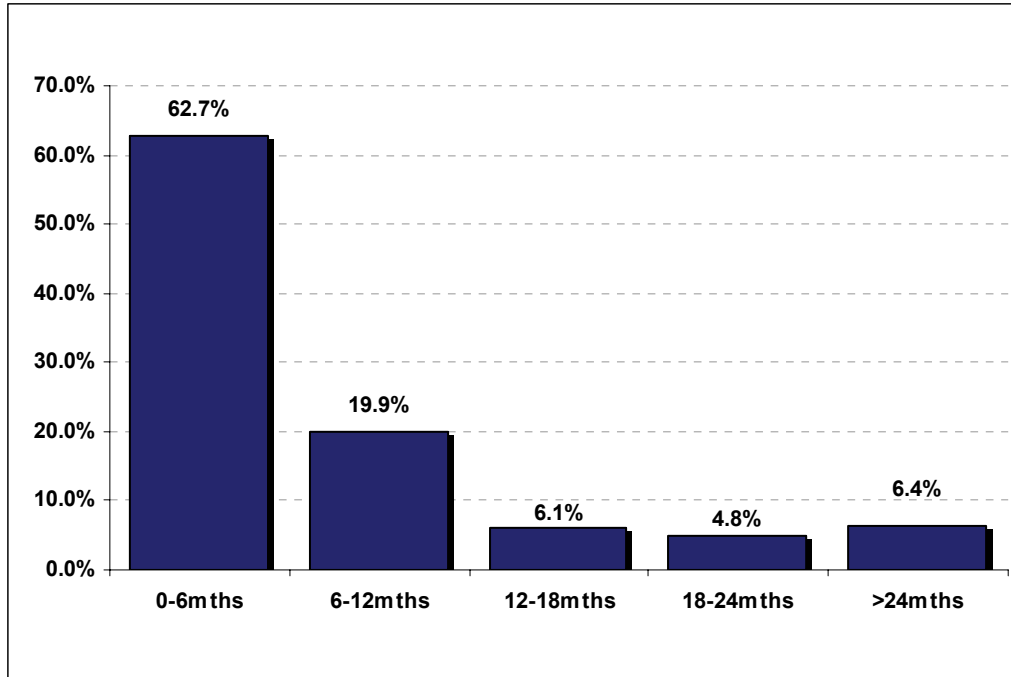
Age and number of current matters at 30 June 2006



A total of 3,820 matters remain current as at 30 June 2006. The age of these are shown in the graph above. There were 653 applications still current relating to periods before those shown in the graph. Over 90% of cases prior to 2001 are native title matters. 340 (56%) of these are active with the remainder being linked cases to a lead matter which is either in mediation or litigation. Of these active files over 50% (170) remain in mediation in the National Native Title Tribunal (NNTT).

Figure 5.4

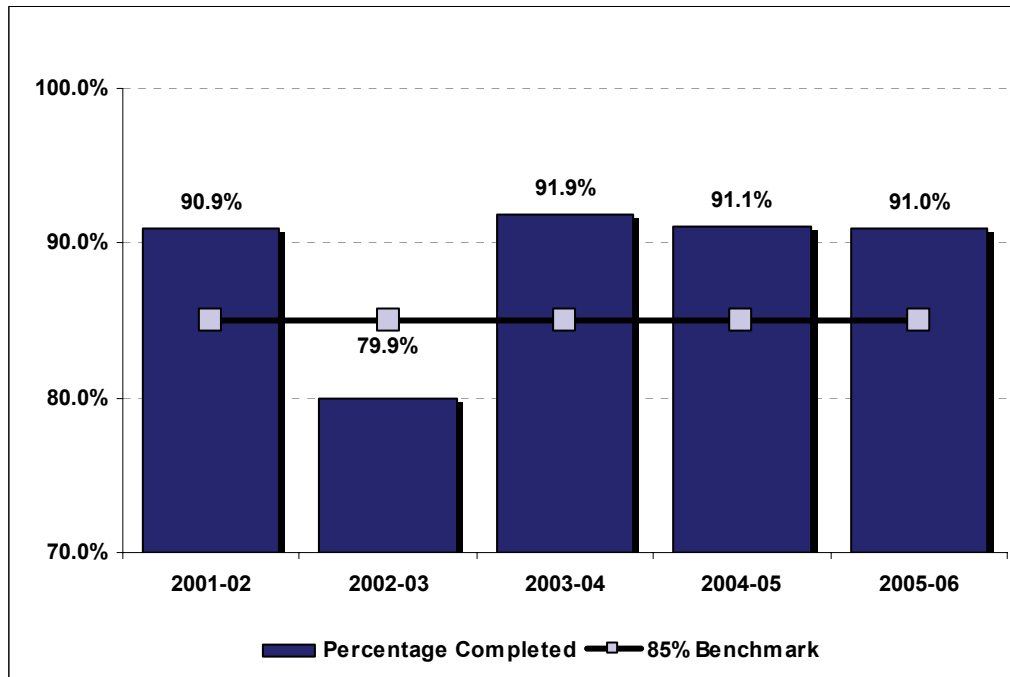
**Time span to complete
Matters completed in the period 1 July 2001 to 30 June 2006**



A total of 26,217 matters were completed during the five year period ended 30 June 2006 excluding Native Title matters. The time span, from filing to disposition of these matters, is shown in the graph above.

Figure 5.5

**Time span to complete benchmark
2001–02 to 2005–06**

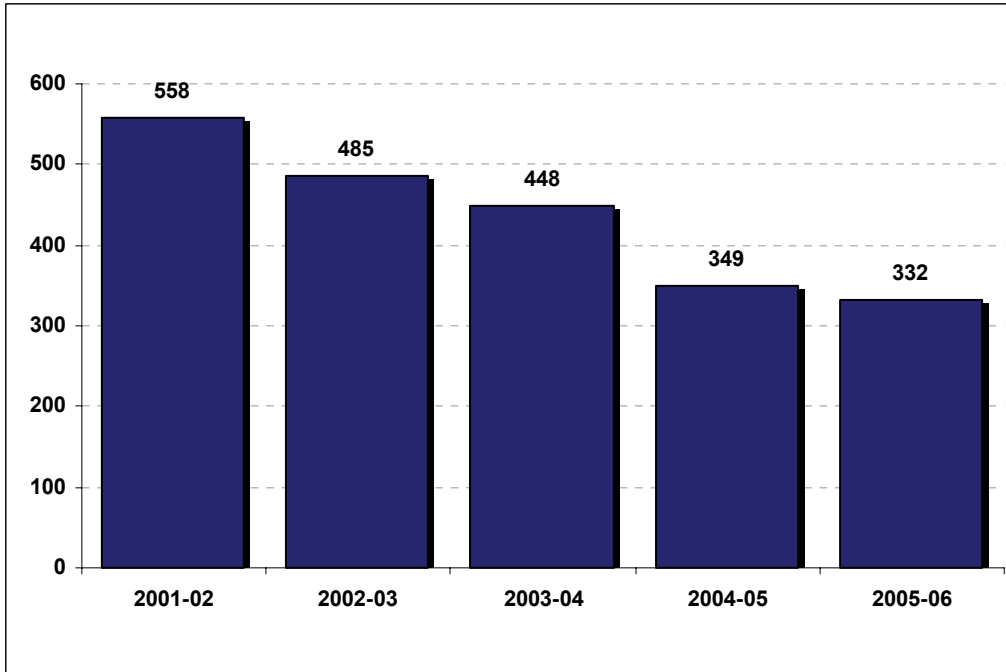


The total number of matters (including appeals but excluding Native Title) completed for each of the last five years and the time span for completion are shown below.

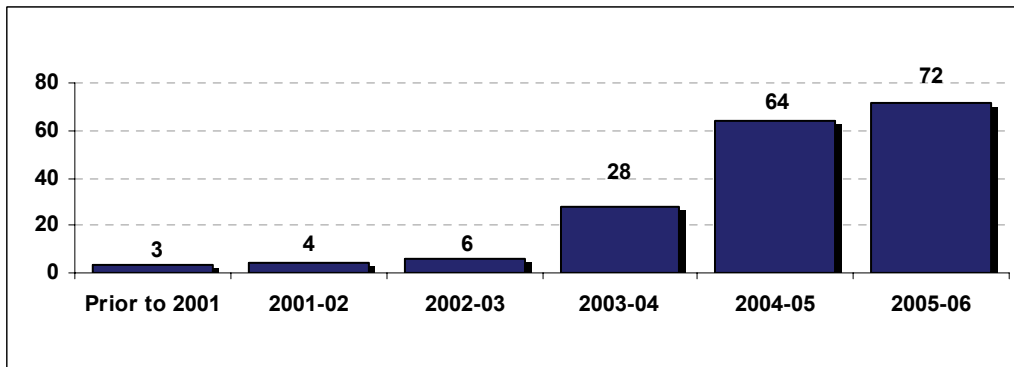
Finalisations of Major COAs Including Appeals and Related Actions excluding Native Title National Totals by Financial Year					
Year	2001-02	2002-03	2003-04	2004-05	2005-06
Percentage Completed					
85% Benchmark	85%	85%	85%	85%	85%
Under 18 Months	4170	4125	5499	3833	5530
% of Total	90.9%	79.9%	91.9%	91.1%	91.0%
Over 18 Months	415	1036	487	376	548
% of Total	9.1%	20.1%	8.1%	8.9%	9.0%
Total COA's	4585	5161	5986	4209	6078

Figure 5.6

Bankruptcy Act matters filed 2001-02 to 2005-06



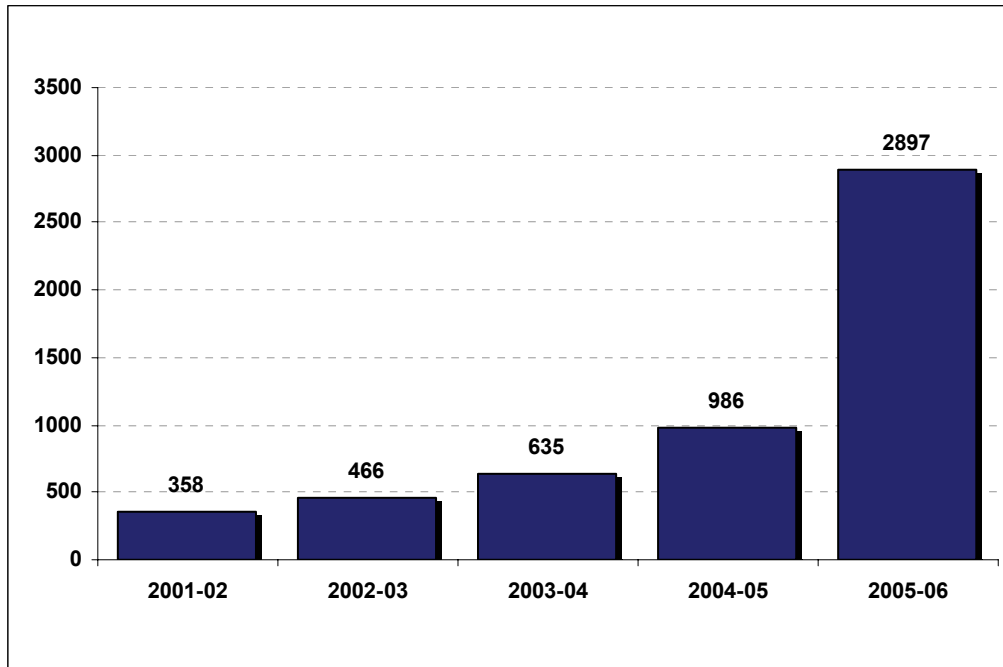
Age and number of current Bankruptcy Act matters at 30 June 2006



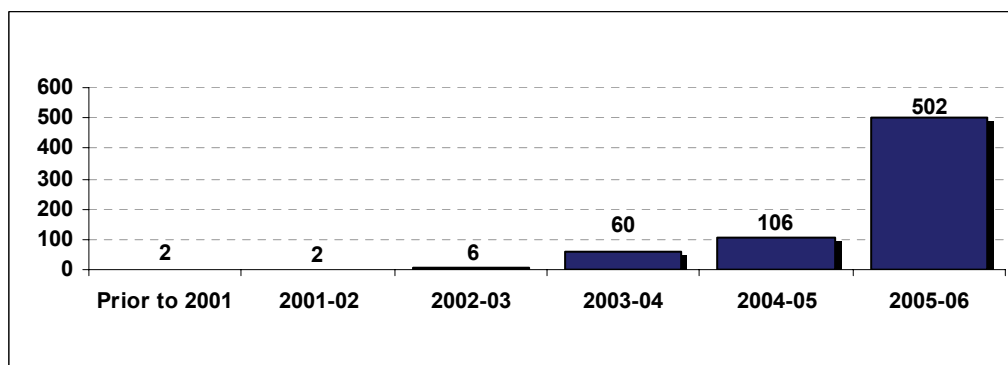
A total of 177 *Bankruptcy Act* matters remain current at 30 June 2006. The age of these are shown in the graph above. There were three matters still current relating to periods before those shown in the graph.

Figure 5.7

Corporations Act matters filed 2001–02 to 2005–06



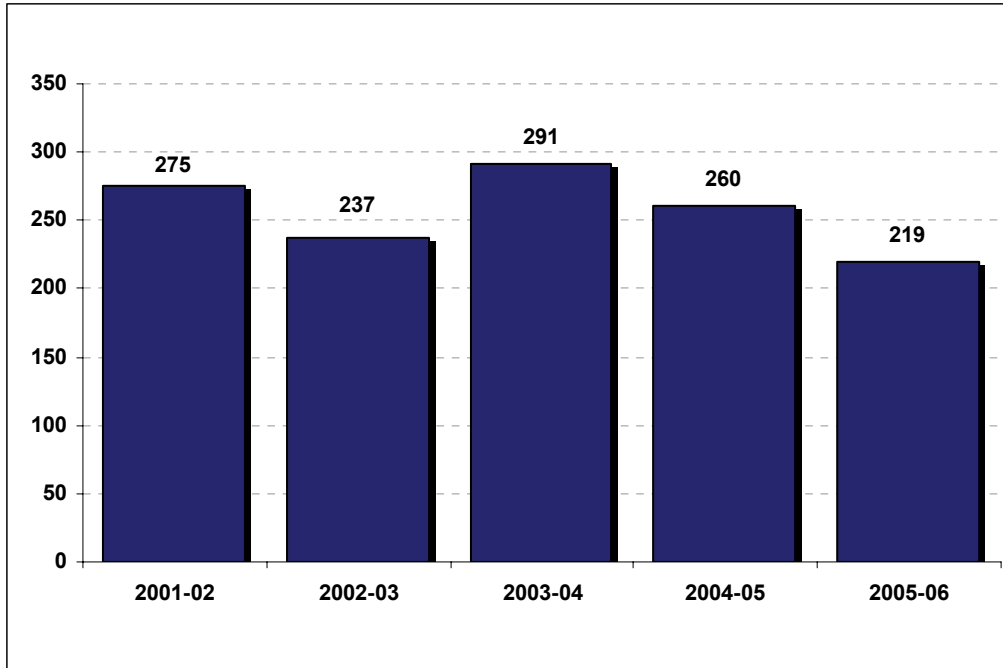
Age and number of current Corporations Act matters at 30 June 2006



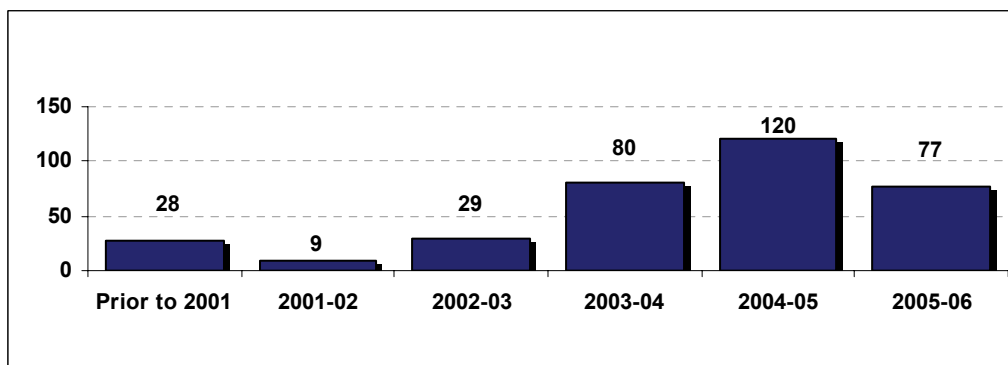
A total of 678 Corporations Act matters remain current at 30 June 2006. The age of these are shown in the graph above. There were two matters still current relating to periods before those shown in the graph.

Figure 5.8

Trade Practices Act matters filed 2001-02 to 2005-06



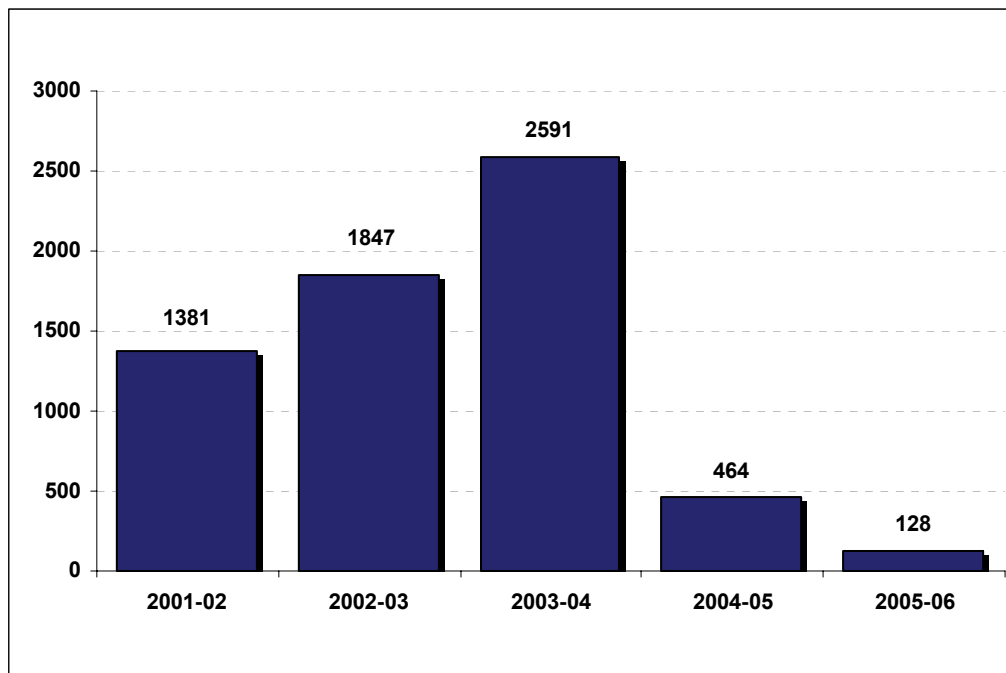
Age and number of Trade Practices Act matters current at 30 June 2006



A total of 343 Trade Practices Act matters remain current as at 30 June 2006. The age of these are shown in the graph above. There were 28 matters still current relating to periods before those shown in the graph.

Figure 5.9

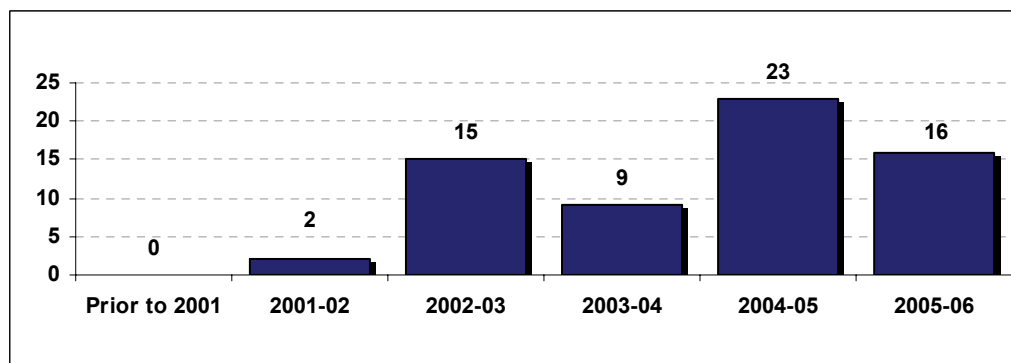
Migration Act matters filed 2001-02 to 2005-06



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

The increase shown for 2002–03 and 2003–04 is largely attributed to migration applications remitted from the High Court of Australia. A total of 637 were remitted in 2002–03 and 1,716 were remitted in 2003–04. Since 1 December 2005, when the *Migration Litigation Reform Act* commenced, almost all first instance migration cases have been filed in the Federal Magistrates Court.

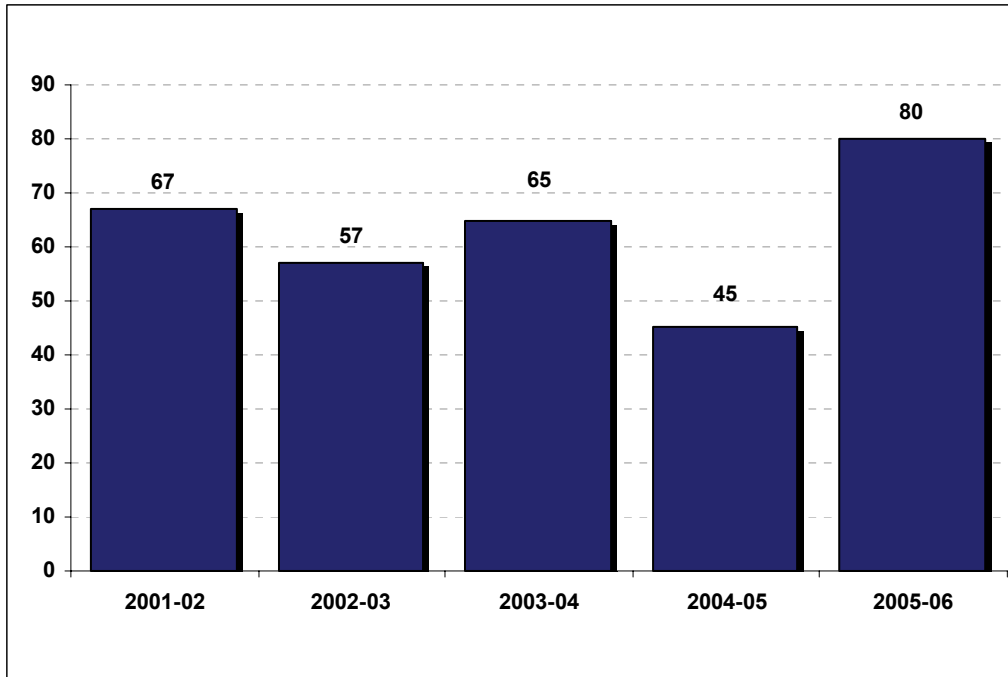
Age and number Migration Act matters current at 30 June 2006



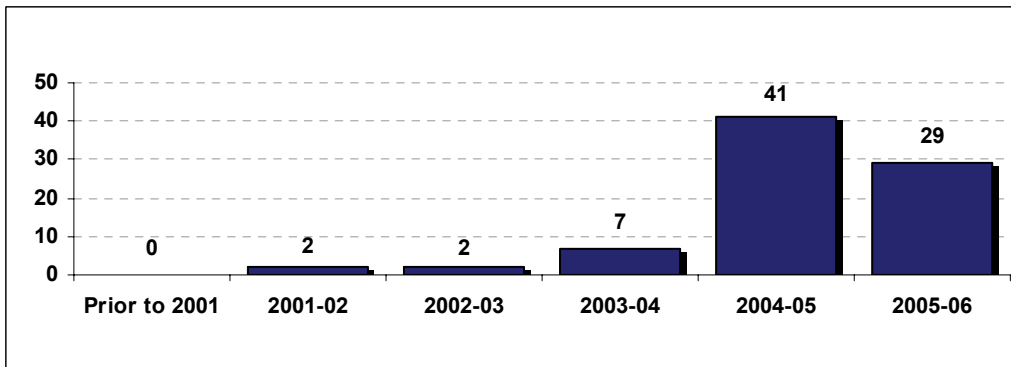
A total of 65 Migration Act matters remain current as at 30 June 2006. The age of these are shown in the graph above. There were no matters still current relating to periods before those shown in the graph.

Figure 5.10

Admiralty Act matters filed 2001–02 to 2005–06



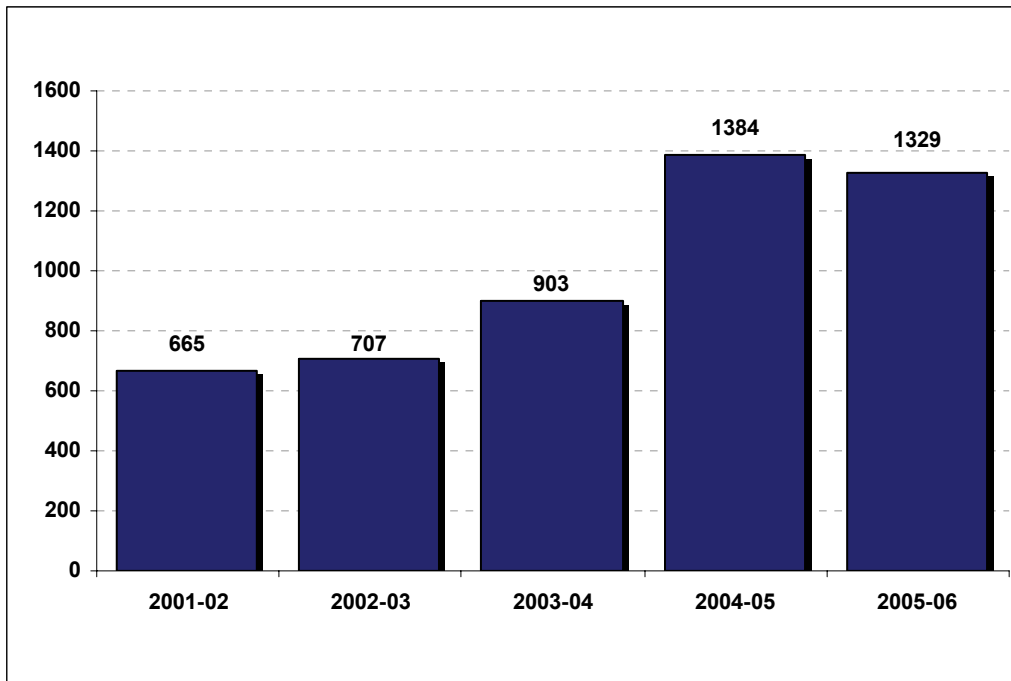
Age and number of Admiralty Act matters current at 30 June 2006



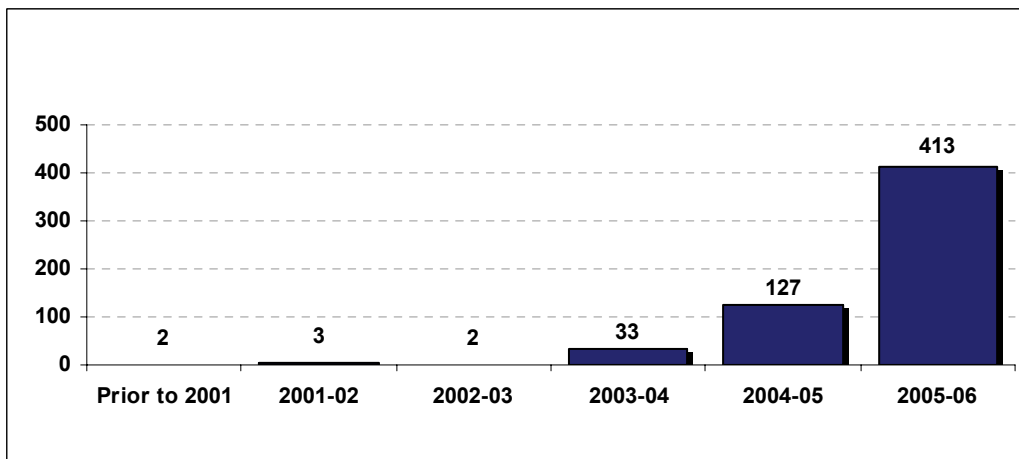
A total of 81 *Admiralty Act* matters remain current as at 30 June 2006. The age of these are shown in the graph above. There were no matters still current relating to periods before those shown in the graph.

Figure 5.11

Appeals and Related Actions filed 2001–02 to 2005–06



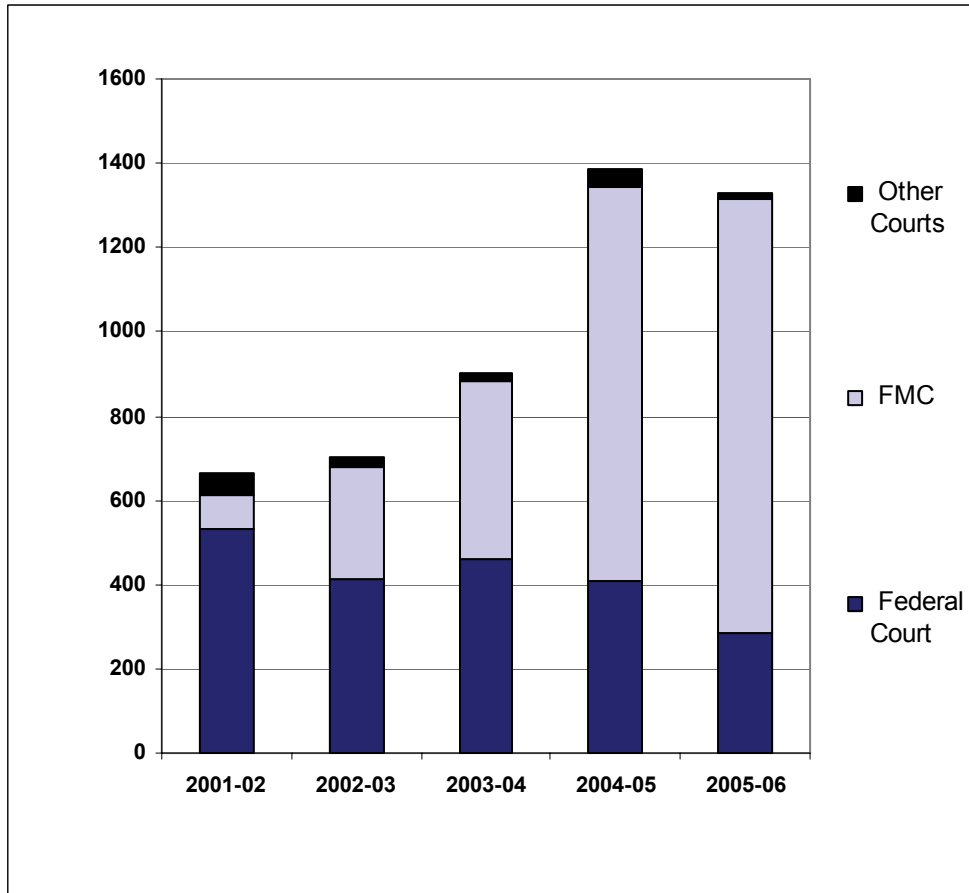
Age and number of Appeals and Related Actions current at 30 June 2006



A total of 580 appeals remain current as at 30 June 2006. The age of these are shown in the graph above. There were two appeals and related actions still current relating to the period before those shown in the graph.

Figure 5.12

Source of Appeals and Related Actions 2001–02 to 2005–06



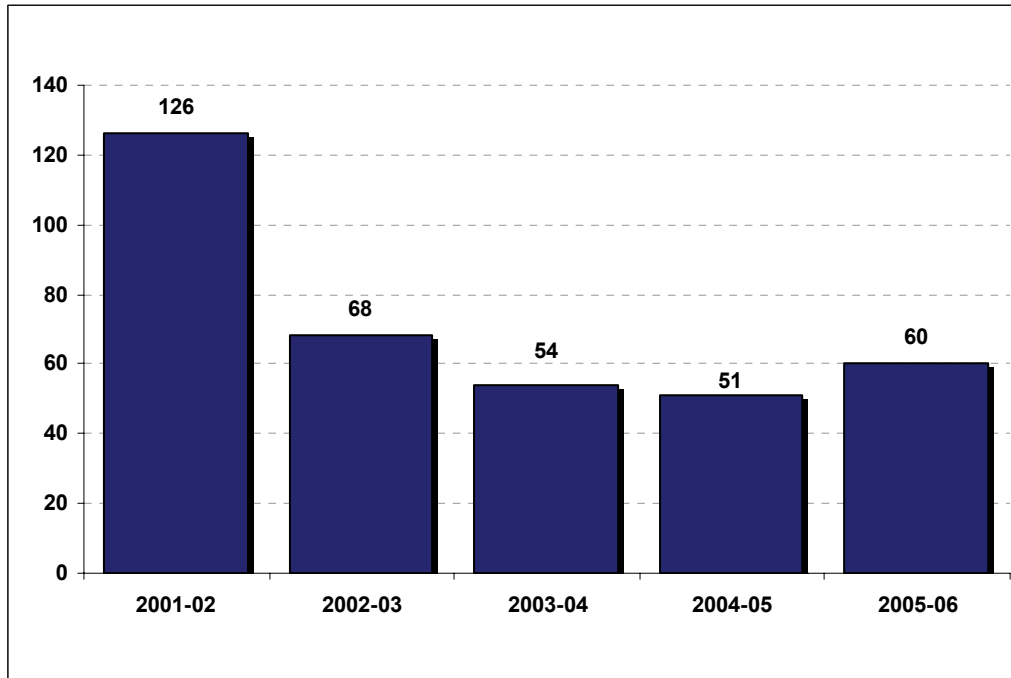
APPEALS AND RELATED ACTIONS										
Year	2001-02		2002-03		2003-04		2004-05		2005-06	
Source										
Federal Court	534	76.2%	415	46.0%	461	33.3%	409	30.8%	283	21.3%
FMC	78	11.1%	263	29.1%	423	30.5%	933	70.2%	1033	77.7%
Other Courts	51	7.3%	23	2.5%	19	1.4%	43	3.2%	13	1.0%
Total by Period	663		701		903		1385		1329	

Notes:

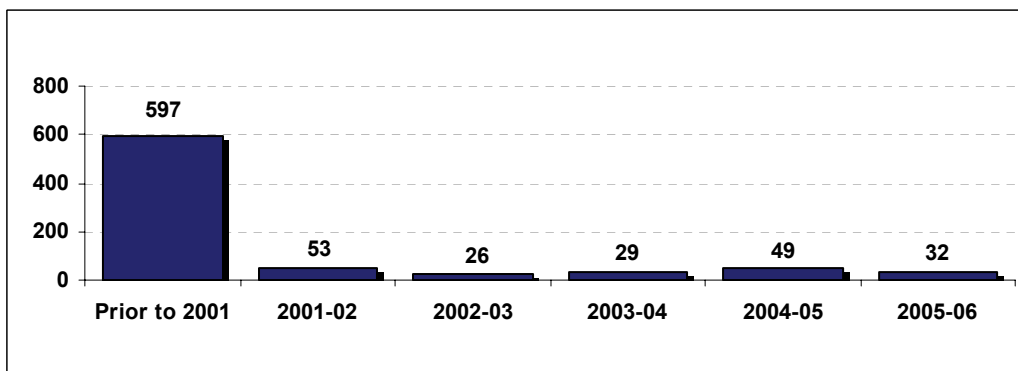
1. The Federal Magistrates Court (FMC) commenced on 23 June 2000.
2. Appeals from Supreme Courts have declined following the establishment of the ACT Court of Appeal in 2002.

Figure 5.13

Native Title Act matters filed 2001-02 to 2005-06



Age and number of Native Title Act matters remaining current at 30 June 2006



A total of 786 Native Title matters remain current at 30 June 2006 (not including appeals). The age of these are shown in the graph above. There were 597 matters still current relating to periods before those shown in the graph. Of these 340 are active cases with the remainder being linked cases to a lead matter which is either in mediation or litigation. Of the active cases over 50% (170) remain in mediation in the National Native Title Tribunal.

More details on the statistics are included in Chapter 3 on page 41

APPENDIX 6

WORK OF TRIBUNALS

The following summarises the work of the Australian Competition Tribunal, the Copyright Tribunal, the Defence Force Discipline Appeal Tribunal and the Federal Police Disciplinary Tribunal during the reporting year.

Australian Competition Tribunal

Functions and powers

The Australian Competition Tribunal was established under the *Trade Practices Act 1974* to hear applications for the review of:

- determinations by the Australian Competition and Consumer Commission (ACCC) in relation to the grant or revocation of authorisations which permit conduct or arrangements that would otherwise be prohibited under the Trade Practices Act for being anti-competitive;
- decisions by the Minister or the ACCC in relation to allowing third parties to have access to the services of essential facilities of national significance, such as electricity grids or gas pipelines; and
- determinations by the ACCC in relation to notices issued under section 93 of the Trade Practices Act in relation to exclusive dealing.

A review by the Tribunal is a re-hearing or a re-consideration of a matter, and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of the review. It can affirm, set aside or vary the decision under review.

The Minister may also refer to the Tribunal, for inquiry and report, issues concerning certain practices by ocean cargo carriers.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is subject to the Trade Practices Act and regulations within the discretion of the Tribunal. The *Trade Practices Regulations 1974* sets out some procedural requirements in relation to the making and hearing of review applications.

Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General.

Justice Goldberg is the full-time President of the Tribunal. During the reporting year, Justice Hely ceased to be a Deputy President on 1 October 2005.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 106.

Activities

Four review proceedings were current at the start of the reporting year. During the year, five proceedings were commenced and six matters were finalised. Three matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Re VFF Chicken Meat Growers* Boycott Authorisation [2006] ACompT 2 (21 April 2006)

Application by Services Sydney Pty Limited [2005] ACompT 7 (21 December 2005)

Workload Trends

The number of new matters (five) was in line with the 10 year average (5.9). The number of hearings (four) was also in line with the 10 year average (3.8). The number of hearing days (excluding directions hearings) (17) was also in line with the 10 year average (15.9).

Copyright Tribunal

Functions and powers

The Copyright Tribunal was established under the *Copyright Act 1968* to hear applications dealing with four main types of matters:

- to determine the amounts of equitable remuneration payable under statutory licensing schemes;
- to determine a wide range of ancillary issues with respect to the operation of statutory licensing schemes, such as the determination of sampling systems;
- to declare that the applicant (a company limited by guarantee) be a collecting society in relation to copying for the services of the Commonwealth or a State; and
- to determine a wide range of issues in relation to the statutory licensing scheme in favor of government.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is, subject to the Copyright

Act and regulations, within the discretion of the Tribunal. The *Copyright Tribunal (Procedure) Regulations 1969* sets out procedural requirements for the making and hearing of applications.

Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. There were no changes to the membership during 2005-06.

The Secretary of the Tribunal is an officer of the Federal Court. Details of the Secretary are set out in Appendix 3 on page 106.

Activities

Nine matters were current at the start of the reporting year. During the year, one matter was commenced, and four matters were finalised. Six matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Audio-Visual Copyright Society Ltd v Foxtel Management Pty Ltd (No 4) [2006] ACopyT 2

Workload Trends

There appears to be a trend for parties to request a hearing before a Full Tribunal. There have been three Full Tribunal hearings since February 2006, each presided over by a different one of the Tribunal's three presidential members. Each hearing has been lengthy. Lengthy Full Tribunal hearings not only impose a burden in hearing time and decision writing: they involve a cost in terms of payment to the part-time members.

Defence Force Discipline Appeal Tribunal

Functions and powers

The Defence Force Discipline Appeal Tribunal was established under the *Defence Force Discipline Appeals Act 1974* to hear and determine appeals by persons who have been:

- convicted of a service offence, or
- who have been acquitted of a service offence on the ground of unsoundness of mind (“a prescribed acquittal”)

by a court martial or a Defence Force Magistrate under the *Defence Force Discipline Act 1982*.

The Tribunal may dismiss or allow the appeal, substitute for a conviction a prescribed acquittal, or, if satisfied the appellant was unfit to stand trial, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. The procedure of the Tribunal is within its discretion.

Membership and staff

The Tribunal consists of a President, a Deputy President and such other members as are appointed by the Governor-General. During the reporting year, the President of the Tribunal was Justice Heerey.

The Registrar and Deputy Registrars of the Tribunal are officers of the Federal Court. Their details are set out in Appendix 3 on page 106. On 16 May 2006 Sia Lagos was appointed Registrar of the Tribunal.

Activities

No matters were current at the start of the reporting year. During the year, one matter was commenced and finalised. No matters are pending.

No complaints were made to the Tribunal about its procedures, rules, forms, timeliness or courtesy to users during the reporting year.

Decisions of Interest

Fulton v Chief of Army [2005] AFDAT 1

Federal Police Disciplinary Tribunal

Functions and powers

The Federal Police Disciplinary Tribunal was established under the *Complaints (Australian Federal Police) Act 1981* to deal with disciplinary offences under the Australian Federal Police (Discipline) Regulations. In addition, the responsible Minister may refer to the Tribunal for inquiry and report a matter relating to the Australian Federal Police.

Practice and procedure

Hearings before the Tribunal normally take place in public. Parties may be represented by a lawyer. Proceedings are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of the Act and a proper

consideration of the matters before the Tribunal permit. The Tribunal is not bound by the rules of evidence.

Membership and staff

The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General.

The Registrar and Deputy Registrars of the Tribunal are all officers of the Federal Court. Their details are set out in Appendix 3 on page 106.

Activities

No disciplinary proceedings were current at the start of the reporting year. During the year, no proceedings were commenced. Nor were any matters referred by the Minister for inquiry and report.

No complaints were made to the Tribunal about its operations during the reporting year.

APPENDIX 7

SUMMARY OF DECISIONS OF INTEREST

Environment – Statutory and Treaty Interpretation – Civil penalties

Greentree v Minister for the Environment and Heritage
(13 July 2005, Justices Kiefel, Weinberg and Edmonds)

This was an appeal from the judgment in *Greentree v Minister for the Environment and Heritage (No 2)* and *Greentree v Minister for the Environment and Heritage (No 3)* where orders were made restraining Mr Ronald Greentree and the company he controlled, AUEN Grain Pty Ltd, from carrying out activities, including farming activities, in connection with a portion of the declared wetlands known as the Rasmar Gwydir wetlands. Mr Greentree was ordered to pay a pecuniary penalty to the Commonwealth of \$150,000 and AUEN Grain pay a pecuniary penalty of \$300,000. Both appellants were also required to undertake remedial works on the property, specifically tree planting in the wetlands.

The appellants appealed on the grounds that the area of land which led to their prosecution was not a ‘declared Ramsar wetland’ for the purposes of section 17(1) of the *Environment Protection Biodiversity and Conservation Act 1999 (Cth)* (EPBC Act). Section 17(1) provides that a ‘wetland or part of a wetland, designated by the Commonwealth under Article 2 of the Ramsar Convention’ is a ‘declared Ramsar wetland’. Article 2 of the Convention requires that ‘the boundaries of each wetland shall be precisely described and also delimited on a map’.

It was submitted by the appellants that the site in question had not been designated in accordance within the meaning of section 17(1) of the EPBC Act, because no precise description had been given of the boundaries and it was not delimited on a map.

The Full Court held that the section did not require precision in description. That part of Article 2 of the Convention which did require precision was not imported into the section. It did borrow a phrase which included the word ‘designated’. Its meaning was determined by reference to principles of treaty interpretation. Its purposes did not require precision of description. The obligation the Article sought to impose on Contracting States was not intended as a precondition to listing under the Convention. The Full Court also had regard to Article 31(3)(b) of the Vienna Convention, which permits reference to the subsequent practices of contracting parties. The obligation to provide precise information was regarded by them as something to be attended to as soon as possible and not as affecting the status of a listing or designation.

The Full Court upheld the finding that there had been a significant impact on the ecological character of the site. The removal of timber and trees had destroyed an integral component of the habitat for waterbirds and caused an imbalance of the soil. It considered factors relevant to pecuniary penalty and upheld the penalty imposed.

The appeal was dismissed with costs.

Bankruptcy – whether wife competent to bring contravention proceedings against husband for failing to pay to her monies ordered by the Family Court to be paid to her, the husband having presented his own bankruptcy petition before the contravention proceedings commenced

Melnik v Melnik

(16 August 2005, Justices Spender, Hill and Finn)

In this appeal the Full Court decided that a wife was not competent to bring contravention proceedings against her husband for failing to pay to her monies ordered by the Family Court to be paid to her, the husband having presented his own bankruptcy petition before the contravention proceedings commenced.

The case turned on the effect of sections 58(3) and 60(1) of the *Bankruptcy Act 1966* (Cth) on contravention proceedings under section 112AD of the *Family Law Act 1975* (Cth).

The Family Court had ordered the husband to pay \$79,000 to the wife. He failed to comply with that order. He then presented his own petition for bankruptcy. The wife brought contravention proceedings under section 112AD of the Family Law Act. The Family Court held that the husband had contravened a final order of the Court to pay money, without reasonable excuse. Before the hearing in the Family Court to fix the husband's penalty, the husband applied, unsuccessfully, to the Federal Magistrates Court to enjoin the wife from proceeding with the contravention proceedings.

The day before the Family Court was to make final orders on penalty, the husband applied to the Federal Court, seeking to challenge the orders of the Federal Magistrates Court refusing to enjoin the wife from proceeding with the contravention proceedings.

The Family Court on the following day ordered the husband be imprisoned for three months. The Family Court stayed that order, pending determination of the husband's appeal to the Federal Court.

The Full Court set aside the orders of the Federal Magistrate refusing to enjoin the wife from proceeding with contravention proceedings. The Full Court held that the effect of sections 58(3) and 60(1)(b) of the Bankruptcy Act was that, the applicant having presented his own petition for bankruptcy, it was not competent for the respondent later to commence or continue contravention proceedings in the Family Court in respect of the non-payment of \$79,000, or to take the further steps in those proceedings.

Section 58(3) of the Bankruptcy Act provides that after a debtor has become a bankrupt, it is not competent for a creditor to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt, or without leave of the Court, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

The Full Court held that because no leave under section 58(3)(b) was ever sought by the respondent or granted, it was not competent for the respondent to commence the contravention proceedings, or to take any fresh step in those proceedings, the Full Court holding that those proceedings to be ‘legal proceeding[s] in respect of a provable debt’.

The Full Court further determined that the proceedings should have been stayed by the Federal Magistrate, pursuant to section 60(1)(b) of the Bankruptcy Act. The Full Court considered the proceedings by the respondent were proceedings ‘in respect of the non-payment of a provable debt’, within section 60(1)(b)(i), and also were proceedings ‘in consequence of his...refusal or failure to comply with an order of the [Family Court]...for the payment of a provable debt’, within section 60(1)(b)(ii).

In relation to the order of the Family Court that the applicant be imprisoned, the Full Court concluded it was competent for the Federal Court, pursuant to section 60(1)(b) of the Bankruptcy Act, to stay that order.

Intellectual Property – Copyright – authorisation of infringement

Universal Music Australia Pty Ltd v Sharman License Holdings Ltd
(5 September 2005, Justice Wilcox)

Thirty applicants (major record companies) commenced proceedings against ten respondents, each of which were alleged to have been involved, in different ways, in the creation, development and provision of peer-to-peer file sharing software known as ‘kazaa’.

The main issue in the proceeding was whether the respondents (individually or jointly) authorised users of the kazaa system to infringe the applicants’ copyright in sound recordings. Section 101 of the *Copyright Act 1968* (Cth) provides that copyright is infringed by a person who, not being the owner of the copyright and without the licence of the copyright owner, authorises another person to do in Australia an infringing act.

The kazaa software was available to be downloaded from the kazaa website. There were two different types of software that could be downloaded. It is not necessary to discuss the differences for present purposes. Once the software was downloaded onto a computer, that computer became part of the kazaa network and the user was granted access to the electronic files stored on all other computers connected to the internet with similar software. Kazaa users could then search for and download music, and other, files from the computers of other users. The website contained some warnings against breaching copyright and, prior to the software being downloaded, users were required to enter into an end user licence agreement, which contained a condition not to infringe copyright.

There were many users of the kazaa system. The respondents were aware that many of them habitually used the software to transmit copyright material. The respondents conceded that the kazaa software provided a vehicle for breach of copyright. However, they contended that they did not authorise any infringing acts. The

respondents claimed that the kazaa system could be used for legitimate purposes; users were able to share original works or non-copyright works.

The applicants led evidence to show there were mechanisms that some of the respondents could have put into place to eliminate or substantially reduce infringement of copyright. However, it was not in the respondents' interests to put any of those measures into place; the greater the use of the kazaa system and website, the greater the income that could be generated from advertising. Advertising revenue was shared between some of the respondents.

His Honour concluded that, despite the warnings against copyright and the provision of an end user licence agreement, the respondents were aware that such measures had been ineffective in preventing or reducing the incidence of copyright infringement. There were technical measures that particular respondents could have taken to curtail the sharing of copyright files, but no such measures had been taken.

Six of the ten respondents were found to have authorised users to infringe the applicants' copyright in relation to specified sound recordings. The applicants' claims of direct infringement of copyright, contravention of the Trade Practices Act and conspiracy were all rejected.

Contempt – application for respondent to be punished for contempt of court for contravening an order of a Judge of this Court by taking part in the management of a corporation.

Australian Securities and Investments Commission v Reid
(13 September 2005, Justice Lander)

The applicant brought a notice of motion seeking punishment of the respondent for being in contempt of orders of the Federal Court.

The respondent was previously convicted of serious fraud. At the time of his conviction the Corporations Law provided that a person so convicted was prohibited from being involved in the management of a corporation for five years without leave of the Court. The respondent breached that prohibition. On 10 March 1992 Justice Jenkinson made orders, pursuant to section 230 of the Corporations Law, prohibiting the respondent from managing corporations until 10 August 2036.

Since Justice Jenkinson made that order, the respondent had been convicted of breaching it twice. On the first occasion, in 1994, he was given a six month custodial sentence, suspended on the condition he refrain from further breaching the order for its entire operation, that is until 10 August 2036. On the second occasion, in 2002, the respondent was sentenced to twelve months imprisonment, with the warrant ordered to lie in the registry for two years so long as he refrained from further breaching Justice Jenkinson's orders. The suspended sentence ordered in 1994 was discharged. At that time, the respondent gave an undertaking to the Court that he 'would not be involved in the management of a company, in any form at all, in the future'.

By notice of motion, dated 17 November 2003, the applicant sought orders that the respondent be committed to prison or punished for contravening the order of Justice

Jenkinson on 10 March 1992. In the alternative, it sought to have the warrant ordered by Justice Kenny to be executed. In the further alternative, it sought to have the respondent committed to prison or punished for breach of the undertaking given to Justice Kenny on 8 October 2001. The statement of charge accompanying the notice of motion alleged that the respondent was involved in the management of two corporations, Battstone Australia Pty Ltd and Australian Marble Pty Ltd, for specific periods of time between February 2003 and July 2003.

There was significant delay in the matter being heard. The respondent was unrepresented for many of the directions hearings. At other hearings the respondent was represented by different solicitors with whom he was negotiating a retainer. The respondent did not comply with orders of the court relating to the preparation of the litigation. After the matter was listed for trial, the respondent applied for an adjournment of the hearing date. The adjournment was refused. The respondent then failed to appear at the trial. A warrant was issued for the respondent's arrest. The warrant was executed on 11 August 2004 and the respondent was taken into custody. The respondent was finally released on bail on 2 November 2004.

The hearing of the trial commenced on 22 November 2004. The respondent was, at that time, unrepresented. During the course of the trial, the respondent informed the Court that he would be represented for closing submissions.

In closing submissions the respondent argued a number of procedural issues relating to the trial process, including a complaint that the judge erred in hearing the contempt proceedings at the same time as other civil proceedings under the *Corporations Act 2001* (Cth) relating to the same conduct. Justice Lander held that the applicant had at all times complied with the rules of the Court and there was no basis for declaring a mistrial. The two proceedings arose from the same factual material and, to avoid any issues with standard of proof, he applied the standard of beyond reasonable doubt to both the civil proceedings and the contempt proceedings, although a lower standard could have been applied in the civil proceedings.

The respondent next argued that the judge should disqualify himself for apprehended bias, on two grounds. First, that during the interlocutory procedure he became aware of matters prejudicial to the respondent, such as his non-attendance at trial and subsequent arrest. Secondly, it was argued that apprehended bias arose from the judge hearing the contempt proceedings at the same time as the related civil proceedings. The applicant argued that the respondent's conduct of the litigation to date before Justice Lander amounted to waiver of any apprehended bias.

His Honour held that there was no apprehended bias because it had not been made out that a fair minded observer might apprehend that the judge might not bring an impartial mind to the case. However, he did hold that, had he found an apprehension of bias, the delay in bringing the application for disqualification would not have amounted to waiver. Had there been a reasonable apprehension of bias, he would have disqualified himself to protect the integrity of the Court's processes.

In order to determine whether the respondent was in contempt it was necessary to consider whether he had breached the orders of the Court. In doing so, it was necessary to consider whether the respondent had been involved in the management

of a corporation. Justice Lander considered the evidence of the respondent's conduct in relation to two businesses, Battstone Australia Pty Ltd and Australian Marble Pty Ltd. It was held that Mr Reid managed both Battstone and Australian Marble. His Honour applied the test from *Commission for Corporate Affairs (Vic) v Bracht*. This test required His Honour to have regard to the size and nature of the company, to determine whether the person was involved in decisions at such a level that they affected the corporation as a whole or a substantial part and had impact on the financial standing and the conduct of the corporation.

In relation to Australian Marble, the evidence established that the respondent was solely in charge of the corporation. There were no other employees. The respondent procured finance for the company and engaged in negotiations for the company to purchase Battstone. In addition, it appeared that the respondent gave instructions to the company directors as to how to operate the company and gave a verbal guarantee on the company's behalf to cover the debts of Battstone. His Honour found that the respondent managed the company over a specific period of time.

In relation to Battstone, the evidence established that the respondent took up a management role within the company. He instructed employees about the manner in which to execute their duties, he gave instructions to the general manager before eventually terminating his employment, he negotiated on the company's behalf with suppliers and he employed new employees. His Honour found that after '3 March 2003 Mr Reid assumed the senior management role... The evidence is all to the same effect and that is that he assumed all of the responsibilities that usually attach to senior management. He continued to act in that capacity, at least until 3 June 2003 when Mr Broome was appointed liquidator'.

As the respondent had breached an order of the Court, he was in contempt of Court. His Honour adjourned the matter to enable the parties to address him on whether the contempt was criminal in nature and the appropriate penalty to be imposed.

Corporations – company in administration – whether member's claim against company in connection with acquisition of shares in the company is a debt owed to member in capacity as a member

Sons of Gwalia Limited (Administrator Appointed) (ACN 008 994 287) v Margaretic (15 September 2005, Justice Emmett)

The respondent bought 20,000 shares in Sons of Gwalia Limited ('the Company') and his name was entered on the Register of Members. Administrators were appointed to the Company less than 14 days after the purchase of the shares, which are now worthless. The Administrators propounded a proposed deed of company arrangement.

At the relevant time, the Company was a listed public company. Under section 674 of the Corporations Act ('the Act') and rule 3.1 of the Australian Stock Exchange Listing Rules, the Company was obliged to disclose to the ASX any information concerning the Company that a reasonable person would expect to have a material effect on the price of the shares in the Company once they became aware of it. A person who suffers loss by conduct by a company that contravenes section 674 is given a right to recover the loss from the company.

The respondent claimed that, at the time of his purchase, the Company was in possession of information about the state of its affairs and that, had he been aware of the information, he would not have bought the shares. He claimed that as a result he has lost a substantial sum of money, which he wished to be able to prove as a debt under the proposed deed of company arrangement.

The Administrators commenced the proceeding seeking a declaration that the respondent's claim would not be provable under the proposed deed of company arrangement, or that payment of his claim would be postponed until all debts owed to, or claims made by, persons other than shareholder creditors had been satisfied. The respondent filed a cross-claim seeking a declaration that he was a creditor of the Company and was entitled to all the rights of a creditor under Part 5.3A of the Act.

After a discussion of *Webb Distributors (Aust) Pty Ltd v State of Victoria* and the divergent lines of authority leading up to that case, Justice Emmett distinguished the current case and held that a claim by a person who, in reliance upon a company's misleading and deceptive conduct, has acted to his or her detriment by buying shares in that company, is not a claim by that person in his or her capacity as a member of the Company.

Justice Emmett held that the respondent's claim was not a debt owed by the Company to him in his capacity as a member of the Company; rather, if it was a debt owed by the Company, it was one arising out of the Company's contravention of consumer protection legislation. Accordingly, section 563A of the Act would not require any postponement of the debt. Justice Emmett also held that the shareholder was a creditor of the Company, who should have the right to attend meetings of creditors of the Company, to vote at such meetings and to receive information sent by the Company to its creditors.

Native title – grant of native title – nature and extent of non-exclusive native title rights over inter-tidal zone

Gawirrin Gumana v Northern Territory of Australia (No 2) (Blue Mud Bay No 2)
(11 October 2005, Justice Mansfield)

On 7 February 2005, Justice Selway determined that there should be a grant of native title to the Yolngu people in respect of an area in and around Blue Mud Bay in coastal remote East Arnhem Land. The grant of native title was to be for a right of exclusive possession over that part of the claim area other than the sea and the inter-tidal zone, and to be for rights associated with non-exclusive possession over the inter-tidal zone and the adjacent sea. His Honour also determined that it was not appropriate to make any order to the effect that the Northern Territory had no power to issue commercial fishing licences in relation to the inter-tidal zone.

Justice Selway died before final orders were made. The hearing was completed by Justice Mansfield, who made a determination of native title to reflect the reasons for judgment of Justice Selway. Several issues of substance arose concerning the nature and extent of native title rights to be granted over the inter-tidal zone.

The first issue which arose in respect of the inter-tidal zone was whether those parts of rivers, streams and estuaries that are affected by the ebb and flow of the tide (the ‘arms of the sea’) should be excluded from the defined areas comprising land and inland waters, even if they are not navigable. His Honour found that the public right to fish was exercisable in the inter-tidal zone, including tidal waters, whether those waters are navigable or not.

In respect of the native title rights to the inter-tidal zone and outer waters, Justice Mansfield found that the native title holders had the right to ‘visit, have access to, and maintain sites, places and areas of religious, spiritual or cultural importance or significance within the area’ but not to ‘protect’ those sites. His Honour considered that a right to ‘protect’ such sites would include the right to exclude others from those sites, which would be inconsistent with the public rights to fish and to navigate.

His Honour further held that any rights possessed under traditional laws and customs to use the waters of the inter-tidal zone and outer waters for commercial purposes were rights which were not recognised by the common law, and should not be the subject of a determination. However, the native title holders were granted the right to hunt, fish, gather and use resources within the area for non-commercial exchange or consumption for the purposes allowed by or under their traditional laws and customs.

Several other issues with respect to the form of the determination were resolved by Justice Mansfield. Being satisfied that the balance of the applicants’ proposed determination gave effect to the reasons for judgment of Justice Selway, on 11 October 2005 his Honour made the determination of native title at Yilpara, Northern Territory.

Practice and Procedure – stay of proceedings – abuse of the Court's process – maintenance and champerty

Dorajay Pty Limited v Aristocrat Leisure Limited
(20 October 2005, Justice Stone)

This judgment concerned an interlocutory application made in a representative proceeding brought under Part IVA of the *Federal Court of Australia Act 1976* (Cth). The proceeding was commenced by Dorajay on behalf of itself and a group of other investors in Aristocrat. Initially Dorajay defined the group of investors on whose behalf it commenced the proceeding as those:

- who bought shares in Aristocrat between September 2002 and May 2003;
- who suffered damage because of alleged misrepresentations made by Aristocrat; and
- who retained Dorajay’s solicitors, Maurice Blackburn Cashman (MBC), to act for them in the proceeding.

It was the last stipulation, that in order to be a member of the group a person needed to retain MBC, which was challenged in the interlocutory proceeding.

In practice, the stipulation that a group member instruct MBC was also a stipulation that the group member enter into a funding agreement with a company, Insolvency Litigation Fund Pty Ltd (ILF). This is because it was a term of the contract for legal

services between MBC and its clients in this proceeding that the clients enter into a funding agreement with ILF. In brief, the funding agreement provided that ILF would pay the group member's reasonable legal costs of the proceeding against Aristocrat, in return for ILF receiving a share of any money that the group member received from the proceeding (whether this be because of a settlement of the proceeding or upon judgment).

Justice Stone considered the impact of this funding arrangement on the various parties to this proceeding and found that the funding arrangement did not constitute an abuse of the Court's processes. In particular, her Honour found that although the funding arrangement meant that group members who wished to 'opt out' of the representative proceedings would be disadvantaged, such disadvantages were not so harsh that they undermined the Court's processes. In addition, her Honour found that the control that the arrangement gave ILF over the conduct of the litigation was not so extensive as to amount to an abuse of the Court's process.

However, Justice Stone held that the requirement that a group member retain MBC effectively meant that a prospective group member had to 'opt in' to the proceedings, that is, take positive steps to be a part of the proceedings. Her Honour found that, in Part IVA of the Federal Court of Australia Act, Parliament had expressed a clear choice that Federal Court representative proceedings ought to be conducted on an 'opt out' basis. That is, in the interests of equity and efficiency, all persons who have claims against a particular respondent that give rise to a substantial common issue and arise out of the same or similar circumstances ought to be included in the group represented in the proceeding unless they take positive steps to 'opt out' of the proceeding. Her Honour held that arrangements that effectively required group members to 'opt in' to the proceeding, subverted the opt out process and were an abuse of the Court's processes. In addition, her Honour found that it was repugnant to the policy of the Act that the group definition be restricted to the clients of one particular solicitor. Accordingly, her Honour ordered that the proceeding could not continue as a representative proceeding without an appropriate amendment of the definition of the group represented.

Copyright – counterfeit certificates of authenticity affixed to computers loaded with software onto hard disks thereof and accompanying restore compact disks

Microsoft Corporation v PC Club Australia Pty Ltd
(28 October 2005, Justice Conti)

These proceedings were brought by Microsoft primarily for infringement of its copyright in two well-known computer programs *Windows XP Home* and *Windows XP Pro* distributed in the so-called *OEM* channel. PC Club's primary defence was denial of standing of Microsoft and its related corporate applicants by reason of an assignment of the copyright to a Nevada resident corporation, and the absence of that corporation as an applicant for relief or of documentary evidence establishing that the Nevada corporation was not (or no longer) in law the author of those computer programs. PC Club denied any entitlement of Microsoft to rely on the statutory presumption of ownership and subsistence of copyright afforded by the Copyright Act.

Resolution of the issues arising in relation to copyright title involved interpretation of critical Microsoft inter-company United States contractual documentation, inclusive of distribution channel arrangements, and also of the law of the State of Nevada, and of the copyright title presumptions of Australian municipal law. Defences were also raised by PC Club as to absence of notice of assignment pursuant to section 12 of the *Conveyancing Act 1919* (NSW). Contentious issues arose also for resolution as to presumptive evidentiary provisions the subject of the Copyright Act (being sections 126A, 126B and 128).

Additional claims were advanced by Microsoft companies against PC Club for breach of trademarks and for misleading and deceptive conduct. A number of expert witnesses, some from the United States, provided testimonial evidence, both by affidavit and orally. Microsoft ultimately succeeded substantially on all causes of action. The proceedings took place in the context of *Anton Piller* and *Mareva* relief earlier set in train *ex parte*, and the consequential seizure of recently manufactured computer discs.

Administrative Law – jurisdictional error – military detention – application of principles of sentencing

Sargeson v Chief of Army
(17 November 2005, Justice Jacobson)

In this case Justice Jacobson ordered the immediate release of the applicant from military detention, pending a final hearing. Among the final relief sought was a writ of habeas corpus, on the grounds of jurisdictional error in the decision to sentence the applicant to 21 days detention, which had been made under the *Defence Force Discipline Act 1982* (Cth).

In finding a serious question to be tried, his Honour noted that one of the sentencing principles to be applied was taking into account the physical and mental condition and personal history of the applicant. It appeared that the Commanding Officer did not take into account a doctor's report which diagnosed the applicant as depressed, and which stated that detention posed 'a significant risk to this member's health' and that there was a significant risk of self harm.

His Honour noted that detention pursuant to the Act, that is to say without judicial mandate, can only be ordered to the extent that it is justified by a valid statutory power: see *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs*. He observed that the law is very jealous of infringement of personal liberty: *Re Bolton and Another; Ex Parte Bean*.

Justice Jacobson considered that, if the applicant's detention was unlawful, the court has power to order his release. He cited a number of authorities which consider the question of whether the court has power to issue a writ of habeas corpus or an order in the nature of habeas corpus, but ultimately issued a mandatory interlocutory injunction.

Migration – visa – protection visa – procedural fairness – applicant a woman with culturally induced reluctance to divulge to men what had happened to her

Applicants M16 of 2004 v Minister for Immigration and Multicultural and Indigenous Affairs

(24 November 2005, Justice Gray)

A Tamil woman, her husband and their children came from Sri Lanka to Australia in July 1996. The following year, the woman applied to the Department of Immigration and Multicultural Affairs (subsequently the Department of Immigration and Multicultural and Indigenous Affairs) (in both cases, ‘the Department’) for a protection visa. Her husband and the four children were also named in the application; their entitlement to a protection visa depended on the primary case of their wife and mother.

In her application, the primary applicant described an incident in which the family home had been invaded by members of a Tamil organisation sympathetic to the Sri Lankan government forces. She said she was taken to a room separate from her husband, kicked and beaten. She said that there was further information of a sensitive nature that was relevant to her application, which she would ‘confess’ in an interview, and that she would prefer to discuss these matters with a female case officer. The Department did not interview any of the applicants. In December 1997, the application was refused on the basis of the written material provided.

The applicants applied to the Refugee Review Tribunal (‘the Tribunal’). The primary applicant provided further material to the Tribunal, indicating that she had other matters she would disclose to a woman. At her migration agent’s request, the Tribunal provided a female interpreter, but the member constituting the Tribunal was male.

At the Tribunal hearing, the primary applicant gave evidence in the absence of her husband, but her migration agent, who was also male, was present. She did not provide further details of the incident in the family home. In answer to a question from the Tribunal member as to whether she had been traumatised, she said that she could not tell him how much. The Tribunal member did not ask whether she had further information she could reveal.

The Tribunal affirmed the decision to refuse a protection visa. The applicants applied unsuccessfully to the Federal Court, at a time when the relevant provisions of the *Migration Act 1958* (Cth) (‘the Migration Act’) prevented them from asserting in that proceeding that the Tribunal had denied them procedural fairness (natural justice). They appealed from the judgment, but then consented to the dismissal of the appeal.

In November 2001, the applicants applied to the High Court, seeking to overturn the Tribunal decision. They did not allege denial of procedural fairness. After the application for an order nisi was remitted to the Federal Court, this proceeding was also dismissed by consent. In January 2004, the applicants applied again to the High Court. The matter was also remitted to the Federal Court and became the proceeding heard by Justice Gray.

Justice Gray held that the applicants had been denied procedural fairness, and the Tribunal had failed to perform its duty under section 425(1) of the Migration Act to

invite the applicants to a hearing to give evidence and present arguments, by the failure of the Tribunal to afford the primary applicant a proper opportunity to provide further information, which the Tribunal member knew existed, and which may have been relevant to her claim. The Department had published extensive guidelines for dealing with claims raising gender-specific issues, which reflected the general understanding that there may be cultural barriers to women talking about some of their experiences in front of men. It should have been obvious to the Tribunal that there was such a barrier in this case, and that there were further matters about which the first applicant could have spoken if given the opportunity.

Justice Gray also held that the applicants were not precluded from seeking a remedy by reason of their involvement in the previous proceedings challenging the Tribunal's decision. This issue involved questions of: *res judicata*, or cause of action estoppel; issue estoppel; estoppel in respect of issues not raised in previous proceedings, on the basis that they ought to have been raised (as explained in *Port of Melbourne Authority v Anshun Pty Ltd*); and abuse of the process of the Court.

Justice Gray found that the fact that the first applicant had further information that she wished to reveal to a female case officer had not been raised by the applicants in the previous proceedings. There had been no judicial determination of the question whether the Tribunal denied the applicants procedural fairness in the manner that had occurred. There could be no cause of action estoppel or issue estoppel on that point.

Justice Gray then considered whether the issue ought to have been raised in the prior proceedings, giving rise to *Anshun* estoppel. In the first proceeding before the Federal Court the applicants were unable to raise denial of procedural fairness, as they were prevented from doing so by section 476(2)(a) of the Migration Act, which has now been repealed. The applicants could have raised the issue in their November 2001 application, but their application for an order nisi was dismissed by consent, so no final judgment on the merits was given. There could be no cause of action estoppel or issue estoppel arising from that proceeding. Alternatively, there were special circumstances, because of the cultural constraints on the primary applicant's ability to tell her full story in a male-dominated environment, so that *Anshun* estoppel should not operate to prevent the applicants from raising denial of procedural fairness.

For similar reasons, the current proceeding did not involve any abuse of the process of the Court.

Justice Gray therefore made orders for writs of certiorari and mandamus, directed to the Tribunal, the effect of which was to quash the Tribunal's decision and require the Tribunal to hear and determine according to law the application for review of the decision to refuse a protection visa.

Designs – appellant and respondent competitors in market for locking systems

Assa Abloy Australia Pty Ltd v Australian Lock Company
(2 December 2005, Justices Heerey, Finkelstein and Allsop)

The appellant and respondent were competitors in the supply of high security locking systems. The respondent's designs for its locks were registered under the *Designs Act*

1906 (Cth). The appellant applied to have some of these registrations expunged on the grounds that they were not new or original. The Act provided that applications for expungement could only be brought by a person who was ‘aggrieved’ or ‘interested’ in respect of the particular registration.

The appellant did not claim that any of the respondent’s locks infringed any of the intellectual property which it had in its own locks. However, both parties in their promotional activities stressed the protection given by registration. Design registration was a ‘critical marketing tool’.

Design registration helped to prevent unauthorized duplication of keys. Manufacturers only supplied key blanks to a limited number of authorised retail outlets such as locksmiths. These retailers were bound by contract with the manufacturers to satisfy themselves that the purchaser of the lock system had authorised any request for duplication. This protection was backed up by the fact that dealings with key blanks by unauthorized retailers could be prevented by enforcement of design registration rights.

A majority of a Full Court (Justices Heerey and Allsop, Justice Finkelstein dissenting) reversed the primary judge and held that the appellant was a person ‘aggrieved’ and ‘interested’.

Taxation – income tax – deductions – tax avoidance – Tea Tree oil plantation scheme – interlocking agreements – Farm Management and Loan Agreements – limited recourse loan – management fees, interest and associated costs – whether taxpayer to be treated as having dominant purpose of obtaining a tax benefit

Calder v Commissioner of Taxation

(7 December 2005, Justices French, Stone and Siopis)

In June 1994 the appellant invested in a tea tree oil plantation project in New South Wales that involved the acquisition of seeds for 10,000 trees to be grown and managed in common with trees acquired by other investors for the purpose of producing and selling tea tree oil. They entered into a Farm Agreement with the Land Owner for the use of the land on which their trees would be planted, a Management Agreement with another entity to manage their interest in the Farm business for a period of 15 years and a Loan Agreement with a Lender to finance the payment of management fees and other outgoings associated with the investment. The loans were, in part, limited recourse loans.

The appellant claimed deductions on account of his outgoings for the years ended 30 June 1994 and 30 June 1995. The deductions claimed totalled \$16,025 for the two years.

In August 2000 the respondent Commissioner issued amended assessments disallowing the deductions for the two years on the basis that they were tax benefits obtained under a scheme to which the tax avoidance provisions of Part IVA of the *Income Tax Assessment Act 1936* (Cth) (the ITAA) applied.

Objections taken to the amended assessments were disallowed and an appeal to the original jurisdiction of the Federal Court was dismissed. Justice Nicholson, who

dismissed the appeal, found it would be concluded that the appellant's dominant purpose in entering into the investment was to obtain a tax benefit. That conclusion was an objective one which did not depend upon the taxpayer's actual subjective purpose. It was reached by reference to the eight factors set out in section 177D(b) of the ITAA which are required to be considered in determining the purpose of a taxpayer entering into a scheme which gives rise to a tax benefit.

The appeal to the Full Court was largely by way of challenge to the evaluative findings made by the primary judge on undisputed primary facts. In such a case the Court gives weight to the primary judge's evaluation of the facts and does not interfere with such assessment unless the primary judge is shown to be wrong. In this case the Full Court held that Justice Nicholson's evaluation of the factors relevant to whether the tea tree oil project was a scheme to which Part IVA applied was open on the facts before him and did not disclose any error. The Full Court dismissed the appeal with costs.

Admiralty and Maritime – Shipping and Navigation – compulsory pilotage – shipowner liable for fault of pilot, though pilot not properly licensed

Braverus Maritime Inc v Port Kembla Coal Terminal Ltd
(12 December 2005, Justices Tamberlin, Mansfield and Allsop)

This was an important case about the operation in shipping in Australia of pilotage and about the responsibility for pilots and the Trade Practices Act. In the berthing of a large bulk carrier in Port Kembla, the coal berth was struck by the bow of the ship, causing considerable damage. Both the master and the pilot were negligent to a degree and the pilot was found to have engaged in misleading conduct by the information he gave to the master. Nevertheless, because of the operation of section 410B of the *Navigation Act 1912* (Cth), only the shipowner was liable, not the pilot. The case involved a comprehensive examination of the law governing the relative liabilities of ship and pilot in compulsory pilotage in Australia.

Administrative Law – appeal from the Administrative Appeals Tribunal – claims made under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) – application for access to documents under the *Freedom of Information Act 1982* (Cth) – claims of exemption on the ground of legal professional privilege

Comcare v Foster
(12 January 2006, Justice Greenwood)

This case concerned an application (by way of an appeal) from a decision of the Administrative Appeal Tribunal (the Tribunal) that Comcare was not entitled to withhold certain documents and video materials the subject of an application by Ms Foster under the *Freedom of Information Act 1982* (Cth) (FOI Act), in reliance upon an exemption in section 42(1) of the FOI Act that the documents would be exempt from production in legal proceedings by virtue of legal professional privilege.

The evidence before the Tribunal was that the documents were created for the dominant purpose of Comcare's independent lawyers giving, and Comcare obtaining, legal advice in respect of the claims by Ms Foster for compensation or her

applications to the AAT for review of those claims. Alternatively, the dominant purpose involved use of the documents in the existing proceedings or proceedings then anticipated by Comcare. The evidence before the AAT was that:

- Comcare had retained independent legal advisers;
- Ms King (or other officers within the Appeals and Review Team of Comcare) was the point of contact between Comcare and the independent legal advisers;
- Ms King had administrative responsibility for managing the claims by Ms Foster and Comcare's response to those claims;
- Comcare was seeking advice, independent of Comcare, on Ms Foster's claims and Tribunal proceedings; and
- the advice from the independent lawyers was kept physically separate from other material such as administrative material passing between internal officers within Comcare.

Nevertheless, the Tribunal found the withheld documents did not attract legal professional privilege because they were 'purely procedural' and 'only referred to information on the public record'. The Tribunal also found that the video material could not attract legal professional privilege to the extent that it contained 'personal information' about the respondent.

Consistent with decisions of the High Court in cases such as *Propend Finance, Esso Petroleum, Daniels Corporation* and *Grant v Downs* (Barwick CJ on the question of the significance of routine documents), Justice Greenwood held that the correct principle to be applied when deciding whether legal professional privilege attaches to a document, is whether the *communications* as a whole (of which the documents are a component part), occurred for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings. Further, the following circumstances provide no determinative basis for rejecting what would otherwise be a proper attraction of legal professional privilege on the facts, namely that:

- the content of the correspondence between the solicitor and client was purely procedural; or
- the correspondence between the solicitor and client only refers to information available on the public register;
- the surveillance video contained personal information about Ms Foster.

In respect of the video surveillance tapes, Justice Greenwood considered the approaches of Justice French in *J-Corp Pty Ltd v Australian Builders Labourers Federated Union of Workers (WA) (No. 1)* and the Court of Appeal of Western Australia (Justices Ipps, Pidgeon and Wallwork) in *Boyes v Colins*. His Honour considered the distinction drawn by Justice French between video tapes of events which occurred in public and the taking of witness statements. In *J-Corp*, Justice French considered the public nature of the recording of public events meant the material was not gathered as a function of a confidential communication between lawyer and client notwithstanding that the sole purpose for making the video was for submission of the video to the lawyers. In *Boyes*, the Court of Appeal considered describing video images as direct evidence of matters did not assist in determining whether legal professional privilege subsisted in the communication of the video because, in the words of Justice Jacobs in *Grant v Downs*, '...that privilege extends

not only to communications actually made, but to material prepared for the purpose of communication thereof to the legal adviser’.

Justice Greenwood preferred the observations of the intermediate Court of Appeal in *Boyes* on the question of the video material, allowed the appeal, set aside the Tribunal’s decision and remitted to the Tribunal for determination according to law, the question of whether the documents are exempt for the purposes of section 42 of the FOI Act.

Statutory Interpretation – whether statutory powers of police to be read down to preclude assistance to foreign police where possible outcome is the imposition of the death penalty

Rush v Commissioner of Police
(23 January 2006, Justice Finn)

The four applicants involved in this application for preliminary discovery were Australian citizens and members of the group known as the ‘Bali nine’. Much of the detail in the case related only to the first applicant (Scott Rush) with the other three cases arising from the applicants’ involvement in the same events.

On 6 April and 8 April 2005 the applicants travelled to Bali. Prior to Rush’s departure from Australia, his father, Lee Rush, became aware that he may have been travelling to Indonesia, and was concerned that his son was involved in illegal activities. Lee Rush contacted a barrister friend (Robert Myers) to seek advice. Mr Myers duly contacted an associate (Damon Patching) who was seconded to the Australian Federal Police (AFP) at the time. The evidence of Mr Myers was that he requested that Scott Rush be detained at Sydney airport and prevented from leaving Australia. If he could not be detained, Myers requested that Rush should be stopped at the point of exit and advised that the AFP were watching him and that he should not participate in any illegal activity. The factual basis of the applicant’s claim was that Myers was apparently told that the AFP would talk to Rush if a passport alert was activated and was later informed that this had occurred, and Scott Rush had been spoken to. As a result, Lee Rush had not travelled to Bali to stop his son’s involvement. The AFP denied that such an undertaking had ever been given.

The four applicants were subsequently arrested for alleged involvement in drug trafficking. It transpired that the arrests had resulted from action taken by the Indonesian police (INP) in consequence of information provided to them by the police in Australia. At the time of the application, each of the applicants faced the death penalty in Indonesia.

Pursuant to Order 15A rules 3 and 6 of the Federal Court Rules, the applicant’s sought preliminary discovery in anticipation of possible later proceedings of the identity of the members of the AFP who made the operational decisions to request assistance from the INP regarding the applicants and who provided assistance to the INP concerning the applicant’s activities in Bali. Scott Rush additionally sought the identity of the member or members of the AFP who made the operational decisions (a) not to inform him that he was under surveillance and (b) not to advise his parents that he had not been informed.

Discovery was also sought of the relevant documents of the AFP which related to the arrest and detention of the applicants on 17/18 April 2005 in Bali.

Under Order 15A, the issue for the Court was whether the proposed proceedings was in respect of a cause of action known to law which was not purely speculative in character and not devoid of prospects. Three possible causes of action were ultimately canvassed before the Court. Two involved declaratory relief against AFP officers for (i) acting without lawful authority in making decisions and taking actions which exposed the applicants to the death penalty in Indonesia and (ii) failing to satisfy the applicants' substantive legitimated expectations as Australian citizens that the Australian Government and its agencies and public officers would not act in a way as to expose them to the risk of the imposition of the death penalty. In addition the applicants put forward two potential tort claims, one in negligence and a claim for misfeasance in public office.

The Court held generally that the power to order identity discovery under Order 15A rule 3 was not to be used in favour of a person who intends to commence merely speculative proceedings. Further, information discovery under Order 15A rule 6 carried an objective test of whether or not there is reasonable cause to believe that the applicant may have the right to obtain relief in the Court. This said, it is not enough to merely assert that there is the mere possibility of a case against the second respondent. With these principles in mind and after outlining the various statutes, treaties, international instruments and agreements, his Honour considered each of the potential causes of action.

Acting without lawful authority

The applicants argued in the first instance, that sections 8 and 9 of the *Australian Federal Police Act 1979* (Cth) (AFP Act) do not empower or justify any decision made by a member which exposes an Australian citizen to the death penalty. His Honour held that the provision of information by the AFP to the INP related to a suspected importation of heroin contrary to the 'laws of the Commonwealth'. As such it fell squarely within their functions as defined in section 8 of the AFP Act. The applicants had argued that the section should be read down in light of Australia's internal attitude towards the death penalty as well as its international obligations. The Court rejected this argument having regard to the *Mutual Assistance in Criminal Matters Act 1987* (Cth) and the Death Penalty Charge Guide, which governed the actions of the AFP in various ways.

Substantive legitimate expectation

The applicants' position was that each of them, in their capacity as Australian citizens, had a substantive legitimate expectation that the Australian Government would not act in such a way as to expose them to the risk of the imposition of the death penalty. The Court held, that in light of the decisions in *Teoh* and *Lam* it was clear that the doctrine of substantive legitimate expectation was not a present part of Australian law.

Tortious claims

The Court considered the line of authority regarding the liability of police officers for acts or omissions in the course of official duty that occasion foreseeable harm. His Honour held that there would be no arguable basis for any contention that AFP officers had a legal responsibility to warn any of the applicants that they were under police surveillance or exposing themselves to the risk of the death penalty especially given the information previously gathered about the applicants in the ongoing AFP investigation. The AFP was already possessed with a body of information about the applicants' activities and there was a rational and proper police purpose for the making of the request to the INP. Any proposed duty would be inconsistent with the duty owed by the AFP to the public at large in the conduct of its investigations into the Bali drug trafficking operation.

Finally, the Court rejected the potential claim of misfeasance in a public office on the basis that there was nothing in the material to suggest that any of the AFP officers had acted with 'reckless indifference'. There was no reasonable cause to believe that the decision or actions were invalid because they were improperly motivated.

Shipping and Navigation – seafarers – injury – workers' compensation – whether ships 'operated by' company which had responsibility for crewing operations

ASP Ship Management Pty Ltd v Administrative Appeals Tribunal
(10 March 2006, Chief Justice Black, Justices Emmett and Allsop)

This decision concerned a claim by seafarers for compensation for injuries sustained in the course of their employment.

Mr Bergvall was employed by ASP Ship Management as a member of the crew of the oil tanker *MT Flinders*. The ship was owned by a company in the United States. She was registered in Panama and a company in the United Kingdom was responsible for her ultimate management. The UK company had entered into a ship management agreement with ASP Ship Management.

Mr Bergvall claimed to have been injured in the course of his employment and he made a claim for compensation under the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) (the 'Compensation Act'). That claim was taken to have been disallowed by ASP Ship Management. Mr Bergvall then sought to have that decision reviewed by the Administrative Appeals Tribunal.

Mr Kelk was employed by Mermaid Labour and Management (Mermaid) as a member of the crew of the pipe-laying vessel *MV Lorelay*. The ship was owned by a Swiss company, she was registered in Panama and a separate Swiss company was responsible for her ultimate management. A third Swiss company had entered into a labour and catering agreement with Mermaid.

Mr Kelk claimed to have been injured in the course of his employment and he made a claim for compensation under the Compensation Act. That claim was taken to have

been disallowed by Mermaid. Mr Kelk then sought to have that decision reviewed by the Administrative Appeals Tribunal.

The compensation regime established by the Compensation Act was limited to seafarers employed on ships to which Part II of *Navigation Act 1912* (Cth) applied. Pursuant to section 10, that part of the Navigation Act applied, relevantly, to a ship which is ‘operated by’ an entity which has a relevant connection with Australia.

The Tribunal decided, as a preliminary question, that it had jurisdiction to review the seafarers’ claims because the *Flinders* and the *Lorelay* were operated by, respectively, ASP Ship Management and Mermaid.

ASP Ship Management and Mermaid sought judicial review of that decision before the Full Court.

The Full Court held that, as there was an error in the Tribunal’s interpretation of the meaning of ‘operator’, the Tribunal had misdirected itself as to the inquiry upon which it had to embark and had not found facts necessary to establish its jurisdiction in relation to the applications by Mr Bergvall and Mr Kelk for review of the deemed disallowance of their claims for compensation.

Legal Professional Privilege – whether legal professional privilege attaches to ‘draft statement of contrition’ proposed to be given in evidence to Royal Commission – powers of commissioner under *Royal Commissions Act 1902* (Cth)

AWB Limited v Honourable Terence Rhoderic Hudson Cole
(17 May 2006, Justice Young)

This case concerned a document entitled ‘Cole Inquiry – Draft Statement of Contrition – Andrew Lindberg.’ The document became Exhibit 665 in the Commission of Inquiry which became known as the ‘Oil-For-Food Inquiry’ conducted by Commissioner Cole under the *Royal Commissions Act 1902* (Cth) (RCA).

The document was inadvertently produced by AWB Limited (AWB) to the Inquiry in response to a notice to produce documents issued under section 3(2A) of the RCA. AWB claimed legal professional privilege in respect of the document. After hearing evidence and submissions concerning Exhibit 665, the Commissioner expressed his view in written reasons that the RCA conferred an ancillary or incidental power on him to determine whether the claim of legal professional privilege had been established in respect of Exhibit 665. On the evidence before him, the Commissioner ruled that Exhibit 665 was not privileged.

The document was drafted by Mr Lindberg, then managing director of AWB, as part of a proposed strategy of ‘over-apologising’ to the Commission to deal with reputational damage AWB had sustained and was likely to sustain in future in connection with the Inquiry. The document was created following a telephone conference that took place on 21 December 2005 between Mr Lindberg, Dr Sandman (a crisis management consultant engaged by AWB to provide public relations advice), Mr Zwier from Arnold Bloch Leibler (the solicitors for AWB) and a number of

employees of AWB. After the telephone conference, Mr Zwier provided written advice to AWB. Mr Lindberg drafted the statement of contrition, which was based closely on Mr Zwier's advice, and arranged for it to be circulated by email to the persons who had participated in the telephone conference of 21 December 2005 for further discussion.

AWB contended that the document attracted legal professional privilege on one or other of the following grounds. First, AWB contended that Exhibit 665 was brought into existence for the dominant purpose of obtaining legal advice from Mr Zwier. Secondly, AWB contended that the document was privileged because it was based closely on Mr Zwier's advice. And thirdly, it contended that Exhibit 665 was brought into existence for the dominant purpose of being used in relation to litigation.

Justice Young held that the document was not protected by legal professional privilege. His Honour found that the document had been created for a number of purposes, including the obtaining of public relations advice, and his Honour was not satisfied that the document had been brought into existence for the dominant purpose of obtaining legal advice. Justice Young found that the document would not, if disclosed, allow a reader to know or infer the nature, content or substance of any legal advice nor would the disclosure of Exhibit 665 result in any waiver of the privilege inhering in that legal advice. As to AWB's argument that the litigation limb of legal professional privilege applied to documents intended to be given in evidence to the Commission, Justice Young held that legal professional privilege does not extend to documents brought into existence for use in relation to a commission of inquiry. Further, his Honour held that Exhibit 665 was not brought into existence for the dominant purpose of being used in connection with litigation which might follow from the report of the Commissioner.

AWB also sought declarations that the Commissioner does not have the power to order the production of a privileged document or to determine whether a document is protected by legal professional privilege. Alternatively, AWB sought a declaration that the Commissioner should not determine whether a claim for legal professional privilege is established. Justice Young declined to make these declarations, holding that although the Commissioner had an administrative power or capacity to form an opinion as to whether the document was privileged and therefore not required to be produced under the notice, the Commissioner's opinion or ruling had no binding force or effect in point of law, and it was open to either party to bring declaratory proceedings in the Federal Court without the Court embarking on a review of the Commissioner's decision.

APPENDIX 8

JUDGES’ PARTICIPATION IN LEGAL REFORM ACTIVITIES AND INTERNATIONAL COMMITTEES AND CONFERENCES IN 2005–06

In July 2005 the Court was visited in Melbourne by Dr Frédéric Jenny, Conseiller extraordinaire of the Court of Cassation, Paris, by Judge Nicholas Forwood of the Court of First Instance of the European Communities and by Professor Alan Fels.

On 11 July 2005, the Chief Justice, the Hon Michael Eric John BLACK AC, attended the State Memorial Service in Sydney for The Rt Hon Sir Harry Gibbs GCMG KBE (Chief Justice of Australia 1981–1987).

In July 2005, the Chief Justice attended the sixteenth Pacific Judicial Conference in Port Vila, Vanuatu.

On 8 August 2005, in Brisbane, the Chief Justice chaired the Inaugural Richard Cooper Memorial lecture, delivered by Adjunct Professor Edgar Gold.

On 11 August 2005, the Melbourne judges were addressed by, and had discussions with, Dr Ashton Calvert AC, former Secretary of the Department of Foreign Affairs and Trade.

On 12 August 2005, in Melbourne, the Chief Justice hosted a luncheon meeting with Professor Catherine Kessedjian, of the University of Paris II (Panthéon-Assas). Professor Kessedjian was accompanied by Professor Cheryl Saunders and Associate Professor Richard Garnett of the Melbourne Law School.

On 15 August 2005, in Melbourne, the Chief Justice hosted a reception on the occasion of the unveiling, by The Rt Hon Sir Zelman Cowen, of the painting *The Lucinda at Farm Cove, Easter Day 1891*. The Chief Justice delivered a short address about the painting.

On 16 August 2005, the Chief Justice attended the Law Council Annual Dinner for Parliamentarians & Senior Departmental Representatives in Canberra.

On 30 August 2005, in Melbourne, the Chief Justice launched *Class Actions in Australia*, by Damian Grave and Ken Adams.

On 1 September 2005, the Chief Justice gave an address at a Memorial Service for The Hon Graham Hill (Federal Court Judge 1989–2005) at St James’ Church, Sydney.

In September 2005, the Chief Justice attended the fourteenth Commonwealth Law Conference in London, and a conference on court architecture in Paris.

On 14 October 2005, the Chief Justice gave an address about the Federal Court and federal jurisdiction to NSW Bar Readers. He also attended a memorial service for The Hon Peter Hely (Federal Court Judge 1998–2005) at St James' Church, King Street, Sydney.

On 21 October 2005, the Chief Justice presided at a Seminar and Conversation with The Hon Justice Antonin Scalia, Associate Justice of the Supreme Court of the United States. This was jointly organised by the Federal Court and the AIJA and took place in the Number 1 Courtroom, in Melbourne. The Chief Justice was also present at the delivery of the Nelson Oration by The Rt Rev Dr Tom Frame to celebrate Trafalgar Day 2005.

From 22–23 October 2005, the Chief Justice attended the 2005 Winter Conversazione of the Boston, Melbourne, Oxford Conversazioni on Culture and Society, organised by Trinity College in Melbourne.

On 24 October 2005, in Perth, the Chief Justice presided at a ceremony for the naming of the Federal Court Library in Perth as The Hon John Toohey Library.

On 8 November 2005, the Chief Justice attended the swearing-in of The Hon Susan Crennan as a justice of the High Court of Australia.

On 15 November 2005, the Chief Justice gave an address, An overview of the Federal Court of Australia, at a dinner in Melbourne for litigation partners.

On 2 December 2005, in Melbourne, the Chief Justice delivered the keynote address, Lessons to be learnt from the operation of the class actions system over the last 13 years, at the 2005 International Class Actions Conference.

In January 2006, the Chief Justice attended the annual Supreme and Federal Court Judges Conference in Brisbane.

On 3 February 2006 the Chief Justice delivered an address at the opening, by The Hon John Howard, MP, Prime Minister of Australia, of the Roma Mitchell Commonwealth Law Court Building in Adelaide. The Chief Justice hosted and spoke at a dinner to mark the occasion.

On 7 February 2006, the Chief Justice attended a ceremonial sitting of the Supreme Court of Western Australia in Perth on the occasion of the retirement of Chief Justice Malcolm.

On 10 February 2006 the Chief Justice attended a Memorial Service at St James' Church, King Street, Sydney, for The Hon John Lockhart AO QC (Federal Court Judge 1978–1999).

On 16 February 2006, the Melbourne judges were addressed by Dr Efraim Zuroff, Director of the Simon Wiesenthal Centre.

On 22 February 2006 the Chief Justice, who is the Chairman of the Advisory Board for the Melbourne Juris Doctor degree of Melbourne University, gave a lecture in the Melbourne Juris Doctor Series on The Federal Court and federal jurisdiction.

On 1 March 2006, the Chief Justice attended a reception at Government House, Canberra.

On 6 March 2006, the Chief Justice attended a luncheon meeting in Brisbane with the Rt Hon Lord Millett.

On 14 March 2006, the Chief Justice met with Judge Mark Kravitz, a judge of the United States District Court for the District of Connecticut.

On 15 March 2006, the Chief Justice attended a luncheon in Melbourne hosted by the Prime Minister in the presence of Her Majesty Queen Elizabeth II, on the occasion of the Commonwealth Games.

On 16 March 2006, in Sydney, the Chief Justice attended the Asia Pacific Judicial Reform Forum Dinner.

From 24–26 March 2006, the Chief Justice attended a Corporations Law Seminar organised by the Court and the Law Council of Australia and held at the Court in Sydney. Speakers at the seminar included The Hon Myron T Steele, Chief Justice of Delaware.

On 11 April 2006, the Chief Justice delivered the opening keynote address, Six approaches to reforming the law: 650 years of treason and sedition, at the conference of the Australasian Law Reform Agencies in Sydney.

On 13 April 2006, the Chief Justice delivered a lecture on The Federal Court and federal jurisdiction to the Victorian Bar Readers in Melbourne.

From 18–19 April 2006, the Chief Justice attended a meeting of the Council of Chief Justices in Wellington, New Zealand.

On 20 April 2006, the Chief Justice chaired the opening session of the Justice Environments Conference in Melbourne. He hosted a reception for delegates and delivered a lecture, Court Architecture: a view from the bench.

On 27 April 2006, in Perth, the Chief Justice presided at a ceremonial sitting of the Court on the occasion of the retirement of The Hon Justice Malcolm Lee (Federal Court Judge 1988–2006).

On 28 April 2006, the Chief Justice attended the fourteenth AIJA Oration on Judicial Administration, delivered by The Rt Honourable Justice Beverley McLachlin PC, the Chief Justice of Canada.

From 3–5 May 2006, in Sydney, the Chief Justice attended sessions of the conference of the International Association of Women Judges. He delivered an address to the delegates at a reception, hosted by the Federal Court, at the Sydney Opera House.

In May 2006, the Chief Justice hosted a lunch for Justice Eleanor Dawson, Justice Carolyn Layden-Stevenson and Justice Anne Mactavish, of the Federal Court, Canada. The judges spent time with the Federal Court in Melbourne and Sydney as part of a continuing judicial exchange arrangement with the Court's Canadian counterpart.

On 11 May 2006, the Chief Justice delivered an address to the Bar Practice Course of the NSW Bar Association. He later delivered an address in Melbourne at a dinner to mark the twenty-fifth anniversary of the Victorian Bar Readers Course, of which the Chief Justice had been the foundation Chairman from 1981–87.

In May 2006, the Chief Justice met with the President of the Federal Administrative Court of Germany in Leipzig. The following week he attended the conference of the 7th Circuit Bar Association and the 7th Circuit Judicial Conference in Chicago. He delivered an address, Perspectives on the jury system from 'down under'. While in Chicago, the Chief Justice discussed aspects of judicial administration with the Circuit Executive and judges. He also met with the Circuit Executive of the 2nd Judicial Circuit, judges of the Court of Appeals and judges of the US District Court for the Eastern District of New York, in New York.

On 14 June 2006, the Chief Justice met with The Hon Sir Albert Palmer, Chief Justice of the Solomon Islands in Melbourne.

On 15 June 2006, the Chief Justice attended a discussion forum with Tiago Amaral Sarmiento, Director of the Judicial System Monitoring Programme, in East Timor.

On 22 June 2006, the Chief Justice attended a Corporations Law Seminar at the Federal Court in Sydney.

During the year the Chief Justice met with representatives of the Law Council of Australia, the Law Society of New South Wales, the Law Institute of Victoria, the New South Wales Bar Association and the Australian Bar Association. He also attended meetings with many of the visitors to the Court.

On 12 July 2005 Justice RYAN presided over the final of the International Maritime Law Arbitration Moot Competition. In March 2006 his Honour delivered a paper, Workplace Relations Jurisdiction after 'Work Choices', to the Plenary Meeting of the Federal Magistrates Court of Australia held in Brisbane.

Justice FRENCH is a member of the Advisory Board of the Faculty of Law at the University of Western Australia, a member of the Advisory Board of the Faculty of Law at the University of Notre Dame in Sydney, a member of the National Indigenous Cultural Awareness Committee of the Australian Institute of Judicial Administration and a member of the Western Australian Genetics Council.

During the reporting period his Honour has undertaken the following activities:

- 1 July 2005 – Law and Rocket Science, the keynote address to the Australian Law Students Association Conference, Perth
- 2–4 September 2005 – Judicial Exchange: Debalkanising the Courts, paper presented to the Judicial Conference of Australia National Colloquium, Sunshine Coast
- 16 September 2005 – the Native Title Process, presentation to Commonwealth and State Native Title Ministers, Parliament House, Canberra
- 18 September 2005 – Intellectual Property and Competition Law, presentation to National Conference of Intellectual Property Society of Australia and New Zealand, Fremantle
- 22–24 September 2005 – Australian Nationhood and the Interaction between International and Domestic Law, paper presented at the first Asian Forum for Constitutional Law, Seoul National University, Seoul, Korea
- 6 December 2005 – International Judicial and Judicial Education Work, lecture to Western Australian branch of the Institute of International Affairs
- January–March – Visiting Fellow, Inns of Court, London. As Visiting Fellow his honour delivered the following addresses, lectures and papers: Co-operative Federalism in Australia – An Intellectual Resource for Europe, public lecture to the Institute of Advanced Legal Studies, London; Discrimination in Fiji and Australia – No Bright Lines, keynote address to the Inner Temple Barristers Training Weekend, Great Windsor Park; Australia’s Evolution as a Nation State in the Community of Nations, paper presented to the Menzies Centre for Australian Studies, Kings College; The Rule of Law and Judicial Review of Executive Decisions, a lecture to Treasury solicitors in London; Competition Law and Intellectual Property – Are the Judges up to it?, paper presented to the Anglo Australian Lawyers’ Society, London; The Equitable Geist in the Machinery of Administrative Justice, paper presented to the Chancery Bar Association and Constitutional and Administrative Law Bar Association, London.
- 7 April 2006 – The 10 Year Forecast for Native Title, paper presented at the Yamtji Marlpa Barna Bab Maaja Aboriginal Corporation 2006 Stakeholders’ Conference, Perth
- 29 April 2006 – Role of Private Enforcement in Competition Law, presentation in Panel Discussion at second International Bar Association and Law Council Anti Trust Seminar, Sydney
- 19 May 2006 – Practitioners v Students Annual Debate, participant, Blackstone Society Annual Dinner, Perth
- 31 May 2006 – Evidence in Civil Litigation, presentation to Western Australian Bar Readers Course
- 10 June 2006 – Radio and Television Broadcasting in the Magistrates’ Courts – Is there a Future?, paper presented to the Association of Australian Magistrates’ National Conference, Fremantle.

Justice HEEREY is Chair of the Advisory Board for the Graduate Program in Intellectual Property Law at the University of Melbourne and a Board Member and Vice President of the Arts Law Centre of Australia. In September 2005, his Honour

was a presenter in a workshop on judgment writing conducted by the National Judicial College of Australia in Adelaide.

In October 2005, Justice MOORE participated in a workshop in Bangkok, Thailand, sponsored by APEC and the United States Patent Office, for judges and prosecutors in South East Asia on the enforcement of intellectual property rights. In January 2006, his Honour participated in planning meetings with representatives of the Supreme Court of Indonesia's Reform Team and the Legal Development Facility and assisted them in developing four draft programs of assistance to help implement their Blueprint for Reform. In April 2006, his Honour was appointed a judge of the Tonga Court of Appeal. Justice Moore continues to be involved in a project of the Supreme People's Court of Vietnam to develop a bench book for the Vietnamese judiciary.

In July 2005 Justice BRANSON presented a paper on appellate practice in the Federal Court to a Government Lawyers Group Seminar (published in *Australian Bar Review* (2005) 26 *ABR* 242). In August 2005 her Honour attended the 2005 Trade Practices Conference organised by the Law Council of Australia. In September 2005 Justice Branson attended the Judicial Conference of Australia Colloquium 2005. On 25 October 2005 Justice Branson was invited by the Faculty of Law, ANU to launch the book *Interpreting Statutes* edited by Suzanne Corcoran and Stephen Bottomley. In November 2005 her Honour chaired a CLE seminar on Expert Evidence in Health at the Faculty of Law, University of Sydney. Her Honour is a Board member of the International Development Law Organisation (IDLO) and attended a special IDLO Board Meeting in Rome in November 2005 and the Annual Board meeting in Rome in March 2006. On 22 November 2005 her Honour attended a conference on Forced Migration and Human Rights hosted by the University of Sydney, Sydney Centre for International and Global Law. In May 2006 Justice Branson attended the eighth Biennial Conference of the International Association of Women Judges and a Law, Religion & Social Change Conference hosted by the ANU. On 9 June 2006 Justice Branson, together with the Chief Justice of South Australia, was a presenter on the topic The Challenge of Corporate Social Responsibility at a meeting of the SA/NT Council of the Australian Institute of Company Directors.

Justice LINDGREN is chair of the Council of Chief Justices' Monitoring Committees on the Harmonised Corporations Rules and Subpoena Rules, as well as its Committee on the Harmonisation of Rules relating to Discovery. This last Committee has recently completed drafting Rules of Court and associated Practice Notes relating to freezing orders and search orders. The Rules and Practice Notes were made and commenced on 5 May 2006.

Justice Lindgren was the keynote speaker at LexisNexis Trade Practices Update 2005 (Brisbane 17 October; Sydney 30 November 2005), delivering a paper, Section 46 (Misuse of Market Power): a Judge's Perspective. On 18 October 2005 his Honour spoke at the University of New South Wales seminar, Advanced Litigation: Class Actions, and on 12 November 2005 he delivered a paper 'Market Power, Collecting Societies and the Role of the Copyright Tribunal' at the 2005 Annual Competition Law Conference, Sydney (published in *Australian Law Journal* (2005) 79 *ALJ* 561–584). Justice Lindgren gave a keynote address, Voluntary Administration: Current Issues and Proposals for Reform, at Law & Finance's sixth Annual Insolvency Practice Symposium held in Sydney on 6 February 2006. In March 2006, his Honour

presented two lectures (with associated setting and marking of assignments) in the Equity Financing Law course in the LLM program of the University of Sydney.

Justice SACKVILLE is the Chair of the Judicial Conference of Australia (JCA). The JCA is the representative body for judges and magistrates in Australia. Justice Sackville chaired the annual Colloquium of the JCA, held at Maroochydore on 2 – 4 September 2005. Justice Sackville also gave presentations in his capacity as the Chair of the JCA to the New South Wales Local Courts Annual Conference held in Sydney on 31 August 2005, and to the Conference of the Council of Magistrates held in Melbourne on 25 November 2005.

On 29 August 2005, Justice Sackville delivered the 13th Lucinda Lecture, ‘How Fragile are the Courts? Freedom of Speech and Criticism of the Judiciary’, at Monash University (published: (2005) 31 *MULR* 191-211). On 8 November 2005, Justice Sackville addressed the Valedictory dinner for graduating law students at the University of NSW. On 12 April 2006, Justice Sackville gave a keynote address ‘Peering over the Horizon: It’s Dark on the Other Side’ at the Australian Law Reform Agencies Conference in Sydney (published (2006) 88 *Reform*).

Justice KIEFEL presented a report, The Federal and State Courts on Constitutional Law: the 2005 term, to the 2006 Constitutional Law Conference in Sydney on 24 February 2006. Her Honour attended meetings of the Australian Law Reform Commission, of which she is a part-time member, including those concerned with the references on Sentencing of Federal Offenders, the Evidence Act and Review of Sedition Laws. Her Honour was re-appointed as a part-time Commissioner for a further period of three years from April 2006. Justice Kiefel contributed an article entitled ‘Change and the Judiciary 1982 – 2006’ for a Festschrift for the Hon Justice Mr Bruce McPherson CBE, of the Queensland Court of Appeal (Supreme Court of Queensland Library, *Justice According to Law*, September 2006, Brisbane).

Her Honour is a member of the recently constituted Law Opportunity Foundation, which seeks to assist disadvantaged young people to undertake law degrees through a system of scholarships. She has accepted an appointment to the Appeals Committee of the University of Queensland Law School Scholarship Endowment Fund.

Justice NICHOLSON prepared Litigants Without Representation: A Dilemma for a Just Society?, a paper presented on his behalf by Justice Helman of the Supreme Court of Queensland to the Greek Conference: Towards a Just Society – Issues in Law and Medicine held in Mykonos, Greece from 25–30 September 2005. On 24 February 2006 Justice Nicholson presented a paper Summer Schools in Retrospect and Prospect to the Law Summer School program of the University of Western Australia. His Honour participated in three sessions at the Justice Environments Conference held in Melbourne on 20–22 April 2006. At the first session, Meeting contemporary needs and preserving tradition in court buildings he gave a presentation on Native Title determination hearings. He was a discussion participant at the second session, Creating safe environments in stressful settings. Justice Nicholson chaired the third session, The Poetry of the Courtroom. In May 2006 his Honour participated in Law Week 2006 through taking part in a panel discussion on the Next Chapter for the Supreme Court Law Library and presenting the Eulogy for Sir Ronald Wilson KBE, CMG AC at the 2006 Sir Ronald Wilson Lecture. He also presided over the

Blake Dawson Waldron Trial Advocacy Competition on 3 May 2006 and addressed the Personal Property Securities Seminar Series held in Perth. Justice Nicholson presented a session on litigants in person and participated in a panel discussion on contempt at the National Judicial Orientation Program held at Aitken Hill, Victoria on 16 May 2006. In his private capacity, Justice Nicholson presented a paper, *Striking a Balance: The Judge's Role*, to the Monash University Access to Justice: How Much is too Much? Conference in Prato, Italy on 30 June 2006.

Justice Nicholson continues to be a member of both the Board and Council of the Australian Institute of Judicial Administration (AIJA) and Chair of the Projects and Research Committee of the AIJA. His Honour is also Secretary of the LAWASIA Judicial Section. He is Deputy Convenor of the Trustees of the Francis Burt Education Centre, President of the International Commission of Jurists, Western Australian Branch and continues to be a member of the Advisory Board to the Center for International Accountability of Organizations. Justice Nicholson is a Foundation Fellow of the newly created Australian Academy of Law established by the Australian Law Reform Commission.

During the reporting year Justice FINN was appointed Professorial Fellow, University of Melbourne Law School and was a member of the Third Working Group on the International Institute for the Unification of Private Law's (UNIDROIT) Principles on International Commercial Contract. His Honour contributed a chapter on 'Statutes and the Common Law: The Continuing Story' (in Corcoran and Bottomley 2005, *Interpreting Statutes*, Federation Press, Sydney) and published two articles, 'Good Faith and Fair Dealing: Australia' (2005) 11 NZBLQ 378; and 'Law and History in Four Parts' (2005) ANZLH E-Journal 239.

In August 2005 Justice MARSHALL participated as a judge of the Victorian Council of Law Student Societies junior final of the Governor-General's Mooting Competition at the Federal Court in Melbourne, together with Justice Goldberg. In September 2005, Justice Marshall gave an address, *Case study of a new democratic system: East Timor to Iraqi officers attached to the media office of the Iraqi Special Tribunal* at the Royal Society of Victoria in Melbourne. In April 2006, Justice Marshall gave an address on the work of the Federal Court to international students from the Masters program of Melbourne University. In May 2006, his Honour gave a presentation on the Justice System in East Timor to the Tasmanian section of the Australian Law Librarians Group, and was interviewed on ABC radio in Hobart. In June 2006, Justice Marshall gave a presentation on the Justice System in East Timor to the Victorian section of the Australian Law Librarians Group.

In October 2005, Justice NORTH attended the international exchange program for the development of an integrated system for judicial mediation presented by the National Judicial Institute of Canada and the Quebec Court of Appeal in Montreal Canada. His Honour also visited the Federal Court of Canada on the inaugural judicial exchange program between the Federal Court of Australia and the Federal Court of Canada.

In November 2005, Justice North, as President of the International Association of Refugee Law Judges, attended the European Chapter Conference in Budapest, Hungary, which was hosted by the Metropolitan Court of Budapest. In January 2006, Justice North presented the keynote address, *Towards Consistent Decision Making in*

Refugee Law, to the national training seminar of the Refugee Protection Division of the Immigration and Refugee Board of Canada in Montreal, Canada. His Honour also visited the Board of Immigration Appeals and the Immigration Court in Washington DC, under the United States Department of State International Visitor Leadership Program. In February 2006, Justice North led a delegation from the International Association of Refugee Law Judges to Mexico City in preparation for the World Conference of the Association to be held in November 2006. His Honour also visited the Court of Appeals for the Ninth Circuit and the District Court in San Francisco and met with the chief mediators of those courts to discuss the subject of alternative dispute resolution. In April 2006, Justice North hosted the Melbourne visit of Justices Dawson, Layden-Stevenson and Mactavish from the Federal Court of Canada. In May 2006, Justice North attended the 2006 Native Title Conference in Darwin and launched the book *Compromised Jurisprudence* by Dr Lisa Strelein.

Justice MANSFIELD is Chair of the Graduate Diploma and Legal Practice Course Committee of the Law Society of South Australia. On 6 July 2005 and 21 September 2005, Justice Mansfield presented sessions for the Northern Territory Law Society Continuing Legal Education program Approach to Assessing Damages under the Trade Practices Act and Section 52 Trade Practices Act. The Law Society of South Australia conducted a Migration Law Conference on 12 and 13 August 2005 and Justice Mansfield presented a session Judicial Review – Aspects of Jurisdictional Error. His Honour also presented a session Admiralty and Maritime Law for the Law Society on 19 April 2006. In late August 2005, Justice Mansfield attended a Corporations Workshop in Sydney and chaired a session Customer Opinion and Behaviour and Other Evidence in Market Assessments. On 29 September 2005, Justice Mansfield presented a paper, Set Off – Mutual Credits, Mutual Debits & Other Mutual Dealings, to the Insolvency Practitioners Association of Australia (SA & NT). His Honour was invited to open the third Annual University of South Australia Trade Practices Workshop on 21 and 22 October in the Barossa Valley, South Australia and participated as a speaker and commentator for various sessions. Justice Mansfield participated in the 16th Pacific Judicial Conference held in Vanuatu from 25-29 July 2005. Justice Mansfield also attended the International Bar Association Maritime Law Conference in Dubai from 6–7 March 2006, and the Asia Pacific Judicial Reform Forum in Sydney held on 16–17 March 2006.

Justice EMMETT is the Challis Lecturer in Roman Law at the University of Sydney and is currently a Deputy President of the Copyright Tribunal. His Honour is also Consultant Editor and Contributor to Butterworths Australian Legal Dictionary. On 22 February 2006 Justice Emmett presented a paper on affidavit evidence in The 2006 Judges Series organised by the College of Law. On 8 March 2006 Justice Emmett provided opening commentary to a Continuing Legal Education seminar on Developments in Directors’ Duties conducted by the University of NSW. In May 2006, Justice Emmett participated in the Bar Reading Program organised by the New South Wales Bar Association.

Justice WEINBERG was a part-time Commissioner for the Australian Law Reform Commission from 1998 until 31 March 2006 when his term expired. He was a contributor to the following reports and papers: Discussion Paper 70: Sentencing of Federal Offenders, (published November 2005, *ALR*); Report 102: Uniform Evidence

Law (published 8 February 2006, *ALR*) and Report 103: Same Crime, Same Time: Sentencing of Federal Offenders (published 22 June 2006, *ALR*).

Justice Weinberg is Deputy President of the Federal Police Disciplinary Tribunal. His Honour was Chair of the Leo Cussen Institute of Victoria from October 2000 until his five year term expired on 31 December 2005. In his capacity as Chair he addressed the students regularly throughout the year. Justice Weinberg has been a Board Member of Monash University Faculty of Law since 1998. Justice Weinberg has been an Adjunct Professor in the Faculty of Business and Law, Deakin University since March 2005.

At the end of 2005 Justice DOWSETT completed his term as a member of the Council of the National Judicial College of Australia. His Honour continues to serve as Chair of the Continuing Professional Development Committee of the Queensland Bar Association.

Justice KENNY has been a part-time Commissioner, Australian Law Reform Commission since May 2003. In that capacity she has been a Member of the Division constituted under the *Australian Law Reform Commission Act 1996* (Cth) for the purposes of the references on The Review of the Evidence Act 1995 (Cth) and Sentencing of Federal Offenders. In early 2005 Justice Kenny was reappointed a member of the Centre for International and Public Law Advisory Board, The Australian National University (ANU). For some years, her Honour has also been a Board Member of the Monash University Faculty of Law.

In July 2005, Justice Kenny participated in a Roundtable on Inherent Executive Power, convened by the Centre for Comparative Constitutional Studies, the University of Melbourne. In August 2005, her Honour was one of three adjudicators in the Deacons Senior Mooting Grand Final held at the University of Melbourne Law School. In October 2005, Justice Kenny participated in the deliberations of the Australian selection committee for awarding Menzies Scholarships in Law. In November 2005, Justice Kenny attended a meeting of the Board of Governors of the International Organization for Judicial Training (IOJT) in Reno, Nevada. At that meeting, her Honour was elected to the Board of Governors of the IOJT. Also in November 2005 Justice Kenny attended the International Conference and Showcase on Judicial Reforms in Manila. Her Honour is a member of the Australian Secretariat for the Asia Pacific Judicial Reform Forum, which came into being following the Manila meeting. In May 2006, Justice Kenny joined Justices Finkelstein and Weinberg to adjudicate the Final of the Deakin Law Students' Society's Senior Moot Competition. Also in May 2006, Justice Kenny was appointed an alternate member of the Council of the National Judicial College of Australia.

In July 2005 Justice GYLES attended the Joint Australian and Irish Bar Conference in Dublin. Later that month he attended the Australian Competition and Consumer Commission Conference. He gave a keynote address on Commercial Litigation in the Federal Court in October 2005. In March 2006 his Honour attended the Law Council of Australia/Federal Court Corporations Seminar, while in June 2006 he organised a Federal Court seminar on Voluntary Administration. In the same month Justice Gyles participated in the third Asia Pacific Mediation Forum Conference at Suva, Fiji.

Justice STONE is an adjunct Professor of Law at the University of NSW and is a Foundation Fellow of the Australian Academy of Law. She has also recently become a member of the Medico Legal Society.

During the year Justice Stone attended the following conferences: International Association of Women Judges Conference hosted by the High Court, Federal and Supreme Courts in Sydney; Law, Religion and Social Change Conference held by the Australian National University; Corporations Workshop conducted by the Law Council of Australia in Canberra; Judicial Conference of Australia’s Colloquium 2005 held at the Sunshine Coast, Queensland; 2006 Constitutional Law Conference held by the University of NSW at the Art Gallery of NSW; Justice Stone also chaired a session on Liability for Misleading Prospectus at the Corporations Law Conference – Evolving Role of Directors held by the Law Council in Sydney. Justice Stone gave the occasional address to Law Graduates at the University of Technology, Sydney and delivered the welcoming address to undergraduate law students at the University of Sydney. Her Honour joined the editorial board of the Equity Journal on 23 January 2006.

During the reporting year Justice ALLSOP gave lectures on admiralty and maritime law, federal jurisdiction and statutory interpretation to various organisations and taught a post-graduate course in Commercial Maritime Law at the University of Sydney. Justice Allsop attended conferences on maritime law and trade practices conducted by the Maritime Law Association of Australia and New Zealand and the Law Council of Australia.

Justice BENNETT was invited to participate in the Justice and Society Seminar, held in Aspen, Colorado in July 2005. Her Honour attended the Judicial Conference of Australia Colloquium 2005 between 2–4 September and the National Judicial College of Australia judgment writing program from 11–13 September, 2005. Justice Bennett also attended the fourth International Judges Conference on Intellectual Property (IP) Law in Washington on 24–26 October 2005; and between 15–17 November 2005, her Honour conducted an Alternative Dispute Resolution (ADR) workshop in Chuuk, Federated States of Micronesia. On 23 November 2005 Justice Bennett was appointed a Presidential Member of the Administrative Appeals Tribunal. As part of the organising committee of the International Association of Women Judges (IAWJ), Justice Bennett participated in the eighth Biennial Conference which was held in Sydney between 3–7 May 2006. Her Honour was invited to address the Intellectual Property Society of Australia and New Zealand’s Annual Judges’ Dinner in Brisbane in May 2006 on Different perspectives on IP Litigation.

Justice Bennett continues to be involved in a number of extra-judicial commitments including Pro-Chancellor of the Australian National University, Director of the Sydney Children’s Hospital Foundation, member of the Board of the Centennial Park & Moore Park Trust, member of Chief Executive Women and past President of the Australian Academy of Forensic Sciences. Her Honour was also a member of the judging panel for the Australian Veuve Clicquot Award for Business Woman of the Year.

Justice SIOPIS was a member of the organising committee of the Law Summer School, sponsored by the University of Western Australia and the Law Society of

Western Australia, held in February 2006. During the reporting year Justice Siopis chaired a seminar on Litigation Affecting Trustees for the Law Society of Western Australia Education Program, presented a paper on Written Submissions for the Advocacy Training Course of the Western Australian Bar Association and presented a seminar on Ethics for the Bar Readers' Course of the Western Australian Bar Association.

Justice EDMONDS chaired the fourth National Tax Symposium of the Taxation Institute of Australia on 21–22 July 2005 on the Financial Arrangements: Past and Future. His Honour presented a paper, Part IVA and Division 165: Where are we now and where are we heading? at the 44th Victorian State Convention of the Taxation Institute of Australia on 6–8 October 2005, and presented a paper, Five years of GST, at the 2005 National GST Intensive Seminar organised by the Taxation Institute of Australia on 13–14 October 2005. His Honour also presented a paper, The Contribution made by Justice Graham Hill to the Development of Tax Law in Australia, to the annual conference of the Australasian Tax Teachers' Association on 30 January 2006. Justice Edmonds chaired the late Professor Ross Parsons Memorial Lecture, Does the United Kingdom need a statutory GAAR?, given by Professor Judith Freeman, the Professor of Tax Law at Oxford University, in the Banco Court of the Supreme Court of NSW on 8 February 2006.

On 27 October 2005 Justice GRAHAM presented a paper on Duty of Care in Aviation Safety – The Legal Perspective to the Safeski's Conference in Canberra. His Honour participated in the Bar Reading Programme organised by the NSW Bar Association and also the Judges' Series of continuing legal education, presenting a paper on Court Etiquette and preparation of witnesses with Justice Adams of the Supreme Court of NSW.

On 17 February 2006 Justice GREENWOOD gave the opening address at the 11th Annual Copyright Conference of the Australian Centre for Intellectual Property in Agriculture (ACIPA) held in Brisbane. On 4 March 2006 his Honour gave an address to the Annual Bar Association of Queensland Conference on Some Aspects of Tendency and Propensity Evidence in a Federal Setting. On 9 March 2006 Justice Greenwood chaired a forum on behalf of the T C Beirne School of Law, University of Queensland, in the Banco Court of the Supreme Court of Queensland at which the Rt Hon Lord Millett, a Lord of Appeal in Ordinary from 1998 to 2004, delivered a foundation address to establish a public lecture series called the McPherson Lecture Series. In June 2006 his Honour contributed a chapter, 'Render therefore unto Caesar things which are Caesar's: The Ownership of Copyright in Judgments Published in Writing or Ex Tempore' to a Festschrift for the Hon Justice Mr Bruce H McPherson CBE of the Queensland Court of Appeal (Supreme Court of Queensland Library, *Justice According to Law*, September 2006, Brisbane).

Justice Greenwood holds a position as Adjunct Professor of Law in the TC Beirne School of Law at the University of Queensland with particular emphasis upon intellectual property and competition law. He is also a presidential member of the Administrative Appeals Tribunal.

APPENDIX 9

EQUAL EMPLOYMENT OPPORTUNITY STATISTICS

Representation of EEO Groups within occupational groups

Occupational Group	Total staff	Women	NESB1	NESB2	ATSI	PWD
SES	11	5	1	1		
FCS and related	366	249	13	28	5	4
Professional	26	18				
TOTAL	403	272	14	29	5	4

Representation of EEO Groups within salary levels

Salary	Total staff	Women	NESB1	NESB2	ATSI	PWD
\$32584 – 36010 FCS1	1					
\$36876 – 40891 FCS2	58	35	1	4	1	1
\$42001 – 45331 FCS3	71	51	6	10		1
\$46814 – 50828 FCS4	20	15	1	1		
\$52213 – 55366 FCS5	156	123	3	11	4	1
\$56393 – 64780 FCS6	20	6	1	1		
\$47157 – 91672 FCM1/FCL1	26	14	1	1		1
\$83211 – 110361 FCM2/FCL2	40	23				
SES	11	5	1	1		
TOTAL	403	272	14	29	5	4

Note: EEO target groups are not mutually exclusive. Any individual officer may be included in more than one group. Salary groupings are based on maximum salary for a classification.

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
 FCS – Federal Court Staff
 FCM – Federal Court Manager
 FCL – Federal Court Legal
 SES – Senior Executive Service

APPENDIX 10

EXPENDITURE ON CONSULTANTS (at 30 June 2006)

The Court's policy on the selection and engagement of all contractors is based on the Australian Government's procurement policy framework as expressed in the Commonwealth Procurement Guidelines (January 2005) and associated guidance documentation published by the Department of Finance and Administration.

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

Table 10.1 below lists all consultancy contracts let during 2005–06 to the value of \$10,000 or more, including GST, and provides details for each individual consultancy including the total value over the life of the contract.

Table 10.1 Consultancy Services let during 2005–06

Consultant Name	Description	Total Value	Selection Process (1)	Justification (2)
Azure Innovations	eCourt business analysis services	\$79,200	Select Tender	(A)
StratSec	Prepare specification for WAN management and secure gateway services, and independent evaluation services.	\$58,960	Select Tender	(A)
Clear Lead	Prepare IT tactical plan	\$40,490	Select Tender	(A)
Azure Innovation	Review Casetrack case management system	\$79,200	Direct Source	(A)
Ernst and Young	Internal audit services	\$62,095	Direct Source	(B)
Cross Technology	Assessment review judges' personal assistants	\$36,519	Direct Source	(B)
Interiors Australia	Canberra Single Entry project, design and documentation services Stage 2 and 3	\$28,897	Select Tender	(B)

Consultant Name	Description	Total Value	Selection Process (1)	Justification (2)
PhilpLighton Architects	Architectural services, Court 1 Hobart upgrade.	\$10,681	Select Tender	(B)
Clynes Hale Walker	Architectural services, Court 9 Darwin upgrade	\$13,200	Select Tender	(B)
Resolve Advisors	Case study best practice in indigenous facilitative processes.	\$49,671	Select Tender	(C)
Dr John Morton	Anthropological services	\$26,400	Direct Source	(B)
Hudson Global Resources	Work design services for NSW Registry	\$82,005	Select Tender	(B)
Hudson Global Resources	Assessment and selection services for NSW Registry	\$33,000	Select Tender	(C)
Total Value of Contracts		\$600,318		

- (1) Explanation of selection process terms drawn from the *Commonwealth Procurement Guidelines* (January 2005):

Open Tender – A procurement procedure in which a request for tender is published inviting all businesses that satisfy the conditions for participation to submit tenders. Public tenders are sought from the marketplace using national and major metropolitan newspaper advertising and the Australian Government AusTender internet site.

Select Tender – A procurement procedure in which the procuring agency selects which potential suppliers are invited to submit tenders. Tenders are invited from a short list of competent suppliers.

Direct Sourcing – A form of restricted tendering available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply goods and/or services sought.

Panel – An arrangement under which a number of suppliers, usually selected through a single procurement process, may each supply property or services to an agency as specified in the panel arrangements. Tenders are sought from suppliers that have pre-qualified on the agency panels to supply to the government. This category includes standing offers and supplier panels where the consultant offers to supply goods and services for a pre-determined length of time, usually at a pre-arranged price.

- (2) Justification for decision to use consultancy:
- (A) Skills currently unavailable within the agency.
 - (B) Need for specialised or professional skills.
 - (C) Need for independent research or assessment.

Competitive tendering and contracting

During 2005–06, there were no contracts let to other organisations for the delivery of services previously performed by the Federal Court of Australia.

Exempt contracts

During 2005–06, there were no contracts or standing offers exempt by the Chief Executive from publication in the contract reporting section on AusTender (formerly known as the Gazette Publishing System).

APPENDIX 11

STATEMENT UNDER SECTION 8 OF THE FREEDOM OF INFORMATION ACT 1982

Information on the particulars of the establishment, organisation, functions and powers of the Court is contained throughout this report. Information on the Court's arrangements for consultation with users of the Court about the Court's operations is also included in Chapter 3 of the report. The following lists the categories of documents maintained by the Court, the Court's facilities for public access and the Court's Freedom of Information (FOI) procedures and relevant contacts for inquiries.

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 (enquiries may be made at the relevant District Registry to ascertain the service provider for the relevant State or Territory);
- 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 free of charge upon request:

- procedural guides to:
 - 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);
 - completing certain forms prescribed by the Rules of Court;
 - filing documents in the Court by facsimile transmission.
- a list of Full Court sittings (published yearly);
- Court lists (published daily);
- various practice notes made by the Chief Justice; and
- Video-conferencing 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 relevant reporting service provider.

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 section 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.

Enquiries 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.

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